

(1969) 09 DEL CK 0004
In the Delhi High Court
Case No : Civil Writ No. 851 of 1968

Rajendra Sareen	Vs	APPELLANT
The State of Haryana and Others		RESPONDENT

Date of Decision : 18-09-1969

Acts Referred:

Citation : AIR 1970 Delhi 132

Hon'ble Judges : Narain Andley, J;Hardayal Hardy, J

Bench : Division Bench

Advocate : S.N. Chopra and P.P. Rao, for the Appellant; C.D. Dewan and Rameshwar Dial, for the Respondent

Judgement

1. The petitioner's challenge in this petition under Article 226 of the Constitution is to an order dated 31st October, 1968 whereby his services were terminated with effect from the date of receipt of the communication bearing the same date addressed to him by the Under Secretary Protocol and Publicity, Government of Haryana, on behalf of the Chief Secretary to the said Government. The communication further stated that one month's salary in lieu of the period of notice was being allowed to the petitioner.

2. The grounds on which the validity of the above order is challenged by the petitioner are (1) that he being a permanent Government servant, the order terminating his services amounts to dismissal and Therefore contravenes the provisions of Article 311 of the Constitution, (2) that even if he is held to be a temporary Government servant his appointment being conterminous with the post held by him, the termination of his service while the post is still in existence would contravene Article 311 of the Constitution and (3) that in any event the order terminating his services is vitiated by mala fides on the part of Shri Bansi Lal, Chief Minister Haryana State, who is imp leaded in the petition as respondent No. 2 and Shri G. L. Bailur, Director Public Relations, Govt. Of Haryana, respondent No. 3, inasmuch as they were actuated by personal malice and ill-will against the petitioner.

3. The petitioner alleged that he joined the service of the composite State of Punjab on 22-6-1957 as State Press Liaison Officer in Delhi on a starting salary of Rs. 600/- per mensem in the grade of Rs. 500-25-650/30-800 in the Public Relations Department of the State. The creation of the post with the said scale of pay and the appointment of the petitioner thereto were both done simultaneously by one and the same order dated 28-6-1957. In July 1962 the post was included in the cadre of the Punjab Public Relations Service which was created at that time. In between the petitioner was granted extraordinary leave for a period of six months from 21st November 1959 to 18th May 1960 with permission to act as a Special Correspondent of the Hindustan Times, New Delhi in Pakistan, on a salary of Rs. 1500 per mensem. On return from leave the petitioner resumed his service in the department and worked in an equivalent post of Deputy Director till June 1966. In 1960 the petitioner crossed the efficiency bar and his pay was raised from Rs. 650/- to Rs. 680/- per mensem with effect from 24-12-1960.

4. On 20th June, 1966, the petitioner was re-posted to Delhi in his original post of State Press Liaison Officer. On the reorganisation of the composite State of Punjab and its bifurcation into two separate States of Punjab and Haryana the post held by the petitioner was allocated to the State of Haryana on 1-11-1966. Along with the post the services of the petitioner were also turned over by the Central Government under the Punjab Reorganisation Act, 1966, to the State of Haryana.

5. From 1-12-1966 to 24-3-1967 the services of the petitioner were lent on deputation by the State of Haryana to the State of Punjab for appointment as Officer on Special Duty (Public Affairs) with the Chief Ministry of Punjab in the scale of Rs. 1000-50-50-1500.

On 25-3-1967 the petitioner reverted to his original post of State Press Liaison Officer at Delhi under the Government of Haryana and continued to work as such till the date of impugned order dated 31st October 1968.

6. The petitioner further alleged that the duties attached to his officer were to maintain liaison between the State of Haryana and the Press in Delhi, to explain the policies of the State Government to leading public men and to see that the various matters relating to the State of Haryana were handled in conformity with the instructions received by him from the Government from time to time. His duty also was to arrange interview for the Chief Minister with the gentlemen of "the fourth estate" and with other authorities and agencies at Delhi, According to the petitioner, in the discharge of his aforesaid duties he had to work for the most part under the personal direction of the Chief Minister of the State.

7. The petitioner claimed that since his appointment in June 1957 no fault was ever found with his work by successive Chief Minister and other superior officers under whom he had to work. Things however took a different turn when on 19-5-1968 respondents No. 2 was elected leader of the Haryana Congress

Legislature Party and was due to be sworn in as the Chief Minister of the State at New Delhi on 21-5-1968. The petition recites a series of events to which detailed reference will be made hereafter when I come to deal with the allegations of malafides. The petition also sets out certain incidents between the petitioner and respondent No. 3 from which he wanted an inference of collaboration between respondents 2 and 3 to bring about his dismissal from service to be drawn. A detailed reference to those till also be made hereafter.

8. According to the petitioner, the climax was reached when respondent No. 2 felt greatly upset over the failure of the petitioner to arrange for publication in the morning issues of leading newspapers of Delhi on 31st October, 1968 a declaration made by Shri Nijalingappa, President of the All India Congress Committee, in a speech delivered by him at a public meeting at Faridabad on the night of 30th October 1968 wherein Shri Nijalingappa had inter alias stated that the Government headed by Shri Bansi Lal (respondent No. 2) would not fall so long as he was the President of the Congress. The petitioner submitted that Shri Nijalingappa's speech had a great political significance and was calculated to strengthen the position of respondent No. 2 was Therefore anxious to see that the said statement of Shri Nijalingappa was given the widest possible press coverage within the shortest possible time.

9. The petitioner alleged that he explained to respondent No. 2 that the newspaper and News Agency Correspondents whom he had taken to Faridabad for the press coverage of the meeting had returned to Delhi too late in the night to be able to submit their copy in time for insertion in the morning issues of the papers and had Therefore decided to put out the news of the meeting and in particular, the above declaration made by Shri Nijalingappa on 1-11-1968. But respondent No. 2 who was already prejudiced against the petitioner was greatly worked up at the absence of the news in the Delhi Press on 31st October 1968 and threatened to take immediate action against him.

10. In the afternoon of 31st October 1968, respondent No. 2 let for Chandigarh and saw to it that an order purporting to terminate the petitioner's services with effect from the date of the receipt of the order by the petitioner was passed after office hours that very day and even arranged to have it served on the petitioner at 2-25 P.M. on 1-11-1968 which was a holiday, through a special messenger.

11. Two separate affidavits were file by the respondents in opposition to the petition. One affidavit was by respondent No. 2 in which he controverted the petitioner's allegations of mala fides against him. The second affidavit was by respondent No. 3 in which besides meeting the allegations of malice etc., made against him personally, he replied to other allegations of the petitioner on the basis of the information derived from official records.

12. As apart from the plea of mala fides the principal allegation made by the petitioner was that he was a permanent Government servant or at any rate, his appointment was conterminous with the post of State Press Liaison Officer and

the said post was not only in existence at the time he was served with the impugned order but was actually included by a Gazette Notification issued in July 1962 in the cadre of the Punjab Public Relations Services that had been created at that time, and the allegation was denied in the affidavit filed by respondent No. 3, the petitioner filed on 19th February 1969 a rejoinder affidavit. In that affidavit, besides controverting the other allegations of respondents 2 and 3 in the affidavits filed by them, the petitioner specifically traversed the allegation that the post of State Press Liaison Officer was never made permanent and had throughout remained an ex-cadre post. The petitioner produced with his affidavit a copy of the relevant Government Notification which prima facie supported his claim and refused the contrary allegation made in the affidavit of respondent no. 3. I shall advert to this aspect of the case at some length when I come to discuss the nature of the post held by the petitioner.

13. At this stage it will suffice to say that since the point was of some importance and in a way, went to the root of the petitioner's claim, by our order dated July 21, 1969 we gave opportunity to the respondents to file affidavits including an affidavit of Shri E.N. Mangat Rai, I.C.S., who was Chief Secretary to the Government of Punjab at the relevant time and had signed the Notification on behalf of the Governor and also to file necessary documents in support of their stand. A similar opportunity was also afforded to the petitioner.

14. After the necessary affidavits and documents were filed by both sides we proceed to hear arguments. Meanwhile the petitioner filed one more application for summoning respondent No. 2 for cross-examination on some of the points arising out of his affidavit. On August 28, 1969 the counsel for the State of Haryana (respondent No. 1) sought leave to place on record an additional affidavit of Shri Ram S. Verma, Deputy Secretary to Government of Haryana, Public Relations Department a copy of which was supplied by him to the petitioner. The affidavit was allowed to be placed on record and was referred to by both sides although no formal order was made by us in that behalf.

15. Mr. Dewan who appeared for the respondents conceded that if the petitioner's plea of mala fides was accepted the impugned order would have to be quashed. I will therefore discuss the question of mala fides first.

16. According to the petitioner, he first incurred the displeasure of respondent No. 2 when soon after the latter's election as leader of the Haryana Congress Legislature Party he addressed a Press Conference at Delhi. In the course of that conference, respondent No. 2 made an imprudent statement that personally he was not at all convinced that Haryana interests demanded inclusion of Chandigarh in that State. The petitioner alleged that apprehending that the said statement of respondent No. 2 might give rise to a political controversy having serious repercussions sought his permission to request the Press Correspondents that the above statement should be treated as off the record. Respondent No. 2 resented the petitioner's request although he accepted and acted upon the suggestion. Respondent No. 2 denied the incident and stated in his affidavit that

he did not recall having made any such statement. He also stated that personally he was all along in favor of inclusion of Chandigarh in Haryana State and in fact said so afterwards, as was evident from the report appearing in the Tribune dated the 26th June, 1968.

17. For my part, I am not impressed by the denial of this incident by respondent No. 2 and would rather prefer the petitioner's version of it. It is rather amazing that respondent No. 2 should remember what he said towards the end of June and plead loss of memory about something that had happened barely a month before that. The press conference of May 19, 1968 was the first of its kind addressed by respondent No. 2 and it is quite likely that he said away something in a moment of excitement under the stress of questions by Press Correspondents which probably did not represent his real views on the subject. If the petitioner Therefore intervened to save the situation respondent No. 2 should rather be grateful to him than to resent his intervention. Anyway, the incident is too trivial to form the foundation of a charge of mala fides against respondent No. 2.

18. The petitioner next referred to certain statements made by respondent No. 2 wherein he was alleged to have alluded to Shri G.L. Nanda, former Home Minister in the Central Government as his "guru" and to have declared that he would function as Chief Minister according to Shri Nanda's advice. The petitioner further alleged that when respondent No. 2 became the Chief Minister, he was very close to Shri G.L. Nanda and Shri Bhagwat Dayal Sharma former Chief Minister of Haryana. The petitioner's association with Shri G.L. Nanda was Therefore in obedience to the express instructions of respondent No. 2. Towards the beginning of August 1968, however differences developed between respondent No. 2 and Shri G.L. Nanda which by the end of August 1968 became almost irreconcilable and in due course they actually fell out. As respondent No. 2 felt that the petitioner was closely associated with Shri G.L. Nanda he became suspicious of and indifferent to the petitioner and started avoiding him.

19. Respondent No. 2 denied these allegations. Here again it would appear that his denial of what he was alleged to have said about Shri G.L. Nanda in the early days of his office as Chief Minister, is to say the least disingenuous. The petitioner has placed on record newspaper cuttings which clearly bear out the truth of his assertion although it may be said that there is nothing concrete on the file to contradict the further statement made by respondent No. 2 that his personal relations with Shir G. L. Nanda were by no means strained. The question however is whether the allegations is strong enough to lead to an inference that respondent No. 2 would made a scapegoat of the petitioner because there was cooling off of relations between him and Shri G.L. Nanda. It may be that sometime when politician fall out their quarrel may have adverse repercussions on the fortunes of civil servants who may have aligned themselves with one side or the other. But that is precisely why the civil servants are expected to remain detached from politicians. Anyway, whatever may be the

state of relationship between respondent No. 2 and Shri G.L. Nanda, I would need something more tangible than what the petitioner has been able to prove in this case to induce me to hold that the petitioner's loss of his job is due to estrangement between respondent No. 2 and Shri G.L. Nanda and to the petitioner's association with the latter.

20. The petitioner then stated that on or about the 23rd June 1968 respondent No. 2 had telephoned from Srinagar and asked him to fix an appointment for him with the editors of the Statesman and the Times of India New Delhi in order that he might complain to them against their Correspondents at Chandigarh who he said were not reporting his statements properly and had been critical about his functioning as Chief Minister. The petitioner alleged that he tried to dissuade respondent No. 2 from this course and advised him that his complaints against the Press Correspondents might make his position difficult. The petitioner further alleged that respondent No. 2 was very much irritated at this and ended the conversation abruptly with the words "do as you like."

21. The allegation was denied by respondent No. 2. The petitioner thereupon moved an application requesting that relevant records be sent for from the Telephones Department Srinagar and respondent No. 2 be also summoned for cross-examination. We however, did not consider it necessary to make any such order as in our opinion, the allegation, even if true was hardly enough either by itself or in conjunction with other facts to make out a case of mala fides against respondent No. 2.

22. The last incident which according to the petitioner led to the bursting of the simmering cauldron of prejudice in the mind of respondent No. 2 was the petitioner's failure to arrange for publication of the declaration made by Shri Nijalingappa in the public meeting held at Faridabad on the night of 30th October 1968. The broad facts of the incident have already been mentioned before and therefore, need not be repeated. It however appears to us that the very foundation of the petitioner's allegation in this behalf is wrong. His case is that respondent No. 2 was so greatly upset over the absence of news in the morning issues of Delhi newspapers on October 31, 1968 that he went posthaste to Chandigarh the same day and got the order of petitioner's removal from service passed after office-hours and saw to its dispatch by a special messenger on the following day. As the allegation was denied by respondent No. 2 who had stated that he had taken the decision to terminate the services of the petitioner on the 29th October 1968 and that the file of the case did not come to him at any time between the 29th October 1968 and 31st October 1968 or later nor did he talk to the Chief Secretary that the order should be issued immediately and that arrangements should be made to serve the same upon the petitioner on the following day, we called for the original files and satisfied ourselves that the petitioner's allegations were not correct and that the decision to terminate the services of the petitioner had in fact been taken by respondent No. 2 on October 29, 1968.

23. I Therefore, hold that there is no merit in the petitioner's allegation that the impugned order was made by respondent No. 2 because of any personal prejudice or malice against the petitioner or that respondent No. 2 abused his power in any manner to bring about the petitioner's removal from service.

24. This brings me to the petitioner's allegations of mala fides against respondent No. 3. The petitioner did not accuse respondent No. 3 of having any personal ill-will against him. His suggestion rather was that respondent No. 3 was more or less reflecting the mood of respondent No. 2 against him and was taking his cue from him. The petitioner alleged that on 24-10-1968 he was called to Chandigarh for reconciliation of outstanding accounts. In the course of his discussions with respondent No. 3 he noticed that the latter was unusually terse and prone to find fault with the petitioner, Respondent No. 3 insisted that the vouchers on account of taxi-fare should indicate the distance covered as per mile-metre and the schedule of rates prescribed. The petitioner explained that in Delhi all taxi-cabs were not equipped with mile-metres which were in working order and only fare meters were fitted as per statutory requirements. Respondent No. 3 persisted that the petitioner should give the distances covered in respect of each voucher submitted by him. The petitioner thereupon said that in future he would try to comply with this requirement to the extent it was possible but so far as the vouchers in question were concerned, he requested that they be passed. Respondent No. 3 did not accept the suggestion and insisted on the petitioner furnishing the distance in respect of each voucher. This led the petitioner to remark that in that case he would have to run the distance all over again in order to measure the distances. On this respondent No. 3 got infuriated and said "Don't talk non-sense". The petitioner protested against this remark and said that he was not accustomed to such intemperate language. Respondent No. 3 then asked the petitioner to leave his room.

25. The broad details of the incident were not disputed by respondent No. 3 though he attempted to give a slant to the version by putting the blame on the petitioner for being rather flippant in his behavior and made his own part look quite innocuous. Whatever be the truth and it may be that the petitioner's behavior on that day left a substratum of prejudice in the mind of respondent No. 3 against the petitioner, the connection of the incident with the decision to terminate the services of the petitioner appears to me to be too remote, keeping in view the fact that the final order itself was passed by respondent No. 2 and not by respondent No. 3. The result is that the petitioner's plea of mala fides against respondent No. 3 also fails and is rejected.

26. I shall now take up the other two contentions of the petitioner regarding the nature of the post held by him and his right to hold the same.

27. The respondents placed on record the various posts held by the petitioner from the date of his appointment on 22-6-1957 to the date of termination of his services on 1-11-1968. The chronological order of the petitioner's postings is as follows:-

Post Held Period for which held 1. State Liaison Officer 22-6-1957 to 18-7-1960 2. Deputy Director (Field) 19-7-1960 to 19-9-1960 3. Officer on Special Duty 20-9-1960 to 26-6-1962 4. Deputy Director (Press) 27-6-1962 to 14-6-1966 5. State Liaison Officer 15-6-1966 to 30-11-1966 6. Remained on Deputation with Punjab Government 1-12-1966 to 24-3-1967 7. State Press Liaison Officer 25-3-1967 to 1-11-1968

28. It is common ground that the only order relating to the petitioner's appointment is the one contained in the Memorandum dated 28-6-1957 addressed by Shri Nakul Sen I.C. S. Chief Secretary. Government Punjab to the Director of Public relations Punjab which reads as under:-

"Sub: Creation Of The Post Of State Press Liaison Officer At DELHI:

1. The Governor of Punjab is pleased to create the post of State Press Liaison Officer at Delhi in the scale of Rupees 500-25-650/30-800 with effect from the 22nd June, 1957 till the 28th Feb. 1958 and the appointment of Shri Ranjendra Sareen thereto.

2. The expenditure will be met from within the Budget grant under the head "57-Mscellaneous- D-Publicity Board-D-I-Publicity Board" for the year 1957-58."

29. It is also common ground that although the initial creation of the post of State Press Liaison Officer at Delhi and the petitioner's appointment thereto were for the duration of about 8 months from 22-6-57 to 28-2-1958, the post was renewed from year to year on the basis of annual sanctions granted by the government i.e., from the 1st day of March in one year till the 28th day of February in the following year and although no specific order continuing the petitioner's appointment to the post was made after 28-2-1958, he kept on holding the post till 18-7-1960. In between he was granted extraordinary leave from 21-11-1959 till 18-5-1960. Between 19-7-1960 and 26-6-1962 the petitioner held two other posts in the Department of Public Relations but it was not disputed that those two posts viz., Deputy Director (Field) and officer of Special Duty were both of equivalent status and pay. From 27-6-1962 to 14-6-1966 the petitioner held the post of Deputy Director (Press) and then once again as State Press Liaison Officer from 16-6-1966 to 30-11-1966 and it is on the basis of that incumbency alone that the petition laid claim to being a permanent Government servant. The respondents admitted the petitioner's appointment to these posts. They also admitted that he held the posts for the periods mentioned above. The respondent further admitted that the post of Deputy Director (Press) was a permanent post. It was also a cadre post; but their contention was that the petitioner's appointment thereto was on a temporary basis. As regards the post of State Press Liaison Officer their contention was that it was neither a cadre post nor a permanent post.

30. The petitioner however succeeded in establishing that the post of State Press Liaison Officer was inclined in the cadre in July 1962. In this connection the petitioner placed on record a Gazettee Notification dated the 11th July 1962

which clearly showed that on and from that date at least there could be no doubt about the post of State Press Liaison Officer being a cadre post in Class II of the service.

31. The production of this notification which is to be found as Annexure X to the petitioner's rejoinder dated the 19th February, 1969 at page 125 of the file given rise to fresh controversy between the parties which was only resolved by the affidavit of Shri E. N. Mangat Rai who was Chief Secretary to the Punjab Govt., at the relevant time and had signed the said notification on behalf of the Governor of Punjab. According to the notification, a new Service called the "Punjab Public Relations Service" was supposed to have been created by the Governor including therein the posts mentioned in the notification after classifying them into Class I and II.

32. The petitioner claimed that the post of Deputy Director (Press) to which he was appointed on 27-6-1962 and the State Press Liaison Officer to which he reverted on 16-6-1966, being cadre posts in the newly created public Relations Service under the aforesaid notification, he should be held to have been appointed substantively to a permanent post and had Therefore the rights and privileges of a permanent Government Servant. After the filing of the said notification the respondents abandoned their initial stand and conceded that on and from 11-7-1962 the pos of State Press Liaison Officer did become a cadre post. They however, strongly resisted the petitioner's plea that the notification created any new Service. They also vehemently asserted that the post of State Press Liaison Officer though included in the cadre and classified as Class II post was nevertheless a temporary post.

33. As regards creation of a new Service by the aforesaid notification, on a perusal of the affidavit filed by Shri E.N. Mangat Rai on 7-8-1969, I am satisfied that it was not the intention of the Punjab Government at any time to create any new Service. All that had happened was that the Director, Public Relations and Tourism, Punjab had addressed a letter dated the 19th June 1961 to the Chief Secretary to Government of Punjab (Protocol and Publicity Branch) on the subject of classification of services in the Public Relations Department, Punjab. The proposal was examined at various levels and ultimately on the analogy of the practice followed by certain other departments of the Punjab State and Punjab Public Relations Department (Gazetted) Service was named as "Punjab Public Relations Service (P.P.R.S) and the gazetted posts were classified into Class I and II.

34. The expression "creation of Service" as used in the Notification when considered in the background of the various letters and nothings to which Shri Mangat Rai referred in his affidavit would thus appear to be an unhappy expression. In reality the Punjab Public Relations Service mentioned in the notification ws merely a new name for the same old Service, namely, the Punjab Public Relations Department (Gazetted) Service with the difference that four new posts which were not mentioned in Appendic "A" to the Punjab Public Relations

Department (Gazetted) Service Rules, 1958 viz. (1) Officer on Special Duty (2) State Press Liaison Officer (3) Exhibition Officer and (4) Song and Drama Officer, were also included in the cadre.

35. Having failed in their attempt to prove that the post of State Press Liaison Officer was not a cadre post the respondents took the stand that in any event, it was not a permanent post. Mr. Dewan, learned counsel for the respondents, strenuously urged that it was not necessary that all posts in a cadre should be permanent. According to the learned counsel, a cadre could be wholly temporary or it may contain posts within it, both temporary and permanent. In support of his submission. Mr. Dewan drew our attention to the affidavit of Shri E. N. Mangat Rai and also to the fresh affidavit filed on 28-8-1969 by Shri Ram S. Verma Deputy Secretary to Government Haryana, Public Relations Department wherein it was stated that according to the relevant documents and files of the Department examined by him, all the posts mentioned in Appendix A to the 1958 Rules were not of permanent character. As an instance he referred to the post of Administrative Officer which was temporary and continued to be so until it was made permanent by the Government Order dated the 25th September, 1964. He further stated that the post of State Press Liaison Officer had all along been temporary until the creation of the post of Joint Director in June 1962. When the post of State Press Liaison Officer was thrown in abeyance and it remained so till June 1966 likewise the post of Officer on Special Duty was a temporary post at the time of the notification dated the 11th July 1962 and it continued to be so even thereafter. Similarly the post of Exhibition Officer and Song and Drama Officer were of temporary character and were made permanent by the order of Government dated the 1st September 1966. The deponent supported his averments by reference to certain documents of which copies were filed with the affidavit.

36. It is true that this affidavit was filed almost at the conclusion of the arguments but a copy of the affidavit was supplied to the petitioner and although he had ample opportunity to contradict the averments made therein he did not make any attempt to do so. In my opinion the respondents have placed sufficient material on record to establish that in spite of its inclusion in the cadre by the notification of July 11, 1962 the post of State Press Liaison Officer still continued to remain temporary and no orders were ever passed by Government to convert it into a permanent post. As the post itself was temporary and was being renewed by annual sanction every year the question of petitioner's appointment to that post in a permanent capacity could not possibly arise. Mr. Chopra learned counsel for the petitioner however, argued that the petitioner's claim to permanency was not founded merely on his appointment to the post of State Press Liaison Officer. It rested on a more solid foundation. Mr. Chopra urged that it had not been denied by the respondents that the recruitment and conditions of Service of persons appointed to the Punjab Public Relations Department (Gazetted) Service and its rechristened successor, the Punjab Public Relations service were, regulated by the Punjab Public Relations Department (Gazetted)

Service Rules, 1958. These rules were framed by the Governor of Punjab in exercise of his powers under the proviso to Art. 309 of the Constitution and had Therefore statutory binding force.

37. Rule 9 of the said rules which relates to the method of recruitment to various posts in the Service provides in sub-rule (b) that in the case of Deputy Director, Public Relations, the recruitment shall be made-

(i) by selection from among the Public Relations Officers, Editors, District Punjab Relations Officers, and the Superintendent provided they have five years" experience in their respective posts, or

(ii) by transfer or deputation of a person already in the service of the Government of a state or of the Union, or

(iii) by direct appointment.

When the petitioner who was already in the service of the State was transferred on 26-6-1962 to the post of Deputy Director (Press) vice Shri Rajendra Nath who was transferred as State Press Liaison Officer and then Joint Director at Delhi, he should be held to have been recruited to that post by transfer in accordance with sub-rule (b) (ii) of R. 9 mentioned above.

38. Mr. Chopra next referred to R. 10 and submitted that after the petitioner was appointed to the post under R. 9 (b)(ii) he was to remain on probation for a period of one year but the total period of probation could in no case exceed three years. Thereafter the petitioner automatically became permanent if there was a permanent vacancy against which he could be confirmed. It could not be disputed that the petitioner continued to hold the post of Deputy Director (Press) from 27-6-1962 to 14-6-1966. This was more than the maximum period of probation prescribed under R. 10 which reads as under:-

"10. Probation - (1) Members of the service, who are appointed against permanent vacancies, shall on appointment to any post in the Service remain on probation for a period of two years in the case of members recruited by direct appointment, and one year in the case of members recruited otherwise.

Provided that the period of service spent on deputation or on a corresponding or a higher post may be allowed to count towards the period of probation fixed under this rule.

(2) If the work or conduct of any member during his period of probation is, in the opinion of appointing authority, not satisfactory, the appointing authority may dispense with his services or revert him to his former post if he has been recruited otherwise than by direct appointment.

(3) On the completion of the period of probation of any member, the appointing authority may confirm such member in his appointment or, if his work and conduct have, in the opinion of the appointing authority, not been satisfactory dispense with his services or revert him to his former post if he has been

recruited otherwise than by direct appointment or extend the period of probation and thereafter pass such orders as it could have passed on the expiry of the original period of probation.

Provided that the total period of probation including extension, if any, shall not exceed three years if there is a permanent vacancy against which such members can be confirmed."

In this connection Mr. Chopra drew our attention to the judgment of the Supreme Court in State of Punjab Vs. Dharam Singh, where it was held:-

"Where, as in the present case, the service rules fix a certain period of time beyond which the probationary period cannot be extended, and an employee appointed or promoted to a post on probation is allowed to continue in that post after completion of the maximum period of probation without an express order of confirmation, he cannot be deemed to continue in that post as a probationer by implication. The reason is that such an implication is negated by the service rule forbidding extension of the probationary period beyond the maximum period fixed by it. In such a case, it is permissible to draw the inference that the employee allowed to continue in the post on completion of the maximum period of probation has been confirmed in the post by implication."

Mr. Chopra submitted that R. 6(3) of the Punjab Educational Service which was under consideration before their Lordships in that case was in pari materia with Rule 10(3) in the present case. Mr. Chopra further submitted that it was respondents' own case that the post of Deputy Director (Press) was a permanent post at the time of the appointment of the petitioner to it in June 1962. There were also two other posts of Deputy directors one of Deputy Director (Field) and the other Deputy Director (Publicity Material). According to the affidavit of Shri Ram S. Verma the post of Deputy Director (Field) was permanently held by Mrs. A. Mardhekar, while the other post was a temporary post and was made permanent with effect from 1-4-1964 only. It therefore followed that in the year 1964 at least, there were three permanent posts of Deputy Directors. As there was a permanent vacancy in respect of one of those posts, on the expiry of the period of two years or at the most three years probation, the petitioner became entitled to be confirmed in the vacancy. It is true that after 14-6-1966 the petitioner was transferred to the post of State Press Liaison Officer which was a temporary post but once he became a permanent Government Servant, his subsequent appointment to a temporary post would not have the effect of impairing his status as a permanent servant.

39. There is a great deal of force in the argument of Mr. Chopra. It is true that the petitioner's appointment as Deputy Director (Press) was made with effect from 27-6-1962 by Punjab Government's notification No. 7940-I.P.P.-62/15997 dated the 30th July 1962 because the permanent incumbent of that post Shri Rajendra Nath, was transferred to Delhi with effect from 2-7-1962 as Joint Director, Public Relations Delhi. Shri Rajendra Nath's appointment to the post

was a temporary appointment because sanction of the Governor to the creation of that post itself was up to the 28th February, 1963 (see Memo No. 4754-I.P.P.-62/12966 dated the 21st June, 1962 addressed by Shri E. N. Mangat Rai Chief Secretary, Punjab Government to the Director Public Relations and Tourism, Punjab Annexure Xvi at page 287 of the file). Shri Rajendra Nath Therefore, continued to retain his lien on the post of Deputy Director (Press) which he was holding substantively before his transfer to Delhi. The post of Joint Director was thereafter continued on the basis of annual sanctions till September 1968 when it was made permanent. The petitioner's appointment to the post of Deputy Director was Therefore , in or against a permanent post although the vacancy at that time was not permanent in that some one else had a lien on the post.

40. Mr. Dewan contended that on a true construction of Rule 10(1) the question of petitioner's appointment on probation will only arise if it is established that he was not only appointed against a post that was permanent but also against a vacancy which was of a permanent nature. According to Mr. Dewan, the words "appointed against permanent vacancies" in sub-rule (1) of Rule 10 are capable of only one meaning and that is "appointed not only against permanent posts but also against permanent posts which are permanently vacant." I cannot agree, as I find it extremely difficult to visualise a permanent post which is permanently vacant.

41. The interpretation suggested by Mr. Dewan would also make non-sense of the proviso to sub-rule (3) of Rule 10. If for the application of Rule 10 (i) it is necessary that both the post and the vacancy should be of a permanent nature then the words "if there is a permanent vacancy against which such member can be confirmed" as embodied in the proviso to sub-r (3) will become otiose. Applying to rule of harmonious construction to sub-rule (1) and the proviso to sub-rule (3), the only proper meaning to be given to the expression "permanent vacancies" in sub-rule (1) is vacancies in permanent posts, no matter how those vacancies may have occurred. The vacancies in the posts may be the result of incumbents of those posts having been appointed to other posts temporarily or in an officiating capacity. Mr. Dewan next contended that the petitioner could not have been appointed against a permanent vacancy even if the meaning canvassed for by Mr. Chopra were given to that term. In this connection he invited our attention to two letters dated 16-1-1963 and 22-5-1963 addressed by the Secretary Punjab Public Service Commission Patiala to the Chief Secretary to Government Punjab wherein the Commission had declined to agree to the proposed appointment of the petitioner as Deputy Director (Press) in relaxation of the prescribed qualifications. Both these letters were filed as Annexures R-3/8 and R-3/9 to the affidavit of Shri G. L. Bailur (respondent No. 3). Mr. Dewan also referred to the following passage in the affidavit of respondent No. 3:-

"It may be mentioned that the post of State Press Liaison Officer was held in abeyance for four years i.e., from June 1962 to June, 1966. During this period, the petitioner was appointed to occupy the post of Deputy Director, a cadre post

in the Department of Public Relations. The Public Service Commission took exception to this appointment of the petitioner and after some correspondence between the Government and the Commission, the Commission did not agree to the appointment of the petitioner to the said cadre post. Accordingly the post of the State Press Liaison Officer was revived and the petitioner appointed thereto in June 1966. At no time was the petitioner ever made permanent by an order of the Government."

The petitioner's reply to this part of the affidavit of respondent No. 3 was as under:-

"I do not admit for want of knowledge the allegations that the Public Service Commission did not agree or took exception to my appointment of Deputy Director. The very fact that I held the post for a period of four years prima facie indicates that my appointment to the post was not unlawful."

42. In the Commission's letter dated 16-1-1963 there is reference to the letter of the Chief Secretary to Government Punjab dated the 6th August 1962 addressed to the Secretary to the Commission. The qualifications for the post of Deputy Director which according to the Commission were not possessed by the petitioner, were contained in that letter. No such letter was produced on record by the respondents nor has any other material been placed on record as to what were the special qualifications for that post which the petitioner did not possess. In the absence of necessary material it is not possible to accept the ipse dixit of respondent No. 3 or the advice or opinion of the Public Service Commission which the Government itself declined to follow because the petitioner's appointment in that post was continued for over three years after the receipt of the last letter of the Commission dated 22-5-1963 wherein it was clearly stated that the Commission were unable to agree to the appointment of the petitioner as Deputy Director (Press) in relaxation of the qualification.

43. In the circumstances, there is no escape from the conclusion that the Government had deliberately chosen to disregard the advice of the Commission and had decided to appoint the petitioner to the post of Deputy Director (Press) in opposition to that advice. Once that appointment was made the provisions of Rule 10 were attracted giving rise to the consequence envisaged therein.

44. Mr. Dewan finally argued that the case of State of Punjab Vs. Dharam Singh, decided by the Supreme Court was distinguishable on facts and that the case which was directly in point was Shri Anup Singh v. State of Punjab, Civil Writ No. 1623 of 1966 decided by Tek Chand J., of the Punjab and Haryana High Court on 29-11-1967 and confirmed by a Division bench of that High Court in L.P.C. NO. 43 of 1968 (Punj). What was held was that even in cases where the period of probation has been extended the question of confirmation arises only if a vacancy exists. In that case it was held that there was no such vacancy, Tek Chand J., had also held that there was a lacuna in the rules under discussion in that case because the rules no doubt provided that the total period of probation

including extension shall not exceed three years but they were silent as to what was to follow where the period of three years had been completed and the probationer was otherwise, suitable from the point of his work and conduct. The learned Judges of the Division Bench (Meher Singh C. J., and Prem Chand Jain J.) do not appear to have dealt with this part of the reasoning of the learned Single Judge. Anyway, in the instant case the proviso to sub-rule (3) specifically lays down what is to happen on the expiry of the total period of probation. The case of State of Punjab Vs. Dharam Singh, Therefore, fully applies to this case.

45. The result is that the first contention raised by the petitioner prevails and it is held that his appointment as Deputy Director ripened into a permanent appointment on the expiry of the period of probation and he became entitled to be confirmed in that post for the simple reason that by 1-4-1964 there were three permanent posts of Deputy Directors in one of which there was a permanent vacancy against which he could be confirmed. Whether any order of confirmation was actually made by the Government or not appears to me to be wholly irrelevant as the petitioner's right to confirmation arose on the expiry of the period of probation and the existence of permanent vacancy against which he could be confirmed within the meaning of the proviso to sub-rule (3).

46. Once it is held that the petitioner acquired the status of a permanent government servant his subsequent transfer to the post of State Press Liaison Officer, no matter whether that post was permanent or temporary would not derogate from his status and rights as such. It was held by the Supreme Court in Parshotam Lal Dhingra Vs. Union of India (UOI), :

"In the absence of any special contract the substantive appointment to a permanent post gives the servant so appointed a right to hold the post until, under the rules, he attains the age of superannuation or is compulsorily retired after having put in the prescribed number of years" service or the post is abolished and his service cannot be terminated except by way of punishment for misconduct, negligence, inefficiency or any other disqualification found against him on proper enquiry after due notice."

As the petitioner's services were terminated without proper enquiry after due notice to him, the order of termination of his services must be struck down as having been made in contravention of the constitutional guarantee under Art. 311 of the Constitution.

47. The alternative contention urged by the petitioner will arise for consideration only if my view in regard to the first contention of the petitioner is found to be wrong. The contention briefly is that even if it be held that his appointment to the post of State Press Liaison Officer, the post that he held first and last, was temporary his appointment was conterminous with the post and Therefore, so long as the post was in existence he could not be asked to quit. For his argument, the petitioner relied upon the order dated 28-6-1957 which provided for the creation of the post as well as for the appointment of the petitioner

thereto. The petitioner admitted that the post as well as his appointment thereto was in the first instance for a period of eight months ending with 28th February 1958 and that thereafter the post was renewed from year to year on the basis of annual sanction granted by the Government. Although the petitioner continued to hold that post he was unable to produce any fresh order regarding continuance of his appointment thereto or the terms and conditions on which such appointment was continued. In the absence of any specific order to that effect it is impossible to hold that because the petitioner was allowed to hold the post for several years when the post was being renewed, his appointment to the post must be treated as being conterminous with the post. The only reasonable assumption to make is that the petitioner's tenure ended by the 28th of February each year and when the post was renewed for the ensuring year the petitioner's appointment was also carried forward till the corresponding date in that year. It Therefore, follows that the utmost that could be said in favor of the petitioner is that he had a right to continue in the post till 28th February 1969.

48. The petitioner then contended that there was no provision in the rules by which his services could be terminated with one month's notice. Even on the assumption that he had a right to continue in the post till 28th February, 1969 his discharge from service by one month's notice on 31st October, 1968 was illegal and amounted to imposition of a penalty of removal or dismissal within the meaning of those expressions as used in R. 4 (vi) and (vii) of the Punjab Civil Services (Punishment and Appeal) Rules, 1952. In this connection our attention was invited to Note (4) in Appendix 24 to the Punjab Civil Service Rules Volume I (First Edition 1959 Reprint) at page 175 where it is observed:

"The discharge of a person appointed to hold a temporary appointment before the expiration of the period of his appointment, not being within the scope of Cl (b) of the Explanation to this rule, amounts to removal or dismissal within the meaning of R. 4 and is Therefore, appealable under these rules."

The foot-note appears to be a decision of the Government on the interpretation of Cl (b) of the Explanation to R. 4. The clause reads as under:-

"The termination of employment of a temporary Government servant appointed otherwise than under contract on the expiration of the period of the appointment, does not amount to removal or dismissal within the meaning of this rule or R. 7." And is in my opinion a correct interpretation of the rule.

49. In reply to the petitioner's argument Mr. Dewan refused us to R. 5.9 (b) of the Punjab Civil Services Rules Volume II. The said rule reads as under:-

"When it is proposed to discharge a person holding a temporary post before the expiry of the term of his appointment or a person employed temporarily on monthly wages without specified limit of time or duty, a month's notice of discharge should be given to such a person, and his pay or wages must be paid for any period by which such notice falls short of a month."

In my opinion, no help can be derived by the learned counsel from the above rule. The rule forms part of a group of rules comprised in Section 1 of Chapter V which deal with different kinds of pensions and conditions for their grant. Sub-section B (i) of that section which consists of Rr. 5.7 and 5.8 deals with selection for discharge. Rule 5.7 reads:-

"The selection of Government servants to be discharged upon the reduction of an establishment should *prima facie* be so made that the least charge for compensation pension will be incurred."

Rules 5.7 and 5.8 are followed by Rr. 5.9 and 5.10 in sub-section B (ii) and deal with notice of discharge. It follows that the notice of discharge envisaged in R. 5.9 (b) is consequent upon "the reduction of an establishment" contemplated under Rule 5.7. In the present case, it cannot be disputed that the petitioner's discharge from service was not the result of any reduction of establishment. The order terminating the petitioner's services by one month's notice is Therefore, liable to be quashed on this ground as well.

50. Mr. Dewan finally contended that even in the absence of any rules the services of a temporary Government servant were liable to be terminated by one month's notice for the simple reason that such an employee had no right to hold the post. In this connection our attention was invited to the following passage in the judgment of the Supreme Court in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, :

"Likewise an appointment to a temporary post in a Government service may be substantive or on probation or on an officiating basis. Here also, in the absence of any special stipulation or any specific service rules, the servant so appointed acquires no right to the post and his service can be terminated at any time except in one case, namely, when the appointment to a temporary post is for a definite period."

51. It appears to me that the passage cited above does not help Mr. Dewan's argument as the petitioner's appointment to the temporary post has been held by me to be for a definite period i.e. for the period ending on the 28th February of the year from which the post was being renewed from year to year. The position in such a case appears to have been made perfectly clear by the learned Chief Justice who spoke for the Court in that case in the passage immediately following the one cited by Mr. Dewan where it was observed:

"In such a case the servant so appointed, acquires a right to his tenure for that period which cannot be put an end to unless there is a special contract entitling the employer to do so on giving the requisite notice or the person so appointed is, on enquiry held on due notice to the servant and after giving him a reasonable opportunity, to defend himself, found guilty of misconduct, negligence, inefficiency or any other disqualification and is by way of punishment dismissed or removed from service or reduced in rank."

52. The result is that this contention of the petitioner also succeeds. The prayer clause in the petition shows that the only relief claimed by the petitioner is for a writ of certiorari or any other writ, order or direction quashing the order dated 31-10-1968. As the petitioner has succeeded in making good two out of three contentions raised by him he is entitled to the relief prayed for by him. The order dated 31-1-1968 terminating the petitioner's service is accordingly quashed. The petitioner will also have his costs which are assessed at Rs. 500.

53. Petition allowed.