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**(1978) 05 P&H CK 0004**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Civil Writ Petition No. 1050 of 1978**

S.K. Verma and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

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**Date of Decision :** 19-05-1978

**Acts Referred:**

Constitution of India, 1950 — Article 16, 311

**Citation :** AIR 1979 P&H 149 : (1978) 2 ILR (P&H) 414

**Hon'ble Judges :** S.S. Sandhawalia, J;S.C. Mital, J;P.C. Jain, J

**Bench :** Full Bench

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## Judgement

S.S. Sandhawalia, J.—Whether the services of an ad hoc public servant can be terminated and another ad hoc employee appointed in his place is the somewhat interesting question, which falls for determination by this Full Bench. This reference has been necessitated in the wake of doubts raised about the correctness of the observations made by the Division Bench at the motion stage in *Krishna Devi v. Punjab State* (C. W. P. 2268 of 1977 decided on 9-12-1977 (Punj & Her)).

2. Though the issue is pristinely legal, yet a passing reference to the facts becomes inevitable. The three petitioners were recruited as Junior Auditors in the office of the District Food & Supplies Controller vide identical letters of appointment (Annexure P. 1). The relevant portion thereof deserves quotation:--

"The appointment is" against a temporary post, the sanction of which is granted from time to time. If the post is abolished then your appointment is liable to be terminated as you are being appointed on temporary basis. It is therefore, made clear that your service can be terminated at any time without giving any notice."

3. It is the petitioners case that though the temporary post against which they were appointed are yet continuing, nevertheless their services are sought to be terminated and the respondents have sent requisitions to the Employment Exchanges for appointment of fresh candidates in place of the petitioners on ad

hoc basis. It is not in dispute that the respondent-State has Issued an order (Annexure P. 2) inter alia providing for the regularisation of certain categories of its ad hoc employees, who had completed at least a minimum period of one year's continuous service on 31-3-1977 and further satisfied the requisite conditions specified in the said order. Admittedly none of the petitioners satisfied the basic conditions spelled out in Annexure P. 2, in order to attract its application. Nevertheless, a challenge is laid to the apprehended termination of the petitioners' services primarily on the ground that their employment cannot be dispensed with as long as the posts against which they were appointed continue and in order to make room for other ad hoc employees.

4. In the return filed on behalf of the State, it is highlighted that the appointments of the petitioner ab initio were on ad hoc basis and their services were liable to be terminated without notices in accordance with letters of their appointment. It has been categorically averred that the petitioners' case is not covered by the Government instructions (Annexure P. 2) and consequently the stand is that the petitioners have no legal right either for regularisation of the services or to challenge the termination thereof in accordance with the terms of their appointment.

5. The consideration as to who replaces them thereafter has been characterised as wholly irrelevant and extraneous to the issue.

6. To clear the ground for the consideration of the main question, it may be noticed at the very outset that a half-hearted attempt was made by Mr. Chopra to take some advantage of Annexure P. 2 for the regularisation of the petitioners' services. It was contended that the fixation of the date of 31-3-1977 for purposes of regularisation of ad hoc employees was arbitrary and discriminatory, and consequently despite the fact that the petitioners did not satisfy the conditions spelled out in that order, they were nevertheless entitled to claim the benefits thereof. On this point, however, the matter stands concluded against the petitioners by the Division Bench judgment in *Gian Chand v. Director, Hydrel Designs, Punjab* (1976) 1 SLR 570: 1976 Lab IC 1177 (Punj). It has been authoritatively held that neither the fixing of a date for purposes of regularisation of ad hoc employees can be termed as arbitrary, nor would any question of discrimination arise between persons who satisfied the conditions laid down for regularisation as against others who do not. Faced with the aforesaid unsurmountable hurdle, the learned counsel for the petitioners did not press this aspect of the case at all.

7. The anchor-sheet of the petitioners' case, as already noticed, are the observations of the Division Bench in *Krishnn Devi's case* (CWP No. 2268 of 1977, D/- 9-12-1977 (Punj)) made at the motion stage to the following effect:--

"The order Annexure P. 2 dated Feb. 19, 1977, passed by the Headmaster Government High School, Ghumiara, shows that the services of the petitioner are being terminated on the appointment of another employee by the District

Education Officer, Faridkot. The order does not say that the other employee has been recruited as a regular teacher. We are highly doubtful whether it would be open to the Dist. Education Officer to terminate the services of an ad hoc employee who is better qualified for making the appointment of another employee with lesser qualifications on ad hoc basis. In the circumstances, we hold that the petitioner on the basis of her qualifications is entitled to hold the post of a Hindi teacher and she will not be removed from service merely because another employee is available for appointment on ad hoc basis. It shall, however, be open to the department to terminate her services if a regularly selected Hindi teacher is available for appointment. With these observations, this petition stands disposed of with no order as to costs."

8. Relying on the above, the learned counsel for the petitioner has raised two contentions. Firstly, that the services of even an ad hoc employee can be terminated only if a permanent and regular employee is to take his place if the post against which he was appointed is continuing. Secondly, on a lower plane it is contended that in any case the services of an ad hoc employee cannot be terminated in order to replace him by another ad hoc employee of equivalent or inferior academic qualification. It was, however, fairly conceded that the services of an ad hoc employee may be terminated if the post against which he was appointed is abolished.

9. We do not propose to get enmeshed in any abstruse discussion about the precise legal connotation of the term "ad hoc employee" or to attempt a precise definition thereof. Indeed, it appears to us that this convenient appellation for a wholly temporary employee cannot be raised to the pedestal of a term of art. Mr. Chopra had without much attempted to draw a sharp line of distinction between a temporary employee and an ad hoc employee. According to him, an ad hoc employee is one who is appointed for a specified period of time as against a temporary one, who may be appointed without specifying the period of his appointment at all.

However, Mr. Chopra could neither, cite any principle nor precedent for this supposed distinction. We are wholly unable to find any merit therein and indeed, it would be vain to attempt a legal definition of a loose and convenient word of common parlance. To our mind, the term "ad hoc employee" is conveniently used for a wholly temporary employee engaged either for a particular period or for a particular purpose and one whose services can be terminated with the maximum of ease. The dictionary meaning of ad hoc in Webster's New International Dictionary has been given as "pertaining to or for the sake of this case alone." In the Random House Dictionary its meaning has been given as "for this special purpose, with respect to this subject or thing."

10. Therefore, having regard to the ordinary meaning of the term, no distinction can reasonably be drawn between a temporary employee whose services are terminable without notice or otherwise and an employee characterised as ad hoc and employed on similar terms. Indeed, it appears to us that in the gamut of

service law an ad hoc employee virtually stands at the lowest rung. As against the permanent, quasi-permanent, and temporary employee, the ad hoc one appears at the lowest level implying that he had been engaged casually, or for a stop-gap arrangement for a short duration or fleeting purposes.

11. Now going back to the observations of the Division Bench in Krishna Devi's case (CWP No. 2268 of 1977, D/- 9-12-1977 (Punj)) on which primary reliance has been placed, it appears manifest that these are obviously of first impression. As noticed earlier they were made in passing at the motion stage and perhaps in the context of a more or less agreed order, and in any case without serious opposition by the respondent-State therein. It is more than evident from its two paragraphs that the issue was never seriously canvassed before their Lordships of the Division Bench. Neither principle nor precedent seems to have been cited nor adverted to. It is, therefore, with great respect and regret that we find ourselves wholly unable to agree with the line of reasoning indicated in those observations.

12. As we look at the matter, the issue of the termination of the services of an ad hoc employee is strictly confined between him and the State. The primary and indeed what appears to us as the sole consideration here is whether the employer State has a legal right to terminate the services of an ad hoc employee or not. Viewed from the opposite angle, it is whether the latter has a legal right to continue in his post. The issue, if one may say so, is hence confined to these two parties. The consideration whether consideration upon such a termination the respondent State would choose to employ any one at all in the same post, and if so, whether such an employment would be of regular or transitory nature, appears to us as wholly extraneous for the determination of the rights and liabilities of the employer and employee. Similarly the question of academic qualifications and the suitability, etc., of the proposed incumbent of the post who may later come to occupy the same, appears to us on an identical footing.

13. Now if the employer has the power to terminate the services of his employee in accordance with the terms of contract or otherwise, we are unable to see how the academic qualifications of the existing employee or of the one, who on an off-chance, is likely to succeed him would become relevant to the question. Similarly the nature of the tenure whether permanent or temporary that might later on be offered to the new incumbent cannot in our view in any way enlarge or constrict the power of termination of services otherwise vested in the employer. With great respect it appears to us that these matters are not only extraneous to the issue, but are an unnecessary extension into a field which must necessarily remain conjectural.

14. Undoubtedly academic qualifications of an employee are relevant and even important, but by themselves they do not and should not necessarily ensure either permanency of tenure or invariably implying a superiority to hold a particular post. To take a homely example, for a menial or ministerial job higher academic qualifications might well prove to be a handicap. Experience has shown

that in such like situations, persons of superior academic qualifications may remain wholly dissatisfied and. disgruntled in a post of this nature, while others of lesser and lowly academic standing may value and cherish such a job.

15. We are firmly of the view that neither the academic qualifications of a proposed incumbent to fill the vacancy nor the satire of the tenure offered to him should have ally legal consequences on the power or otherwise of the employer State to dispense or not with the services of an ad hoc employee

16. Once the aforesaid considerations are out of the way, it appears to us that the right of the respondent State, and for that matter of any employer to terminate the services of an employee in accordance with the terms of his appointment is inherent and well recognised by law. Of course such a right may be cut into or constricted by statutory provisions. In the present context, the only provisions brought to our notice and on which some semblance of reliance was placed by the petitioners are Arts. 16 and 311 of the Constitution or in the gives circumstances the statutory law or service. rules governing the parties, Indeed it deserves recalling that so far. as the State is concerned, the pleasure doctrine has been expressly noticed and incorporated in the Constitution by Art. 310 itself. The relevant part whereof is as follows.--

"310. Tenure of office of persons serving the Union or. a State.

(1) Except as expressly provided by this constitution, every person who is a member of a defence service or of a civil service of the Union or of an all-India service or holds any post connected with defence or any civil post under the Union, holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor of the State.

(2)xx xx xx xx xx"

It is by low well settled however, that the pleasure doctrine inherited from the concepts of British jurisprudence has been subjected to sizeable fetters by virtue of Art. 311, as also Art. 16. An examination of these provisions together, however makes it plain that elementary right of the employer to appoint and terminate the services of the employee. or to use the picturesque and powerful terminology of American jurisprudence, labelled as the right to "hire and fire." an employee, can he cut down only by specific legal provisions Admittedly in the present context of a simple termination of services in accordance with the contract of employment clearly specifying that these may he dispensed wills any time without giving any notice, no question of Art. 311 being attracted arises. Indeed Mr. Chopra, learned counsel for the petitioners, fairly conceded that this Article had no application to the present case. Similarly it is plain that the service of the petitioners not being governed by any statute or service rules, none of these interposed to bar the Bright of termination of the petitioners" services in accordance with their letters of appointment.

17. In view of the non-applicability of both Art. 311 and any other statutory provision, the learned counsel for the petitioners was forced to clutch at a straw by arguing that Article 16 was attracted in their case and there was hostile discrimination involved in dispensing with their services and employing other ad hoc employees instead.

18. We are unable to agree. It is elementary that Art. 14 or 16 are attracted only when equals are treated unequally or to put it in reverse unequally are treated equally. We are unable to see how the petitioned can claim any hostile discrimination qua some unspecified persons, who are not even parties to this petition and who in some eventuality may later come to hold the posts, which they are being asked to vacate. The equality clause can interpose only in the context of specific persons or a specific class. It is thus patent that in the present context Art. 16 could not even remotely be invoked.

19. Assuming entirely for the sake of argument that the proposed incumbents were specified and determined even then we are unable to see that Art. 16 would be attracted. An ad hoc employee with an existing service record cannot be deemed in the eye of law as identically equivalent to an aspirant for the post which he is likely to vacate. The two do not form the same class, one of them being employed with his service record, whilst the other is as yet unemployed and his work and conduct is yet to be assessed in future. The two, therefore, stand on entirely different footing, far from being in an identical class. There is thus a clear differentia existing betwixt them. Consequently, Art. 16 can have no application even on this assumption either.

20. For the detailed reasons aforesaid we hold that the observations made in *Krishna Devi v. Punjab State* (C. W. P No. 2268 of 1977, decided on 9-12-1977 (Punj)) do not lay down the law correctly and would accordingly overrule the same.

21. Having been repelled on all the legal fronts, Mr. R. K. Chopra, learned counsel on behalf of the petitioners has however, chosen to beat a tactical retreat. He stated that in view of the creation of some additional posts in the department the case of the petitioners was under the favourable consideration of the respondent-State and it was likely that the orders of termination passed against them may not be implemented or might, in fact, be withdrawn. On these premises at the last stage the learned counsel for the petitioners sought permission to withdraw the writ petition. In the peculiar situation and in order not to prejudice the case of the petitioners for re-consideration by the respondent-State, we, as a special case, are inclined to agree with this prayer.

22. Civil Miscellaneous No. 1000 of 1978 is accordingly allowed and the petitioners are permitted to withdraw the case. There will be no order as to costs.

P.C. Jain J.

23. I agree.

S.C. Mital J.

24. I agree.

25. Order accordingly