

(1974) 11 SHI CK 0005

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 193 of 1974

Rajinder Parshad etc.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 12-11-1974

Acts Referred:

Central Civil Services (Conduct) Rules, 1964 — Rule 7
Central Civil Services (Temporary Service) Rules, 1965 — Rule 5, 5(1), 5(2)
Constitution of India, 1950 — Article 14, 16, 311, 311(2)

Citation : (1974) 3 ILR HP 1197

Hon'ble Judges : Chet Ram Thakur, J

Bench : Single Bench

Advocate : Chhabil Dass, for the Appellant; B. Sita Ram, General, for the Respondent

Final Decision : Allowed

Judgement

Chet Ram Thakur, J.—The Petitioners who are appointed as Auditors in the office of the Accountant General, Himachal Pradesh and Chandigarh, Simla, have challenged the orders of termination of their services (Annexures PC-1 to PC-10), dated 11th May, 1974.

2. The Petitioners are members of the Himachal Pradesh Civil Accounts Association of the office of the Accountant General, Himachal Pradesh and Chandigarh, and this Union is affiliated to All India Non-Gazetted Audit and Accounts Association, New Delhi, which is recognized by the Government of India. On 2nd April, 1974, the All-India Non-Gazetted Audit and Accounts Association, New Delhi, (shortly called the Association) served a Charter of Demands to the Comptroller and Auditor-General of India, New Delhi, to the effect that the employees of the department have been meted out gross injustice at the hands of the Pay Commission and that the negotiated settlement of the basic and minimum demands had failed because of the rigid attitude of the Government and by this Charter of Demands they requested that early steps be

taken to settle the minimum demands of the employees and also to take back all forms of punitive measures taken against the Audit employees in various offices of the Accountant General. Consequently, the Himachal Pradesh Civil Accounts Association also gave a notice of their decision to go on pen-down and work to rule strike on 8th and 9th May, 1974, and to go on indefinite strike from 10th May, 1974, onwards till their demands were considered and fully met. On 10th May, 1974, about 93 per cent of the total employees went on general strike. Out of 496 employees who went on strike, 207 were temporary employees and 289 were quasi-permanent employees. 11th and 12th May, 1974, being public holidays, all the persons, who participated in the strike, attended the office on 13th May, 1974, in view of the fact that the union had called off the strike vide letter (Annexure PB), dated 12th May, 1974. The Respondent No. 2 felt aggrieved by this step of the various employees as he had assured his higher authorities that he would not allow the strike to take place. Hence he got issued an Order No. Estt. I/Strike/3-17, dated 11th May, 1974, which was affixed on the notice board by which the services of all the Petitioners were terminated and this notice was followed by Annexures PC-1 to PC-10 to various employees terminating their services. Therefore, the Petitioners submitted that even though the notice purports to be one under Sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Services) Rules, 1965, but it does not ex-facie assign any reason for terminating the services of the Petitioners. Although 496 persons had participated in the general strike on 10th May, 1974, but only 6 persons were singled out for this adverse treatment and no action has been taken against others. The Petitioners have been discriminated. The aforesaid termination has not been made either on account of any administrative reason or on account of the abolition of the posts. The orders have been passed by way of punishment.

3. It was further averred that the orders of termination of services are based on an alleged misconduct of the Petitioners having gone on strike along with others. They were entitled to an opportunity to show-cause against the proposed action of termination of their services as contemplated under Article 311 of the Constitution of India. It was in these circumstances that the Petitioners have filed this petition for quashing the notice of termination as also the termination order.

4. The Respondents admitted that recognition was accorded to the Civil Accounts Association. However, they contended that the Petitioners had no right to the posts and their services have been terminated on the ground of unsuitability and there is no question of any stigma or evil consequence flowing from the orders of termination of their services. The Petitioners were purely temporary employees and were governed by the Central Civil Services (Temporary Service) Rules, 1965, and their services were liable to be terminated at any time without assigning any reason under Rule 5. It was also averred that the writ petition was premature and wholly incompetent. Further it had been pleaded that the Petitioners were guilty of laches and that the petition suffers from misrepresentation and concealment of facts in the affidavits and supplementary affidavits. It was admitted that the Petitioners absented themselves on 10th May,

1974. The factum of strike was admitted. However, it was denied that they were on strike only for one day. In fact they were on strike from 10th May to 12th May, 1974, besides having participated in the pen-down strike on the 9th May, 1974, itself and that the pen-down strike also is a strike within the meaning of Rule 7(ii) of the Central Civil Services (Conduct) Rules, 1964. The Petitioners had no right to go on strike and that they had acted in contravention of the Central Civil Services (Conduct) Rules, 1964, applicable to them which prohibits any form of strike in connection with any matter pertaining to their service or the services of any other Government servant. The action against the Petitioners had been taken by Respondent No. 3 under the terms and conditions of their services as laid down in the Central Civil Services (Temporary Service) Rules. The Petitioners having been found unsuitable for retaining in public service their services were terminated under the terms of service conditions by which they were governed. Their services had not been terminated on account of retrenchment, etc. and as such the question of alleged discriminations was besides the point. No proceedings or disciplinary action by way of punishment against the Petitioners were initiated nor was any step taken in that direction. Further the Petitioners had a right of appeal to the Appellate Authority under Rule 5(2) of the Central Civil Services (Temporary Service) Rules, 1965. This channel had not been exhausted by them before approaching this Court.

5. The first point is whether the order has been passed by way of punishment so as to attract the applicability of Article 311 of the Constitution or it is a simple order of termination. In order to find out whether the order has been passed by way of punishment the Court has to look to the attendant circumstances because the order of termination may merely be a cloak or camouflage for an order founded on misconduct. At this stage it would be necessary to notice a few authorities as to how the Court should proceed in order to find out whether the order of termination is by way of punishment or it is merely an order of simple termination without casting any stigma.

6. It is held in *The State of Bihar and Others Vs. Shiva Bhikshuk Mishra*, that the test for attracting Article 311(2) of the Constitution is whether the misconduct or negligence is a mere motive for the order of reversion or termination of service or whether it is the very foundation of the order of termination of service of the temporary employee. The form of the order, however, is not conclusive of its true nature. The entirety of circumstances preceding or attendant on the impugned order must be examined by the Court and the over-riding test will always be whether the misconduct is a mere motive or is the very foundation of the order. Therefore, in the face of this authority, which has been followed subsequently in *R.S. Sial Vs. The State of U.P. and Others*, we have to see whether the order has been passed by way of punishment so as to attract the provisions of Articles 311(2) of the Constitution or it is a simple order of termination without casting any stigma. The order reads as:

OFFICE OF THE A.G. H.P. & CHANDIGARH, SIMLA Office Order No. Estt. I/

Strike/3-17 Dated 11-5-1974.

in pursuance of the Sub-rule (1) of Rule 5 of the Central "Civil Service (Temporary Services) Rules, 1965, I hereby give notice to the following auditors that their services shall stand terminated from the date of expiry of a period of one month from the date on which Notice is served on or as the case may be tendered to them. S/Shri

1. Bishamber Singh Chandel.
2. Tarlok Chand.
3. Devinder Singh Thakur.
4. Raj Kumar.
5. Surya Kant Bhardawaj.
6. Mehar Chand.
7. Giame Chand Sharma.
8. Rajni Kumar Sharma.
9. Yagesh Verma.
10. VijayKumar
11. Yasundev Lath.
12. Rajinder Kumar Sharma.
13. Rattan Chand.
14. Aran Wilson.
15. SuniL Kumar.

Station: Simla Dated 10-5-1974

Sd/- A.S. Mohindra, Sr. Dy. Accountant General.

7. On the face of it the order, as set out above, appears to be a simple order of termination of services but a close scrutiny of this order would reveal the ground which was taken into consideration for passing the same. The (heading of this letter would show that it had a subject-inaatteru of strike and the date indicated therein is 11th May,1974. This order was displayed on the notice board on 10th May 1974 where as the actual notices served upon the Petitioners are Annexures PC-1 to PC-10 and the subject of the individual notices served on the Petitioners on the 11th May, 1974 is also indicated as: No. Estt. 1 Strike/77. It is stated by the Respondents in their return that the Petitioners had gone on strike on 10th and 11th. It is also admitted by them that the strike was called off on 12th. The ground for termination of the services is given in para 2 of the preliminary objections of the return filed by Shri A.S. Mohindra, Senior Deputy Accountant-

General (Administration) that the Petitioners services have been terminated on the ground of unsuitability. From para 6 of the return also it is manifest that the Petitioners were on strike from 10th to 12th May, 1974, besides having participated in pen-down strike on 9th May, 1974. It has further been stated that pen-down strike is also a strike within the meaning of Rule 7(ii) of the Central Civil Services (Conduct) Rules, 1964. In para 7 of the return the Respondents have quoted the Rule 7 which relates to demonstrations and strikes. In the subsequent portion of para 7 of the return it had been denied that the Petitioners had any right to go on strike or that the alleged right to go on strike was a fundamental right. They had acted in contravention of the C.C.S. (Conduct) Rules, 1964 applicable to them which prohibit any form of strike in connection with any matter pertaining to their service. The facts about issue of notices of termination and their pasting on the notice board were admitted to be true. However, they have stated that this action has been taken under the terms and conditions of their services. Therefore, from the reply of the Respondents as also from the close scrutiny of the notice pasted on the notice board outside the office on 10th as also the notices served on the Petitioners individually, which are Annexures PC-1 to PC-10, leave no manner of doubt to hold that it was not because of the unsuitability of the Petitioners that this action was taken against them but it was because of the strike or because of their misconduct for having gone on strike on 9th, 10th and 11th of May, 1974. It is also not denied that the Association had given a notice of their decision to go on pen-down strike and work to rule on 8th and 9th May, 1974 and to go on indefinite strike from 10th May, 1974 onwards till their demands were considered and fully met. The orders pasted on the notice board and the orders Annexures PC-1 to PC-10 were a sequel to the notices as also the actual participation of the Petitioners in the strike. Therefore, the order of termination though ex-facie is quite innocuous in form but in fact and reality it is a cloak or camouflage for an order founded on misconduct on the part of the Petitioners to have participated in the strike. The Petitioners could not become unsuitable overnight. It was only because of their having gone on strike that they were dubbed as unsuitable and, therefore, this order because of the circumstances preceding and the other attendant circumstances is an order passed by way of punishment and it is not in the public interest or in the ordinary course of administrative routine.

8. Learned Advocate-General has relied on Smt. Malti Heera, Auxiliary Nurse Midwife v. The State of Punjab and Ors. (1973)(1) S.L.R. P&H(769)) and some other authorities to show that a wholly innocuous order terminating the services of an entirely temporary employee cannot be or at least should not be labelled as a penal one. At the very highest the unsatisfactory record of the employee's service may be a motive for passing the order of termination. Where an absolute right to terminate the services of an employee exists without assigning any cause and it is so done in an innocuous order, the normal presumption must be that the authority exercising its right of termination is aware of its power under the contract or the rules. When acting in consonance with the terms of employment,

it terminates the services without imposing any penal consequences, then it is evident that the intent is not to punish. I" need not refer to the other authorities because the principle is the same. There can be no dispute with the principle as laid down but the instant is a case which is totally distinguishable, inasmuch as the Petitioners' Association had served a notice earlier on the 8th of May, 1974 about their decision to resort to strike in case their demands were not fully met. The Petitioners till that date were not in any way dubbed as unsuitable. They went on pen-down strike on 9th and resorted to strike on 10th and 11th. On 10th, as is apparent from the record, a notice was pasted on the notice board outside the office and again notices were individually served on the Petitioners on 11th. on which; date they had gone on strike and it is writ large on the very face of the order terminating their services that it was because of the strike that this action was taken by the Respondents against the Petitioners. If the order had been passed simply on the ground of their unsuitability then there was no question of making a mention of the strike. There is no doubt that the Petitioners are temporary Government servants and their services could be terminated at any time without assigning any reason after giving one month's notice or one month's salary in lieu thereof. But the preceding circumstances which the Court is entitled to investigate fully reveal the true state of affairs. Therefore, in these circumstances this order cannot be said to be a simple order of termination of services without casting any stigma, rather, this was an action taken as a measure of penalty and as such the provisions of Article 311 are definitely attracted, even though the Petitioners were " temporary. Article 311 applies in the case of both permanent and temporary employees and it is well settled that even temporary Government servant are entitled to the protection guaranteed under Article 311 of the Constitution, and in this behalf I am fortified by The Union of India (UOI) Vs. Pandurang Kashinath More,

9. Assuming that the Petitioners were only temporary hands and that this order was not passed by way of punishment but it was a simple order of termination without casting any stigma so as not to attract the applicability of Article 311, even then the provisions of Articles 14 and 16 cannot be ignored, because the Petitioners who were only ten in number have been singled out for termination of their services. In para 5 of the petition it has been mentioned by the Petitioners that on 10th May, 1974 about 93 per cent of the total employees went on general strike. The precise number of persons who did not attend the working on 10th May, 1974 was 496 out of which temporary employees were 207 and quasi-permanent 289. Reply to this is that the Petitioners absented themselves. However, it was denied that 93 per cent of the employees of the office of the Respondent were absent from duty on that day. But it has not been stated by the Respondents as to how many persons were actually absent when there is a specific averment made by the Petitioners that 496 persons did not attend the working on 10th May, 1974. There is also no denial that 289 persons were temporary who had resorted to strike. They have simply said that it was wrong that 93 per cent of the employees were absent from duty. Therefore, the reply is

quite vague and indefinite. Again in para 10 of the petition it has been specifically mentioned that while out of 496 persons who had participated in general strike on 10th May, 1974, 207 were temporary employees and 289 were quasi-permanent employees, but only six persons were singled out for this adverse treatment and no action has been taken against others. The Petitioners were not a different class than the other 207 temporary or 289 quasi-permanent employees. Reply to this is that the Petitioners having been found unsuitable for retention in public service their services were terminated under the terms of service conditions by which they were governed and that the question of suitability or otherwise of any other official for retention in service has no bearing on retention in service of the Petitioners. Therefore, this is also an evasive reply. In para 11 the Petitioners have mentioned that the action is arbitrary and violative of Articles 14 and 16, inasmuch as many persons who are junior to the Petitioners have been retained in service and no reason has been assigned why this discriminatory action is taken against them. They have also stated that the names of such persons whose services have been retained appear at such, and such serial number in the gradation list of temporary auditors. The only reason given in reply to this is that their services were terminated as they were found unsuitable for retention in terms of their service conditions. It is admitted that their services have not been terminated on account of retrenchment, etc. and the main averment about the discriminatory treatment that the others whose services have been retained and who were junior to them has remained unanswered. Therefore, it is obvious that these orders are discriminatory. All the persons who had gone on strike were guilty of misconduct and the Petitioners alone were not a class different from those whose services have been retained although admittedly some of them were junior to the Petitioners. It is also not the case of the Respondents that the Petitioners were the ring leaders; so as to say that the Petitioners formed a different class from those, who although participated in the strike yet were retained in service. The Respondents have also not said that there is reasonable classification between the Petitioners and the other auditors who had resorted to strike along with the Petitioners and who were retained in service.

10. According to *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, , the law may be constitutional even though it relates to a single individual, if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself. Here in the instant case the Respondents have not been able to show how they treated the Petitioners differently although they had participated along with the others who are junior to them and had also participated in the strike like the Petitioners.

11. According to *E. P. Rovappa v. State of Tamil Nadu and Ors.* 1974 (1) S.L.R. (S.C.) 497 the ambit and each of Articles 14 and 16 are not limited to cases where the public servant affected has a right to a post. Even if a public servant is in an officiating position, he can complain of violation of Articles 14 and 16 if he

has been arbitrarily or unfairly treated or subjected to mala fide exercise of power by the State machine. It is, therefore, no answer to the charge of infringement of Articles 14 and 16 to say that the Petitioner had no right to the post who was merely officiating in that post. That might have some relevance to Article 311 but not to Articles 14 and 16. Further, in this authority it has been laid down that Article 14 is the genus while Article 16 is a species. Article 16 gives effect to the doctrine of equality in all matters relating to public employment. In fact equality and arbitrariness are sworn enemies, one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to the political logic and constitutional law and is therefore violative of Article 14 and if it affects any matter relating to public employment it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in state action and ensure fairness and equality of treatment. They require that state action must be based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Here the Petitioners when they were not a different class from the other persons, who also participated in the strike, were temporary like the Petitioners and were junior to them, could not be treated differently. The Petitioners were entitled to equality in the matter of employment. Their services could not be terminated merely under the cloak that they were unsuitable and as such their services were terminated under the terms and conditions of their service.

12. In *State of U.P. and Others Vs. Sughar Singh*, it has been held that where the Petitioner alone is reverted from his officiating post to his substantive post allowing others who were junior to him to retain their officiating posts and the basis for such reversion is admitted to be an adverse entry in his character roll, the order of reversion is by way of punishment and amounts to reduction in rank. The order is also violative of Articles 14 and 16 of the Constitution.

13. It had also been averred by the learned Counsel for the Petitioners, although this ground had not specifically been taken in the petition but in the CMP 541/1974, that some of the persons who had tendered apologies were retained while in the case of the Petitioners their apologies were not accepted, and as such they have been discriminated against. Learned Advocate-General says that the Petitioners have got no right to claim apology. However, in the absence of any pleading in the petition, I am not inclined to accept this ground advanced by the Petitioners.

14. Since I have come to the finding that the order was passed by way of punishment, therefore, it was necessary to have complied with the provisions of Article 311 and which the Respondents did not, and hence there has been a clear violation of Article 311. Further, there has been discrimination, inasmuch as persons junior to the Petitioners who were also temporary Government servants have been retained although they had like the Petitioners participated in the

strike. No reasonable classification so as to discriminate the Petitioners from those who have been retained in service has been disclosed or made out by the Respondent. Therefore, there is a clear violation of the principles as contained in Articles 14 and. 16 of the Constitution. These were the only two points argued by the learned Counsel for the Petitioners. Learned Advocate-General had though taken quite a number of preliminary objections in the return but he did not press them, therefore, he shall be deemed to have given up the same.

15. In the light of the above, I allow this petition and quash the orders of terminations, Annexures PC-1. to PC-10, and the Petitioners shall be deemed to have continued in service. The Petitioners are further held entitled to costs from the Respondents, assessed at Rs. 200/-, to be shared by each equally.