
(1965) 09 AHC CK 0014

In the Allahabad High Court

Case No : Writ Petition No's. 334 and 357 of 1964

Sri Kedar Nath Pandey

APPELLANT

Vs

State of Uttar Pradesh and Another

RESPONDENT

Date of Decision : 17-09-1965

Acts Referred:

Constitution of India, 1950 — Article 309, 310, 311, 311(2), 313

Citation : AIR 1967 All 197 : (1968) 2 LLJ 6

Hon'ble Judges : G.D. Sahgal, J

Bench : Single Bench

Advocate : H.D. Srivastava and Umesh Chandra, for the Appellant; Standing Counsel and J.S. Trivedi, for the Respondent

Final Decision : Allowed

Judgement

G.D. Sahgal, J.—These two writ petitions have been filed by one Kedar Nath Pandey. He was a clerk in the office of the Deputy Commissioner, Lucknow. By and by he rose to the post of the Election Inspector. On attaining the age of 55 years, which was the age of superannuation, he retired from service on the 15th of August, 1962. He was re-employed after retirement and a letter dated the 10th of September, 1962, copy of which it contained in Annexure 1 to both the petitions, was received by Sri M.C. Sharma, District Magistrate, Lucknow, from the Chief Electoral Officer, U. P., intimating that the petitioner's re-employment had been sanctioned from the date of his taking over to the 31st of March, 1963. In pursuance of that letter he took over charge on the 18th of September 1962. A formal sanction to the post was also accorded by the communication dated the 4th of December, 1962, from the Nirvachan Vibhag of the U. P. Government addressed to the District Officer, Lucknow, vide Annexure 2. On the 20th of April, 1963, again a letter was sent for his further re-employment for a further period of one year vide Annexure 3. Thereafter in April, 1964, again he was further re-employed on the existing terms and conditions to the post of Election Inspector, Lucknow, for a further period with effect from, the 1st of April 1964, till he

attained the age of 58 years or till the expiry of the term of the post of Election Inspector whichever was earlier, vide annexure 4. It may here be mentioned that this age of 58 was attained by him on the 15th of August, 1965. Thereafter another communication was received from the Secretary to Government, Nirvachan Vibhag, dated the 25th of April, 1964 in partial modification of the order contained in the earlier communication making his period of re-employment for three months only with effect from the 1st of April, 1964 to the 30th of June, 1964 (vide Annexure 5). Thus while under Annexure 4 he had been employed for the period till he attained the age of 58 years or till the expiry of the term of the post of Election Inspector whichever was earlier, under this letter that period which extended upto his attaining the age of 58 years was reduced only to three months. It is against this order that Writ Petition No. 334 of 1964 has been filed. The prayer is for the quashing of Annexure 5 and for the issue of a writ of mandamus or a writ, order, or direction in the nature of mandamus directing the State of Uttar Pradesh and the District Magistrate, Lucknow, from giving effect to the order of the 25th of April, 1964, Annexure 5. It probably means a mandamus for not giving effect to the order dated the 25th of April, 1964. This writ was filed on the 20th day of May, 1964 though it appears to have been prepared on the 7th of May, 1964. Notice of this writ petition was served on the Standing Counsel, however, on the 11th of May, 1964, which allegation made in paragraph 12 of Writ Petition No. 357 of 1964 is admitted in the counter-affidavit filed in that writ petition. On the 16th of May, 1964, however, a notice was issued on behalf of the State of Uttar Pradesh opposite party No. 1, signed by the Secretary-cum-Chief Electoral Officer that without prejudice to the earlier letter under which the re-employment of the petitioner terminated on the 30th of June, 1964, the Governor was pleased to give notice that in any event his services would stand terminated on the expiry of June 30, 1964, in terms of the general rule promulgated under Notification No. 230/IIB-1953, dated January 30, 1953 regulating the termination of services of temporary government servant. This letter is Annexure 6 to writ petition No. 357 of 1964. It is after the receipt of this notice that Writ Petition No. 357 of 1964 was filed praying for the quashing of this order of the 16th of May, 64 (Annexure 6) also. A writ of mandamus also was prayed for refraining the opposite parties from giving effect to the order dated the 16th of May, 1964.

2. It is in these circumstances that these two writ petitions come up for hearing together. The second prayer as to the writ of mandamus in either of them has become infructuous as the Court refused to grant interim relief during the pendency of the writ petitions.

3. There is an allegation in the subsequent writ petition to the effect that the Minister concerned was not favourably inclined towards the petitioner and after his appointment by the Chief Minister, Uttar Pradesh as Election Inspector, Lucknow, till he attained the age of 58 years he took exception to the order and made it a question of his prestige by tendering his resignation to the Governor. As a consequence in order to avert a ministerial crisis the petitioner's services

were cut short upto the 30th of June, 1964. In the circumstances the impugned order is said to have been a mala fide order.

4. The other facts are not in dispute, but as to this allegation an affidavit has been filed on behalf of the Minister concerned who has denied that the individual case of the petitioner had been made a question of prestige by him though he admitted that there was a difference on a question of policy very much wider and more comprehensive than the individual case of the petitioner or anybody else. He has further stated that he had taken a view that the petitioner's service should not be extended but his view was not based upon any consideration peculiar to the petitioner. In his note that he had written he has stated that such re-employments which were not covered by the rules caused unnecessary heart-burning and bitterness in the office. He also pointed out that it was known as a fact that a very large number of officers were retired during 1962-1963 who were in every way suitable for re-employment and whose retention might have resulted in more efficient disposal of the work but because they had completed the age of 55 years they were compelled to retire. He also pointed out that it was a fact that there were always officials who know the work just as well as the retiring officer himself and they can always shoulder the responsibility of carrying on elections efficiently and in a capable manner. Another note of his pointed out that the re-employment of the petitioner and one more official who were due to retire in September, 1962, amounted to discrimination in their favour which was not justified and it was likely to cause considerable heart-burning in the services and spoil their morale.

5. The contention on behalf of the petitioner is that when once the petitioner had been appointed for a period till he attained the age of 58 years, his was an appointment for a definite term. The post was continuing when he attained the age of 58 as would appear from Annexures B1, B2, B3, B4 and B5 which show that the post has been continuously sanctioned from time to time and the latest sanction of the post is till the 29th of February 1966 (it should be the 28th of February, 1966, as the year 1966 is not a leap year). By terminating his services prior to the end of this fixed term, it is urged, the petitioner has been removed from service within the meaning of that term under Article 311 of the Constitution and as such that Article of the Constitution has been violated.

6. Secondly, it has been urged that in the first place the G. O. of 1953, referred to in Annexure 6, viz., Notification No. 230/IIB-1953 dated January 30, 1953 does not apply to him and even if it is held that it applies to him then it is ultra vires as it is contrary to the guarantee under Article 311 of the Constitution given to a civil servant and secondly because it gives unfettered and uncontrolled power to the Government to make arbitrary selection and terminate the services of any one whose services it may come into their pleasure to terminate.

7. Lastly, it was urged that exercise of power in the case of the petitioner of terminating his services was mala fide and not in the interests of public administration. The learned counsel went to the length of saying that the

dominant motive in this case was to punish the petitioner.

8. Before proceeding to discuss the points raised on behalf of the petitioner we have to keep in mind certain provisions of the Constitution contained in part XIV. Chapter I. These provisions are Articles 309, 310(1) and 311(1) and (2). In so far as they are relevant for our purposes, they provide as follows :

"309. Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State:

Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act.

"310. (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 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.

311. (1) No person who is a member of a civil service of the Union or an all-India service of a 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.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges and where it is proposed, after such inquiry, to impose on him any such penalty, until he has been given a reasonable opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during such inquiry "

9. It would thus be seen that Article 309 provides that subject to the provisions of the Constitution, Acts of the appropriate Legislatures may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or any State. It means that the appropriate Legislature can pass Acts in respect of the terms and conditions of service of persons appointed to public services and posts, but it must be subject to the provisions of the Constitution including Article 310(1). Under the

proviso it would be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment and prescribing conditions of service and posts under the Union or the State. The pleasure of the President or the Governor mentioned in Article 310(1) can thus be exercised by such persons as the President or the Governor may respectively direct in that behalf and the pleasure has to be exercised in accordance with the rules made on that behalf. These rules, and indeed, the exercise of the powers conferred on the delegate must be subject to Article 310, and so, Article 309 cannot impair or affect the pleasure of the President or the Governor, therein specified. Article 309 has thus to be read subject to Articles 310 and 311, and Article 310 has to be read subject to Article 313, Article 311 itself not being subject to any other provision of the Constitution, vide *Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc.,* .

10. Thus the "doctrine of pleasure" has lost some of its majesty and power because it is controlled by the provisions of Article 311 and the field that is covered by Article 311 on a fair and reasonable construction of the relevant words used in that Article would be excluded from the operation of the absolute doctrine of pleasure. The pleasure of the President or the Governor would still be there but it is to be exercised in accordance with the requirements of Article 311, vide *Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc.,* . In the same case it has been remarked that Article 311 has to be read as a proviso to Article 310, and so, there can be no doubt that the pleasure contemplated by Article 310(1) must be exercised subject to the limitations prescribed by Article 311.

11. It is also settled beyond controversy that Article 311 makes no distinction between permanent and temporary posts. Its protection must be held to extend to all government servants holding permanent or temporary posts or officiating in any of them, vide *Parshotam Lal Dhingra Vs. Union of India (UOI)*, and referred to in *Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc.,* .

12. The impact of Article 311 on all types of services has been considered in the case of *Parshotam Lal Dhingra Vs. Union of India (UOI)*, and it would do well to refer to it in order to find out how far will the propositions laid down in that case help us in deciding the matter in controversy in this case.

13. After considering the various rules it has been remarked at page 48 that the conditions of service of a Government servant appointed to a post, permanent or temporary, are regulated by the terms of the contract of employment, express or implied, and subject thereto by the rules applicable to the members of a particular service.

14. It would thus appear that this proposition lays down that if a temporary servant is the case before us (leaving out the case of permanent servants with which we are not concerned), is working on a contract, then his conditions of service are regulated by the terms of the contract of employment. The contract may be express or implied and subject to that contract of employment the terms would be regulated by the rules applicable to the members of that service.

15. In paragraph 11, at page 42, in the beginning is considered the case of a Government servant officiating to a permanent post in substantive capacity or on probation or on officiating basis and the consequences of acting in officiating capacity are pointed out therein. It is pointed out that an appointment to a temporary post in a Government service may be substantive or on probation or on an officiating basis, but in the absence of any special stipulation or any specific service rule, 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. 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.

16. Further it is pointed out in paragraph 12 on the same page that 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 to him. An appointment to a temporary post for a certain specified period also gives the servant so appointed a right to hold the post for the entire period of his tenure and his tenure cannot be put an end to during that period unless he is by way of punishment, dismissed or removed from the service.

17. It was also pointed out in that case at page 47, paragraph 25, in connection with the interpretation of the words "dismissed", "removed" or "reduced in rank" that the next result was that it was only in these cases where the Government intended to inflict those three forms of punishments that the Government servant must be given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. It follows, therefore, that if the termination of service is sought to be brought about otherwise than by way of punishment, then the Government servant whose service is so terminated cannot claim the protection of Article 311(2).

18. That, however, did not solve the problem and so it was farther stated in that case that it is yet to be ascertained as to when an order for the termination of service is inflicted as and by way of punishment and when it is not. The following remarks are then made with respect to permanent and temporary servants in paragraph 26:

"It has already been said that where a person is appointed substantively to a permanent post in Government Service, he normally acquires a right to hold the post until under the rules, he attains the age of superannuation or is compulsorily retired and in the absence of a contract, express or implied, or a service rule, he cannot be turned out of his post unless the post itself is abolished or unless he is guilty of misconduct, negligence, inefficiency or other disqualifications and appropriate proceedings are taken under the service rules read with Article 311(2) Termination of service of such a servant so appointed must per se be a punishment, for it operates as a forfeiture of the servants' rights and brings about a premature end of his employment Again where a person is appointed to a temporary post for a fixed term of say five years his service cannot, in the absence of a contract or a service rule permitting its premature termination, be terminated before the expiry of that period unless he is guilty of some misconduct, negligence, inefficiency or other dis-qualifications and appropriate proceedings are taken under the rules read with Article 311 (2) The premature termination of the service of a servant so appointed will prima facie be a dismissal or removal from service by way of punishment and so within the purview of Article 311(2)."

19. The matter is further clarified in the same paragraph at p. 48, second column, by pointing out that the principle is that when a servant has right to a post or to a rank either under the terms of the contract of employment, express or implied, or under the rules governing the conditions of his service, the termination of the service of such a servant or his reduction to a lower post is by itself and prima facie a punishment, for it operates as a forfeiture of his right to hold that post or that rank and to get the emoluments and other benefits attached thereto

20. Again at page 49, in paragraph 28, it is stated that if the servant has got a right to continue in the post, then, unless the contract of employment or the rules provide to the contrary, his services cannot be terminated otherwise than for misconduct, negligence, inefficiency or other good and sufficient cause. A termination of the service of such a servant on such grounds must be a punishment and, therefore, a dismissal or removal within Article 311 for it operates as a forfeiture of his right and he is visited with the evil consequences of loss of pay and allowances.

21. The law laid down in the various paragraphs referred to above, has been qualified and to a certain extent modified in *Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc.*,

22. As to the remarks at page 47, referred to above, it has been remarked in the majority judgment of *Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc.*, that in the absence of a contract express or implied, or a service rule" which have been introduced in this statement are not to be found in the earlier statements and the addition of these two clauses is apparently due to the fact that the learned Chief Justice who delivered the judgment in *Dhingra's* case, AIR 1988 SC 36 considered Rule 49 and the explanations attached thereto and brought them into the discussion of a permanent servant and that it was not strictly correct. Again as to the remarks at page 49 it is pointed out in *Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc.*, that in the paragraph where this statement occurs the learned Chief Justice who delivered the judgment in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, was summing up the position and the cases there considered were the cases of *Satish Chandra Anand v. The Union of India* AIR 1958 SC 250 and *Shyam Lal Vs. The State of Uttar Pradesh and The Union of India (UOI)*, and they were concerned with the termination of a temporary servant's services and the compulsory retirement of a permanent servant respectively and strictly speaking they did not justify the broader proposition enunciated at the end of the paragraph. The result of the above modification would be that from the portion quoted above from page 47 of the report relating to *Parshotam Lal Dhingra Vs. Union of India (UOI)*, the words "in the absence of a contract, express or implied, or a service rule" should be taken as not being there and the words from the remarks quoted from page 49 to the effect "unless the contract of employment or the rules provide to the contrary" also should be deemed as having been removed therefrom.

23. The effect of this modification, however, does not affect the instant case because the case that was to be considered by the Supreme Court in *Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc.*, was that of a permanent Government servant. The question before the Court was whether the termination of services of a permanent railway servant under Rule 148 (3) or Rule 149(3) amounted to his removal under Article 311(2) of the Constitution.

24. So far as the temporary Government servants are concerned, as is the petitioner here we have to take the law from *Parshotam Lal Dhingra Vs. Union of India (UOI)*, as it is without any modification.

25. Let us see how far it helps either party.

26. The first remarks are at page 42 when it is pointed out that the conditions of service of a Government servant appointed to a post, permanent or temporary, are regulated by the terms of the contract of employment, express or implied, and "subject thereto" (the underlining (here into " ") is mine) by the rules applicable to the members of the particular service. It would thus appear that if the appointment of the petitioner was under any contract, then the rules would be applicable to him only subject to that contract

27. The petitioner was appointed in this case for a period terminating on

attaining the age of 58 years. He accepted this appointment by his conduct inasmuch as he continued to remain in service after he received intimation relating to it. It may therefore, be said that it was a term of contract of his employment to remain in service till the age of 58 years and in such a case he would not be governed by the rules in so far as they may be inconsistent with this term.

28. Again we find the other remark at page 42 to the effect that an appointment to a temporary post for a specified period also gives a servant so appointed a right to hold the post for the entire period of the tenure and it cannot be put an end to within that period unless he is by way of punishment dismissed or removed from service. These remarks also go to help the petitioner inasmuch as his service was for a specified period, i.e., for a fixed term. He had, therefore, a right to hold the post for the entire period of time till he attained the age of 58 and if his services were being put to an end prior to that, then it amounted to punishment and he may be deemed to be dismissed or removed from service by this act of the State.

29. Again we have certain remarks at page 42 also, wherein it has been pointed out that if a person is appointed to a temporary post for a fixed term, say for five years, his service cannot, "in the absence of a contract or a service rule" permitting its premature termination be terminated before the expiry of that period unless he has been guilty of some misconduct, negligence, inefficiency or other disqualifications and appropriate proceedings are taken under the rules read with Article 311(2). This rule it was urged, does not help the petitioner for it made even a temporary post for a fixed term as subject to a contract or a service rule permitting its premature termination. But if there is any service rule which permits the premature termination of the petitioner's service, it was urged, he could be removed from service under that rule, even though his appointment was for a fixed term.

30. I find it difficult to interpret these observations in this manner. In the first place such interpretation would be inconsistent with what has already been said earlier in that judgment with respect to temporary posts for a fixed term. Secondly, the words "in the absence of a service rule permitting its premature termination" do not necessarily imply that if the service rule provides for the termination of a temporary service at any time with immediate effect it would apply even to a temporary service for a fixed term. The use of the words "its premature termination" imply that the rule should provide for the premature termination even of a service for a fixed term. If there is a rule that even though the term of a service is for a fixed term, it can be immediately terminated by notice, then the rule will prevail over the fixed term appointment. But if the rule gives power to the Governor to terminate the service of a temporary servant with immediate effect at any time, then it does not mean that in case of a fixed term service also it can be terminated under the rule.

31. In the light of the above discussion let us now proceed to examine the points

that are before us for determination in this case.

32. The petitioner had been appointed till he attained the age of 58. His was thus an appointment for a definite term. The post also continued at least up till the time he attained the age of 58. By terminating his service prior to the end of this fixed term, he has been removed from service within the meaning of that term under Article 311 of the Constitution.

33. Next, let us consider the effect of the G. O. contained in the Notification No. 230/IIB-1953 dated January 30, 1953. The rule framed under Article 309 of the Constitution provides that the services of a Government servant in temporary service shall be liable to termination at any time by notice in writing given by the Government servant to the appointing authority or by the appointing authority to the Government servant. This rule applies to persons who do not hold a lien on any permanent Government post.

34. The words "temporary service" have already been defined as meaning officiating and substantive service in a temporary post.

35. The post to which the petitioner was appointed was a temporary post and the appointment of the petitioner being to that temporary post which was for a certain term, it was a substantive appointment to that post. The case of the petitioner as a temporary servant is, therefore, covered by this rule, though this rule would not be enforceable against him in view of his being appointed to the temporary post, for a fixed term as already pointed out above.

36. The next point to be considered is whether this rule is ultra vires of the Constitution.

37. As to this, the learned counsel for the petitioner places reliance on *Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc.*, already referred to above. In that case the question was as to whether the termination of services of a permanent railway servant under Rule 148(3) or Rule 149(3) which provided for the termination of even permanent railway servant's services on notice on either side after a period mentioned therein amounted to his removal under Article 311(2) of the Constitution and such a rule was ultra vires. Such a rule was held to be ultra vires. But that was a case of a permanent servant. So far as the temporary servant is concerned, as has been pointed out in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, a temporary post is a post carrying a definite rate of pay sanctioned for a limited time, vide Rule 9(30) of the Fundamental Rules. It can-not be claimed in connection with a service which is itself for a limited time that any rule providing for its being terminated after a month's notice is ultra vires. The rule, therefore, is not ultra vires though it may not be made applicable to the case of the petitioner in view of his service being for a definite term

38. The next question to be determined is whether it is ultra vires on account of an unfettered and uncontrolled power being given to the Governor to make

arbitrary selection and to terminate the services of any one whose services it may come into his pleasure to terminate. The power under the rule of terminating the services of a temporary Government servant must be deemed to have been given to the appointing authority. As has been remarked by Shah, J. in *Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc.*, the rule will not be adjudged as invalid on the assumption that the rule may possibly be abused and may be made a cloak for imposing a punishment on a public servant or that the provision might be utilized for a collateral purpose, for it will not be assumed that in exercising the power to determine employment the authority competent in that behalf may not act honestly. A mere possibility that the power may in some cases be misused or abused, will not per se induce the Court to deny validity to the entrustment of the power. If in a given case the order is not bona fide, and is intended to camouflage an order of removal from service as a disciplinary measure, the protection of Article 311(2) would undoubtedly be attracted, for such an order cannot be regarded as made in exercise of authority conferred by the rule. The rule therefore, cannot be held to be ultra vires on that ground.

39. Lastly, we have to determine as to whether the exercise of that power in this case for termination of the services of the petitioner was mala fide and was not in the interest of public administration. In view of what has already been said above, this question is only of academic interest, for I have already held that the rule contained in the Government Notification of 1958, above referred to, will not apply to the case of the petitioner, his appointment being for a fixed term.

40. In any case, let us examine the arguments put forward in the case on behalf of the petitioner.

41. The petitioner relies on the majority view in *S. Pratap Singh Vs. The State of Punjab*, wherein at page 83, paragraph 10, it has been remarked that the Constitution enshrines and guarantees the rule of law and Article 226 is designed to ensure that each and every authority in the State, including the Government acts bona fide and within the limits of its power and when a Court is satisfied that there is an abuse or misuse of power and its jurisdiction is invoked, it is incumbent on the Court to afford justice to the individual. But the question is whether there has been bona fide use of power in this case. As has already been pointed out earlier, it was as a matter of policy and not on account of any animus towards the petitioner or any mala fide towards him that the Minister concerned was of opinion that extensions should not be made in case of persons like the petitioner especially when the extension is not based upon any consideration peculiar to the petitioner. The exercise of power against the petitioner, therefore, in connection with the termination of his service cannot be said to be mala fide. On this ground, therefore, the petition cannot be allowed, though it has to be allowed on the other ground as has already been pointed out above.

42. It was also urged that it was only after the petitioner had served notice of the earlier petition, namely. Writ Petition No. 334 of 1964, that a notice was

issued to him under the Notification of 1953 revising the earlier G. O. by reducing the extension of his service only upto June 30, 1964. This also cannot be said to be mala fide. It was done because the purpose of the policy enunciated by the Minister it was thought, could be carried out only if such a notice was given to the petitioner. On this ground also the letter contained in Annexure 6 will not be mala fide.

43. In view of what has been said earlier the petitions have to be allowed to the extent of quashing the orders contained in annexures 6 and 6, though no writ of mandamus can now be issued refraining the opposite parties from giving effect to the order.

44. The petitions are accordingly allowed and the orders contained in annexure 5 in Writ Petition No. 384 of 1964 and annexure 6 in Writ Petition No. 357 of 1964 quashed. The opposite parties shall bear the costs of the petitioner.