

**(1954) 05 CAL CK 0034**  
**In the Calcutta High Court**  
**Case No : Matter No. 12 of 1953**

Sm. Anima Munshi

APPELLANT

Vs

Engineer-in-chief and General Manager, Calcutta Telephone District

RESPONDENT

**Date of Decision :** 21-05-1954

**Acts Referred:**

Constitution of India, 1950 — Article 226, 311, 311(1), 311(2)

**Citation :** AIR 1954 Cal 561 : (1955) 2 LLJ 762

**Hon'ble Judges :** Sinha, J

**Bench :** Single Bench

**Advocate :** Niren De and S.K. Acharyya, for the Appellant; G.P. Kar and Arun Mukherjea, for the Respondent

**Final Decision :** Dismissed

## Judgement

Sinha, J.—The petitioner, Sm. Anima Munshi was a telephone operator in the telephone system which operates in the city of Calcutta. Prior to the Government taking over the running of telephones in the city, it was being run by the Bengal Telephone Corporation Limited, a public limited company.

In 1941, a company named Government Telephones Board Limited was formed by the Government of India to acquire the share capital of telephone companies operating all over India, including the Bengal Telephone Corporation Limited (hereinafter referred to as the Corporation) which operated in Calcutta. At first, the Government acquired a majority of the shares but allowed the company to function as before. Sometime in March 1943, the Government of India passed orders, regarding the future organisation of the system of telephones all over India. We are concerned only with what happened in Calcutta.

Upon the expiry of the license of the Corporation on 1-4-1943, it was to be taken over by Government and placed under the administrative control of the Director General of Posts and Telegraphs. The staff of the company was to be taken over

on the existing terms and conditions of service with the exception of those who had attained the age of 55 years. Staff employed after 1-4-1943 was to be recruited on the terms and conditions applicable to Government servants of corresponding and comparable grades but in the case of female operators of the Calcutta Telephone District, they were to be recruited on the same terms as the Corporation.

In the days of the Corporation, female operators were recruited upon a formal contract and the Posts and Telegraphs department adopted the same form of contract with minor alterations.

2. On or about 1-4-1943, the telephone system belonging to the Bengal Telephone Corporation Ltd. was completely taken over by the Government of India.

3. On or about 5-7-1945, the petitioner received a letter from the General Manager on the following terms;

"This department offers you employment as a telephone operator on probation, during which time you will be required to attend the telephone school, Burrabazar Exchange, for three hours daily on a salary of Rs. 40/- per mensem.

Provided your period of probation is satisfactory, you will, when a vacancy occurs, be appointed as a temporary operator on a salary of Rs. 70/- per mensem. Later, and on confirmation of your appointment, you will be placed in the scale of Rs. 70--10--140."

4. The petitioner accepted the offer and signed the application form on 10-7-1945. One of the terms as set out in the application form was that during probation, the employment will be subject to twenty four hours" notice on either side, and that on acceptance, each probationer was to sign an agreement and would be subject to the terms of such agreement as regards notice, etc.

5. As I understand this term, it means that the petitioner would have to be on probation for a certain period until she was accepted as a full-fledged employee when a written agreement would be entered into and this written agreement would govern the employment. Until the written agreement was entered into, the petitioner would be on probation and subject to twenty four hours" notice.

6. The petitioner continued on probation until 1-1-1946, when a written agreement was entered into. The agreement which was signed by the General Manager, Indian Posts & Telegraphs Department, Telephones Calcutta District, recites that the Governor General had engaged the petitioner as operator and the petitioner agreed to serve the Governor General as operator in the Calcutta Telephone District for the period of one year from the date of the agreement, and thereafter, unless and until the agreement should be determined in the manner laid down therein. It was laid down that the General Manager would be entitled to dismiss the operator forthwith if she failed to carry on her duties satisfactorily or committed any breach of agreement or infringed or refused to abide by the

rules or any reasonable orders or absented herself without leave or was guilty of misconduct or committed anything to render herself unfit for the purpose of her duty. There is also the following term:

"The General Manager, Telephones, Calcutta District, shall also be entitled, at any time during the currency of this agreement without assigning any reason therefor, to terminate the same by giving to the operator three calendar months" notice in writing or by paying the operator three months" salary in lieu of notice."

7. The agreement contained another clause to the following effect:

"The operator shall be and is hereby subject to all the rules and regulations of the Governor General for the time being relating to persons employed by the General Manager, Telephones, Calcutta District, and applicable to her employment for the time being and the operator shall be responsible for making and keeping herself acquainted from time to time with all such rules and regulations."

8. Reference has been made before me to a series of correspondence between the Government of India and the Director General of Posts and Telegraphs, dealing with the terms and conditions of service for employees of the late Bengal Telephone Corporation. It appears that as and from 1-4-1946, all ex-employees of the company came under the rules applicable to the P. and T. Staff. I do not see, however, how this is relevant so far as the petitioner is concerned because she is not an ex-employee of the company, but was appointed under a contract with Government at a time when the Government had already taken over the Corporation.

9. On or about 9-3-1949, the petitioner was arrested under the Security Act. She was released on or about 30-6-1949, but re-arrested on or about 20-10-1949. She was suspended with effect from 9-3-1949.

10. On 6-2-1950, notice was served Upon the petitioner under Rule 3 of the Civil Services (Safeguarding National Security) Rules. It was stated that she was reasonably suspected to be a member of the Communist Party of India, that she indulged in highly objectionable activities of such a nature as to raise grave doubts about her loyalty to the State, that she took active part in the preparation of a general strike and that she was liable to be compulsorily retired from service under Rule 3 of the said rules. She was asked to show cause why such action should not be taken against her.

11. It appears that an application was made to this Court, and pursuant to the orders of the Court, the petitioner was released on or about 23-1-1951. On 9-2-1951, the order of suspension was withdrawn and the petitioner was re-instated to her former post of telephone operator.

12. On 10-3-1952, the petitioner wrote a letter to the General Manager stating that although she was under the impression that she was a permanent employee, her name appeared in the register maintained for temporary

employees and that she was granted leave only on average pay. The petitioner wanted the position to be clarified.

13. On 20-3-1952, the petitioner received a letter from the Engineer-in-charge, Calcutta Telephones to the effect that she had not yet become permanent.

14. On 20-6-1952, the petitioner received a notice signed by the Superintending Engineer to the following effect:

"The services of Mrs. Anima Munshi temporary telephone operator, Bank Exchange, are hereby terminated with effect from the forenoon of 21st June 1952. As per terms and conditions of her services, she will be paid one month's pay in lieu of notice."

15. The present rule was issued on 28-1-1953 calling upon the respondents to show cause why an order in the nature of a Writ of Mandamus should not be issued directing the said respondents to forbear from giving effect to the order of dismissal of applicant and /or why the same should not be withdrawn or rescinded.

16. I shall, first of all, state the respective view points of the parties. On behalf of the petitioner, it is stated that she was a permanent employee of the Government and governed by the rules which governed such employees. The agreement dated 1-1-1946 is admitted. She says, however, that the agreement was subject to all the rules and regulations framed by the Governor General for the time being relating to persons employed by the General Manager, Telephones, Calcutta District, and as such, the general rules have become applicable in the matter of dismissal. Alternatively, she states that by reason of the conduct of the Government, her employment has been accepted as having the same incidences and subject to the same rules and regulations as govern the case of all permanent employees employed by the Posts and Telegraphs Department of the Central Government.

17. It is then argued that under the rules applicable to civil servants and also in accordance with Article 311 of the Constitution, she could only be dismissed by an authority not subordinate to the appointing authority, and secondly, before dismissal it was incumbent upon the respondents to give her a reasonable opportunity of defending herself by formulating charges and making a proper departmental enquiry and indicating the punishment that was sought to be imposed.

18. On behalf of the respondents it is emphatically stated that the petitioner's service is based on the agreement dated 1-1-1946 and nothing else. The respondents do not appear to be certain as to whether it is a temporary or a permanent employment. At a certain stage the authorities were at pains to establish that the petitioner was in the temporary employment of the Government. As a matter of fact, the notice dated 20-6-1952 described her as a temporary telephone operator. One month's pay in lieu of notice is given, which

would be appropriate in the case of a temporary servant governed by the Central Civil Services (Temporary Service) Rules 1949.

At the hearing of this application, however, the respondents have taken up the position that the matter is entirely governed by the agreement. From this it is argued that the petitioner is at best entitled to three calendar months' notice or salary in lieu thereof. It is argued that if this be so then dismissal upon one month's notice or pay in lieu thereof might at best be a breach of contract for which the petitioner has her proper remedy elsewhere, but in any event, she is not entitled to the safeguards imposed by the rules or Article 311.

19. So far as the nature of her employment is concerned I have come to the conclusion that she was a permanent employee holding service under a written contract of employment. As I read the form which the petitioner was asked to fill up for the purposes of making the application, it contemplated a period of probation after which an agreement would be arrived at which would amount to confirmation. The petitioner served her period of probation and her services were confirmed and an agreement entered into. There is nothing in the agreement to show that it was a temporary employment. I have looked into the service records of the petitioner which were produced in Court. She has been treated therein as a permanent employee. It is said that this was done by mistake, but I am unable to accept this explanation. Her scale of pay, her provident fund --all go to show that she was in the permanent cadre.

20. In my opinion, the petitioner held a permanent post as a telephone operator under a service contract, namely the agreement dated 1-1-1946. In view of this finding it is unnecessary to go into the very complicated question as to whether if it were otherwise, the petitioner's application should not be dismissed in limine because if there is no contract which fulfils the conditions of Section 175(3), Government of India Act corresponding to Article 299 of the Constitution, then the petitioner cannot maintain an application at all.

21. Mr. De argues that assuming that this agreement governed the contract between the parties, the entire body of rules applicable to civil servants was attracted by the omnibus clause in the agreement which has been set out above. The position, however, is not so simple as that. Here, there is a service contract and there is a specific provision therein which governs the mode of termination of service. I am not concerned with dismissal or removal from service by way of punishment because more difficult questions arise in respect thereof. What has taken place here is a mere termination of the services of the petitioner and must be taken to be under Clause 7 of the agreement. Since there are terms in this agreement which govern matters relating to termination of service, the question is whether they supersede or prevent the operation of the ordinary rules whereby the services of a civil servant can be terminated. In my opinion, that must be so. Where there is a contract of service and service has to be terminated in terms thereof, the general rules regarding the removal from service or dismissal applicable to civil servants do not apply.

22. The position, therefore, is that the authorities were entitled to terminate the service of the petitioner under Clause 7 of the contract. Under that clause, three months' notice had to be given or salary in lieu thereof. The respondents, however, gave one month's notice and offered to pay one month's salary. If this amounted to a violation of the terms of the service contract, it is at best a breach of contract for which the petitioner's proper remedy is to bring an action for damages.

23. This view of the matter also disposes of the question as to whether the petitioner is entitled to challenge the dismissal as contravening the provisions of Article 311(2) of the Constitution. Since the termination of service is to be made in terms of a service agreement, the provisions of Article 311(2) does not apply and the formalities mentioned therein, namely giving her a reasonable opportunity of showing cause etc are not necessary. This is now the settled law as decided in -- " Satish Chandra Anand Vs. The Union of India (UOI), (A) and -- " Shyam Lal Vs. The State of Uttar Pradesh and The Union of India (UOI), (B).

24. Mr. De next takes the point that the order of dismissal dated 20-6-1952 is bad because it contravenes the provisions of Article 311(1) of the Constitution. That Article runs as follows:

"No person who is a member of a civil service of the Union or an All-India Service or a civil service of the State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed."

The contract of service dated 1-1-1946 is signed by the General Manager, Indian P. and T. Department Telephones, Calcutta District. The termination of service was effected by a letter dated 20-6-1952, which is signed by the Superintending Engineer. It is not disputed that the Superintending Engineer is an official subordinate to the General Manager. I have before me an affidavit affirmed by Mr. H. R. Thadani, the General Manager, who says that the appointing authority was at all times the Superintending Engineer and not the General Manager. The Superintending Engineer, Mr, Collershaw has affirmed an affidavit stating that the superintending Engineer was at all material times the appointing authority in respect of telephone operators in the Calcutta Telephone District. He refers to notification No. 7/56/50 Ests. issued by the Ministry of Home Affairs published in the Gazette of India on 28-4-1951.

That notification states that the President of India, under powers conferred by Article 302 of the Constitution was making certain amendments in the rules published in February 1932. According to this notification, the appointing authority of Telephone operators is the Executive Engineer, The question therefore arises as to whether the "appointing authority" so far as the petitioner is concerned, is the General Manager who actually appointed her in January 1946, or the Superintending Engineer who has become the appointing authority since April 1951. I think however that for purposes of this application, this

abstruse point need not be decided, as the issue raised can be disposed of upon a simple point.

Article 311(1) only applies where there is a "removal" or a "dismissal". In the instant case, the petitioner's service has been terminated and it can only be done in accordance with the terms of her contract. Is such a termination of service, either a "Removal" or a "Dismissal?"

25. This point was considered in a recent decision of the Supreme Court, -- Shyam Lal Vs. The State of Uttar Pradesh and The Union of India (UOI), (B)". Das J. stated as follows:

"In England the rule was well established from very early times that public offices were held at the pleasure of the Crown. The English constitutional theory was that the King could do no wrong and accordingly the services of a civil servant could be terminated without assigning any reason and no action could be maintained in the King's Courts for damages for wrongful dismissal.

This principle appears to have been applied even to the servants of the East India Company and certainly to the civil servants after the British Crown took over the territories and the administration thereof from the East India Company. This state of affairs continued until 1919 when Section 96-B of the Government of India Act, 1919. while maintaining that the tenure was during His Majesty's pleasure, introduced a minor restriction on this power of dismissal..... As already stated, Sub-section (4) of this section validated and confirmed the then existing rules and Sub-section (2) gave power to the Secretary of State for India in Council to make rules for regulating the classification of the Civil Services in India the methods of their recruitment, their conditions of service, pay and allowances, and discipline and conduct.

In exercise of this power the Secretary of State for India in Council framed certain rules in December 1920 which with subsequent modifications were published on the 27th May 1930 as The Civil Services (Classification, Control and Appeal) Rules."

Rule 49 provides:

"49. The following penalties may, for good and sufficient reason and as hereinafter provided be imposed upon members of the services, comprised in any of the Classes (1) to (5) specified in Rule 14, namely:.....

(vi) Removal from the civil service of the Crown which does not disqualify from future employment.

(vii) Dismissal from the civil service of the Crown which ordinarily disqualifies from future employment (Explanation: The termination of employment--

(a) ..... x

(b) ..... x

(c) ..... of a person engaged under

a contract in accordance with the terms of his contract, does not amount to removal or dismissal within the meaning of this rule or of Rule 55)."

Then came the Government of India Act, 1935. Section 240 is important for our purposes. The relevant portions of that section were as follows:

"240 (1) Except as expressly provided by this Act, every person who is a member of a civil service of the Crown in India or holds any civil post under the Crown in India, holds office during His Majesty's pleasure.

(2) No such person as aforesaid shall be dismissed from the service of His Majesty by any authority subordinate to that by which he was appointed.

(3) No such person aforesaid shall be dismissed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him."

Finally we have our Constitution

"Article 311(1) reproduces the provisions of Section 240(2) of the Government of India Act, 1935..... Removal like dismissal no doubt brings about a termination of service but every termination of service does not amount to dismissal or removal.

A reference to the Explanation to Rule 49 quoted above will show that several kinds of termination of service do not amount to removal or dismissal. Our recent decision in -- "Satish Chandra v. Union of India" (supra) (A) fully supports the conclusion that Article 311 does not apply to all cases of termination of service. That was a case of contract for temporary service being terminated by notice under one of the clauses of the contract itself and fell within Clause (c) of the Explanation to Rule 49 and Article 311 was held by this Court not to have any application to the case."

The case here is exactly similar and falls within Clause (e) of the Explanation to Rule 49.

There is a contract of service here under which a service can be terminated upon three months' notice. Termination of service by a notice cannot therefore be treated here either as dismissal or removal from service and does not attract the provisions of Article 311,

If it is the case of the petitioner that the Superintending Engineer could not in law represent the Government of India for purposes of terminating the services of the petitioner, she can file a suit for a declaration that she is still in the employ of Government. Application under Article 226 will not lie and no constitutional provision has been infringed.

26. The result is that the points taken have failed and the application must be dismissed. The Rule is discharged. The respondents were manifestly in error in



considering the petitioner to be a temporary employee and taking all matters into consideration, I make no order as to costs.