

(2008) 08 AP CK 0022

In the Andhra Pradesh High Court

Case No : Writ Petition No. 1554 of 2007

T. Padma, Formerly District Judge (Fast Track Court)

APPELLANT

Vs

State of A.P. and Another

RESPONDENT

Date of Decision : 22-08-2008

Acts Referred:

Ad hoc Appointments Rules, 2001 — Rule 2(4), 8, 9
All India Institute of Medical Sciences Rules, 1958 — Regulation 30(2), 30(3), 35, 7(4)
Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 — Rule 11, 20, 20(1), 9
Andhra Pradesh State and Subordinate Service Rules, 1996 — Rule 22, 22A, 9
Andhra Pradesh State Higher Judicial Service Rules, 1964 — Rule 2, 3
Classification Rules, 1930 — Rule 49
Constitution of India, 1950 — Article 14, 16, 162, 233, 309
Kurukshetra University Act, 1956 — Section 6(1), 6(3)
Public Servants (Inquiries) Rules, 1950 — Rule 21
Railway Establishment Rules — Rule 148(3), 149(3)
Railways Rules, 1955 — Rule 3

Citation : (2008) 6 ALT 241

Hon'ble Judges : R. Subhash Reddy, J;Goda Raghuram, J

Bench : Division Bench

Advocate : Challa Dhanamjaya, for the Appellant; G.P. for GAP for Respondent No. 1 and D.V. Sitharama Murthy, for the Respondent

Final Decision : Allowed

Judgement

Goda Raghuram, J.

Chronology of Relevant Facts:

1. Pursuant to a notification dated 12.08.2003 issued by the 1st respondent calling for applications from eligible candidates for appointment as ad hoc Judges for the Fast Track Courts in the State, the petitioner applied. By the order dated 6.10.2003 in G.O. Rt. No. 1798 Law (LA&J SC.F) Department, twenty persons including the petitioner were notified to have been appointed to act as District Judges on ad hoc basis for Fast Track Courts. Clause (4) of the order declared

that the appointments would cease on 31.3.2005. By a consequent notification dated 22.10.2003 the petitioner and the other directly recruited ad hoc District and Sessions Judges were issued orders of posting by the 2nd respondent. In accordance with the conditions of appointment the petitioner also executed a deed of agreement dated 23.10.2003 with the 2nd respondent for her contractual appointment till 31.3.2005.

2. The 2nd respondent through a circular dated 2.5.2005 directed all Unit Heads to continue the Fast Track Courts functioning in their respective districts and as also the officers and the staff appointed to such courts on ad hoc basis until further orders. The preamble to this circular spelt out that this arrangement is made in view of the representation by the Central Government before the Supreme Court agreeing for continuing of the scheme of Fast Track Courts beyond 31.3.2005.

3. By the order in G.O. Rt. No. 430 Law Department dated 27 3.2006 the 1st respondent issued orders: "... to continue the (18) above candidates who are appointed on ad hoc basis to preside over Fast Track Courts in the cadre of Additional District and Sessions Judges for a further period of 5 years i.e., from 1.4.2005 to 31.3.2010." The petitioner is amongst the 18 officers so continued on ad hoc basis, as Addl. District and Sessions Judges for the Fast Track Courts. The preamble to this order of the 1st respondent stated that the earlier term of these officers had expired by 31.3.2005 and the 2nd respondent had sent proposals for continuance of these persons for the period of 5 years up to 31.3.2010.

4. In the light of the observation recorded in Crl. A. No. 971 of 2005 the 2nd respondent by the order in ROC No. 1971/E1/2006, dated 1.12.2006 instructed the District and Sessions Judge, Medak at Sangareddy to direct the petitioner not to dispose of any cases pending on the file of her court until further orders, while directing the District and Sessions Judge, Medak to attend to any urgent work of the Fast Track Court presided over by the petitioner.

5. The 1st respondent issued an order dated 29.12.2006 in G. O. Ms. No. 180 Law (LA & J SC.F) Department notifying the termination from service of the petitioner with immediate effect. This order (impugned in this writ petition) being relevant, is extracted:

ORDER:

Whereas, the Registrar (Vigilance), High Court of Andhra Pradesh has informed that Government vide G.O. 1st read above, have appointed 20 District Judges on ad hoc basis to preside over Fast Track Courts, under Rule 2 of the Andhra Pradesh State Higher Judicial Service Special Rules for Ad hoc appointments, 2001, from the members of the BAR, and Smt. T.Padma is one among them. Thereupon, the High Court issued posting orders to Smt. T. Padma as Presiding Officer of II Additional District and Sessions Judge (Fast Track Court), Medak at Sangareddy and ever since she is working as such in the said post. In the

reference 2nd read above, the Government have issued orders for continuance of the services of the said Ad hoc Judges for a period of 5 more years till 31.03.2010.

2. And whereas, the Registrar (Vigilance), High Court of Andhra Pradesh has further stated that, while so, Criminal Appeal No. 971/2005 has been preferred to the High Court against the judgment delivered by Smt. T.Padma, in S. C. No. 376/96, dated 23.06.2005 on the file of the II Additional District and Sessions Judge (Fast Track Court), Medak at Sangareddy and when the said Criminal Appeal came up for hearing before the Division Bench of the High Court, it has been observed by the Hon''ble Judge as follows:

Learned Judge convicted 15 Accused and sentenced them to undergo life imprisonment without evaluating the prosecution evidence after recording contentions in one para of 7 or 8 lines. It is not safe to assign Sessions Cases unless her performance with other cases is evaluated.

3. And whereas, the Registrar (Vigilance) has also stated that, based on the above observation, the High Court having perused the other judgments delivered by the said officer in Sessions Cases came to a conclusion that, the judgments delivered by the officer are slipshod and devoid of reasons in support of her conclusions and the Judgment of the officer particularly in S.C. No. 376/96 shows that the officer mechanically convicted 15 Accused for the offence of murder and sentenced them to suffer imprisonment for life without evaluating the prosecution evidence. The High Court further observed that the officer casually decided Judicial matters involving the life and liberty of the individuals and it is not desirable to continue her in service and accordingly resolved to recommend His Excellency the Governor of Andhra Pradesh to terminate the services of Smt. T.Padma, II Additional District and Sessions Judge (Fast Track Court), Medak at Sangareddy, by following the prescribed Rules i.e., "The Andhra Pradesh State Higher Judicial Service Special Rules for Ad hoc Appointments, 2001.

4. Now, therefore, the Governor of Andhra Pradesh after careful examination of the material and considering the recommendations of the High Court of Andhra Pradesh and in exercise of the powers conferred under explanation (viii) to Rule 9 read with Rule 11 and Sub-rule (1) of Rule 20 of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 has decided to terminate Smt. T. Padma, II Additional District and Sessions Judge (Fast Track Court), Medak at Sangareddy from service with immediate effect.

5. Accordingly, the following notification will be published in the Extra Ordinary Issue of Andhra Pradesh Gazette, dated the 29th December, 2006.

NOTIFICATION

In exercise of the powers conferred under explanation (viii) to Rule 9 read with Rule 11 and Sub-rule (1) of Rule 20 of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991, the Governor of Andhra Pradesh

in consultation with the High Court of Andhra Pradesh hereby terminate the services of Smt. T.Padma, II Additional District and Sessions Judge (Fast Track Court), Medak at Sangareddy with immediate effect.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

J. Hari Narayan Chief Secretary to Government

6. The petitioner assails the impugned order, inter alia, on the grounds

(A) That the order has been issued without prior notice or opportunity to put forth her defence;

(B) That the order is issued purportedly in exercise of power under Explanation (viii) to Rule 9 read with Rule 11 and Sub-rule (1) of Rule 20 of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules 1991 ("the CCA Rules") which is wholly inapplicable as it deals with termination of the service of a Government servant appointed on probation during or at the end of the period of probation in accordance with the terms of his appointment or the rules and orders governing such position. As the petitioner was appointed on ad hoc basis but not as a probationer and the tenure of her service was extended up to 31.03.2010, no power is available to terminate her services.

(C) The order of termination on the ground of incompetence casts a stigma and could not have been issued without conducting an enquiry under the CCA Rules.

(D) In the absence of any charge relating to integrity, no disciplinary action could have been initiated for a mere erroneous judgment and the appropriate remedy is only by way of appeal or revision, to an aggrieved party.

7. In the counter affidavit filed by the 2nd respondent, to the extent relevant and material, it is stated that the petitioner had delivered a judgment in SC No. 376 of 1996 convicting the 15 accused to R.I. for life. CrI. A. No. 977 of 2005 there against was allowed and the judgment delivered by the petitioner was set aside by a Division Bench of this Court. Thereon an opinion was expressed by one of the learned Judges of the Division Bench that - "The Learned Judge convicted 15 Accused and sentenced them to undergo life imprisonment without evaluating the prosecution evidence, after recording contentions, in one para of 7 or 8 lines. It is not safe to assign Sessions cases, unless her performance with other cases is evaluated." This was brought to the notice of the Hon'ble the Chief Justice of the High Court, who recorded the following endorsement:

The matter may be put up before the Fast Track Court Committee for consideration and advise in the light of the observations made by the Division Bench in Criminal appeal No. 971 of 2005 decided on 10-7-2006.

8. The appropriate Committee of the High Court considered the matter at the meeting held on 7.11.2006 and observed that the judgments delivered by the petitioner in SC Nos. 376/1996, 164/2000, 383/2002, 223/2003, 232/2003 and 366/2004 are found to be most unsatisfactory. The Committee resolved to

terminate the service of the petitioner. Thereafter the Hon''ble The Chief Justice placed the matter before the Administrative Committee of the High Court dealing with disciplinary matters. The Administrative Committee at the meeting on 20.11.2006 resolved as under:

Considered the minutes dated 7-11-2006 of the Committee of Hon''ble Judges dealing with establishment of Courts including Fast Track Courts and perused the judgments of Smt. T.Padma, II Additional District and Sessions Judge (Fast Track Court), Medak at Sangareddy in S.C. No.376/1996, 164/2000, 383/2002, 223 and 232 of 2003 and 366/2004 and found them to be very slipshod and devoid of reasons in support of her conclusions.

The judgments of the Officer, particularly S.C. No. 376/1996, Dated 23-6-2005 shows that the officer mechanically convicted 15 accused for the offence of murder and sentenced them to suffer imprisonment for life without evaluating the prosecution evidence.

The committee observes that the officer casually decided judicial matters involving the life and liberty of the individuals and it is not desirable to continue her in service. Hence, it is resolved that the services of Smt. T.Padma, II Additional District and Sessions Judge (Fast Track Court), Medak at Sangareddy, be terminated.

9. The Full Court at the meeting held on 30.11.2006 considered this aspect and the resolution of the Administrative Committee dated 20.11.2006 was approved. The Full Court resolved to recommend to the Governor of the State to terminate the services of the petitioner in the category of Ad hoc Judge presiding over Fast Track Court and currently working as II Additional District and Sessions Judge, Medak at Sangareddy. Pursuant to this resolution, a letter dated 10.12.2006 was addressed to the Government to terminate the services of the petitioner following the provisions of the Andhra Pradesh State Higher Judicial Service Special Rules for Ad hoc Appointments, 2001 (the 2001 Rules). Consequently the State Government issued the order impugned in this writ petition.

10. The counter disputes the allegations of the petitioner that a recommendation for termination of her services was made by the High Court only on the basis of the observations by a learned Judge. The counter asserts that in the light of the said observation, several of the judgments delivered by the petitioner in criminal cases were scrutinized by a committee of the High Court, which found the judgments delivered by the petitioner to be slipshod and the conclusions unsupported by reasons, also that the Officer had mechanically convicted 15 accused for the offence of murder and sentenced them to suffer RI for Life, without evaluating the evidence of the prosecution. The committee found that the officer had casually decided judicial matters involving life and liberty of the individuals. Regarding the plea that no notice was given or opportunity offered before issuance of the impugned order, the counter states that as the petitioner was appointed on ad hoc basis but not as a probationer, no notice is required to

be issued under Explanation (viii) to Rule 9 read with Rule 11 and Sub-rule (1) of Rule 20 of the CCA Rules.

11. Before dealing with the issues arising in this writ petition, it is necessary to record, in very brief the scheme of the establishment of Fast Track Courts. The huge backlog of cases and the interminable delays in adjudication of cases has come to assume critical proportions in Indian Judicial System. Apart from an infrastructural mismatch, the lower judge strength of around 10.5 per a million population is broadly considered an endemic cause for this problem. In All India Judges Association and Others Vs. Union of India (UOI) and Others, , the Supreme Court analyzed the reasons underlying the huge backlog of cases and observed that additional posts of judicial officers and the complementary infrastructure would have to be created and directed that an increase in the judge strength to achieve the level of 50 judges per a million population should be implemented in a phased manner and within a period of five years from the date of judgment apart from taking expeditious steps for filling up existing vacancies.

12. Another Constitution Bench of the Supreme Court in P. Ramachandra Rao Vs. State of Karnataka, also pointed out the critical judge -population ratio in the country. As a consequence of such observations by the Apex Court, the Executive at the Federal level was energized and consequent on the recommendations of the XI Finance Commission evolved a scheme of "Fast Track Courts". The operationalization of the scheme was however differently managed in several States.

13. In the State of Andhra Pradesh pursuant to the Fast Track Courts scheme evolved by the Central Government, executive orders were issued by the State in G. O. Rt. Nos. 411, Law (LA & J Cts. C) Department dated 27-03-2001 and G.O. Rt. No. 412, Law (LA & J SCF) Department dated 27-03-2001 appointing retired Judicial Officers as Additional District and Sessions Judges and Senior Civil Judges to preside over Fast Track Courts, on contract basis. This was done on the recommendations of the High Court The appointments were initially for a period of two years up to 31-03-2003. On completion of this tenure, the State Government on recommendations of the High Court, issued orders in G.O.Rt.No. 666, Law (LA & J SCF) Department dated 15-04-2003 and G.O. Rt. No. 703, Law (LA & J Home Cts. C) Department dated 21-04-2003 appointing Additional District and Sessions Judges and Senior Civil Judges to preside over the Fast Track Courts on contract basis for a period of two years or on attaining the age of 68 years whichever is earlier, under Rule 9 of the Andhra Pradesh State and Subordinate Service Rules, 1996 (a provision for appointment on contract basis).

14. In G.O. Rt. No. 286 Law (LA & J SCF) Department dated 05-03-2002, the Andhra Pradesh State Higher Judicial Service Special Rules for Ad hoc Appointments 2001 (for short "the Ad hoc Rules, 2001") were notified and enjoined to come into force with effect from 01-03-2001. The Ad hoc Rules, 2001 being relevant are set out in extenso.

NOTIFICATION

In exercise of the powers conferred by Article 233 and proviso to Article 309 of the Constitution of India and all other powers hereinto enabling the Government of Andhra Pradesh makes the following Rules. These Rules are called the Andhra Pradesh State Higher Judicial Service Special Rules for Ad hoc Appointments 2001. These rules shall come into force from 01.03.2001.

1. CONSTITUTION:

The Service under these rules shall consist of the District and Sessions Judges on Ad hoc appointment.

2. APPOINTMENT:

Notwithstanding anything contained in the Special Rules for A.P. State Higher Judicial Service, 1958, the appointment of District and Sessions Judge on Ad hoc basis shall be made:

(i) By direct recruitment from the members of the bar.

(ii) Appointment by transfer from among Senior Civil Judges in the State Judicial Service.

(iii) By respondent-employment of retired District Judges, provided that 33.1/3% of the total number of Ad hoc posts, shall be filled by direct recruitment.

(1) In the determination of 33.1/3% of total number of Ad hoc posts, fractions exceeding one half shall be counted as one and other fractions shall be disregarded.

(2) Appointments under Rules 2(ii) shall be made on grounds of merit and ability, seniority being considered only when merit and ability are approximately equal.

(3) Appointments under Rule 2(iii) shall be made on grounds of merit ability and fitness.

(4) All appointments made from time to time under Rule 2 shall cease on 31-03-2005.

3. RULE OF RESERVATION:

The rule of reservation shall only be applicable for direct recruitment as provided under Rule 22 & 22A in Part II of Andhra Pradesh State and Subordinate Service Rules except insofar as it relates to physically handicapped persons.

4. QUALIFICATIONS:

The qualifications prescribed for appointment of persons from the Bar to Category II under Rule 3 of Special Rules for Andhra Pradesh State Higher Judicial Service shall apply mutates mutandis to direct recruitment from the Bar under rules.

5. POSTING AND TRANSFERS:

(1) All appointments covered under Rule 2 shall be made by Governor in consultation with the High Court.

(2) All postings and transfers of Ad hoc Judges shall be made by the High Court.

6. SENIORITY:

Inter-se Seniority of the promotees from Senior Civil Judges to the Cadre of District and Sessions Judges shall be as per the seniority fixed at the time of appointment.

7. TERMS AND CONDITIONS:

(1) (a) The District and Sessions Judges appointed by direct recruitment from the Members of the Bar shall be eligible for such perquisites and allowances, for such term and on such conditions as the Governor may prescribe at the time of appointment and on all subsequent occasions at the Governor may deem fit and necessary. They shall be entitled to avail Casual Leave to which the District and Sessions Judges, Grade II are entitled.

(b) A person appointed under Rule 2(i) shall not be regarded as a Member of permanent cadre covered under Rule 2 of the Special Rules for Andhra Pradesh State Higher Judicial Service, 1958, and shall not be entitled to any preferential right to any other appointment to this service or any other service and their service shall not be treated as regular or permanent under the State Government nor shall be a bar for appointment to the posts, covered by the Special Rules for Andhra Pradesh State Higher Judicial Service, 1958 or the Andhra Pradesh State Judicial Service Rules, 1962.

2(a) The respondent-employment of retired District and Sessions Judges shall not be regarded as first appointment to the service and the same shall be on such terms and conditions and for such term of the Governor deems fit at the time of appointment or on all subsequent occasions. They shall be entitled to such Casual Leave as is available to the District and Sessions Judges Grade. II.

EXPLANATION:

The terms of such respondent-employment shall include the conditions of service, pay and allowances, discipline and control, period of appointment and termination of service etc.,

(b) The service rendered by a person appointment under Rule 2(iii) shall not be counted for pensionary and other benefits.

(3) The District and Sessions Judges appointed under Rule 2(ii) shall be eligible to such salary, leave, leave allowances and traveling allowance permissible to the District and Sessions Judges, Grade. II and for such perquisites, allowances and facilities provided in the Courts presided over by the District and Sessions Judges appointed on Ad hoc basis.

8. APPLICATION OF A.P. CIVIL SERVICES (C.C. & A) RULES, 1991.

The Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 as are applicable to A.P. State Higher Judicial Service or the A.P. Revised Pension Rules, 1980 as the case may be shall apply to all the services under these rules *mutatis mutandis*.

9. SAVE:

Notwithstanding anything contained in any other law for the time being in force, all appointments made on Ad hoc basis on or after 1-3-2001, shall be deemed to be the appointments made under these rules.

15. In view of Rule 9 of the Ad hoc Rules, 2001, the appointments made under G.O. Rt. Nos. 411, 412, 666 and 703 supra are appointments deemed to have been made under the Ad hoc Rules, 2001 and are governed by the provisions of these Rules. Rule 2(4) enacts a sunset clause viz., that all appointments made from time to time under Rule 2 shall cease on 31-03-2005. Thus all these appointments stood determined by 31.03.2005.

16. In view of the availability of a statutory regime consequent on the promulgation of the Ad hoc Rules, 2001, the petitioner and nineteen (19) other officers were appointed as Ad hoc Additional District and Sessions Judges by an order of the State Government issued in G. O. Rt. No. 1798, Law (LA & J SC.F) Department dated 06-10-2003 on the recommendations of the High Court. Similar appointments of other officers were made in G.O. Rt. No. 2179, Law (LA & J SC.F) Department dated 04-12-2003. In view of the provision in Rule 2(4) of the Ad hoc Rules, 2001, all the ad hoc appointments made to the Fast Track Courts come to an end on 31-03-2005.

17. As a consequence of an assurance placed on record before the Supreme Court on behalf of the Central Government with regard to continuance of the Fast Track Courts scheme for a further period of five (5) years, the Supreme Court passed an order in Transfer Case (Civil) No.22 of 2001 dated 29-04-2005 extending the tenure of the Fast Track Courts in the country. The High Court of Andhra Pradesh addressed the Government on 24-03-2005 to extend the term of the Fast Track Courts for a period of one month from 01-04-2005 to 30-04-2005. In G.O. Ms. No. 45, Law (LA & J Home Cts.C) Department dated 19-04-2005, the State Government granted extension of Fast Track Courts for a period of one month up to 30-04-2005 and in G. O. Ms. No. 96, Law (LA & J Home Cts. C) Department dated 15-07-2005 issued further orders extending the term of all the 108 existing Fast Track Courts in the State, for a period of five years beyond 31-03-2005 i.e., up to 31-03-2010.

18. Since the tenure of the ad hoc Additional District and Sessions Judges (appointed from the Bar) came to an end by 31.03.2005, the High Court addressed a letter dated 30-07-2005 to the State Government recommending extension of the tenure of the Judicial Officers presiding over the Fast Track

Courts including the 19 advocates (the petitioner and others). The High Court in this letter recommended that the term of the 19 advocates who were appointed on ad hoc basis to preside over the Fast Track Courts in the cadre of Additional District and Sessions Judges be extended for five more years beyond 31-03-2005 on contract basis under Rule 9 of the A.P. State and Subordinate Service Rules, 1996.

19. The State Government in G. O. Rt. No. 430 Law (LA & J SCF) Department dated 27-03-2006 on the basis of the second respondent's proposals dated 30-07-2005 and 09.12.2005 issued orders, inter alia continuing eighteen (18) persons who were appointed on ad hoc basis to preside over Fast Track Courts as Additional District and Sessions Judges, for a further period of five years i.e., from 01-04-2005 to 31-03-2010. Para-3 of this order of the 1st respondent stated that these ad hoc appointments as District & Sessions Judge to preside over Fast Track Courts would cease on 31.3.2010.

20. It requires to be noticed that neither the proposals by the 2nd respondent, in particular those in the letter dated 30.3.2005, nor the order of appointment issued by the 1st respondent in G.O. Rt. No. 430 refer to the provisions of the Ad hoc Rules 2001 for the "continuance of the 18 officers" (including the petitioner) as ad hoc District and Sessions Judge to preside over Fast Track Courts. Rule 2(4) of the Ad hoc Rules 2001 enjoins that all appointments made from time to time under Rule 2 of the these Rules would cease on 31.03.2005. This provision has not been amended and is operational as on date. In the light of the clear and unambiguous legal position obtaining qua Rule 2(4), it follows that the ad hoc Rules 2001 are in effect ad hoc temporary rules, which cease to operate after 31.3.2005 and notwithstanding the savings provision in Rule 9 of the these Rules. Such interpretation and conclusion is inescapable. Even if any appointments are made on ad hoc basis to the post of District and Sessions Judge purportedly in exercise of the powers under the ad hoc Rules 2001 after 31.3.2005, such appointments are enjoined to cease on 31.3.2005 in view of the provisions of Rule 2(4). This would lead to an absurdity. The phraseology of Rule 2(4) of the ad hoc Rules 2001 is clear, unambiguous and is not amenable to a non textual construction, to permit any other interpretation. The language of Rule 2(4) does not permit "ironing out the creases". We therefore hold that the ad hoc appointments made to the post of District and Sessions Judge to preside over Fast Track Courts subsequent to 31.3.2005 cannot be considered as appointments made under the Ad hoc Rules 2001.

21. In view of the rival contentions, the following issues arise for consideration:

(A) As the petitioner's appointment on ad hoc basis was for a fixed tenure (up to 31-03-2010 as set out in G. O. Rt. No. 430), whether the impugned order is valid having been issued in purported exercise of power under Explanation (viii) to Rule 9 read with Rule 11 and Sub-rule (1) of Rule 20 of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991, (for short "the CCA Rules, 1991") in particular since the CCA Rules, 1991 are inapplicable to govern

the conduct, control and appeal domain of the petitioner's service in view of the inapplicability of the Ad hoc Rules, 2001?

(B) Whether the 1st respondent's order (impugned herein) terminating the services of the petitioner as Il-Additional District and Sessions Judge (Fast Track Court), Medak at Sangareddy issued in G.O.Ms.No.180 Law (LA & J SC.F) Department dated 29-12-2006 (for short "the G. O. Ms. No. 180") is invalid since the order is preceded neither by a regular departmental inquiry nor any fair or reasonable opportunity to the petitioner and in the context that the order of termination is issued on the ground of the petitioner's incompetence to hold the post of the Additional District and Sessions Judge, a stigmatic determination? and

(C) Whether disciplinary action could have been initiated against the petitioner in the absence of any charge or allegation relating to her integrity and for mere erroneous judgments having regard to the judicial function discharged by the petitioner?

Issue (A):

22. Rule 8 of the ad hoc Rules 2001 enjoins that the A.P. Civil Services (Classification, Control and Appeal) Rules 1991 (for short "the CCA Rules 1991") as are applicable to the A.P. State Higher Judicial Service shall apply to all the services under these Rules (the ad hoc Rules 2001) mutatis mutandis. Ad hoc appointments made to the post of District & Sessions Judge to preside over Fast Track Court after 31.3.2005 cannot however be considered (as already analyzed supra) to be appointments made under the Ad hoc Rules 2001. Therefore neither Rule 8 of the Ad hoc Rules 2001 nor Rule 9 which enjoins that all appointments made on ad hoc basis on or after 01.03.2001 shall be deemed to be appointments made under these Rules, govern such appointments.

23. On the aforesaid analysis the appointments of the 18 persons including the petitioner, by the order of the 1st respondent in G.O. Rt. No. 430 dated 27.3.2006, as Addl. District and Sessions Judges for a five year period from 01.04.2005 to 31.03.2010 with a clear prescription in Para-3 of the order that the said ad hoc appointments will cease on 31.3.2010, must be considered as contractual/tenured appointments outside the pale of the A.P. State Higher Judicial Service Rules or the ad hoc Rules 2001. These appointments have to be reconciled as having been made under Rule 9 of the A.P. State and Subordinate Service Rules 1996 or in exercise of the executive power of the State under Article 162 of the Constitution.

24. By the impugned order dated 29.12.2006 the 1st respondent terminated the services of the petitioner from the post of Addl. District and Sessions Judge, Fast Track Court, professedly exercising power under Explanation (viii) to Rule 9 r/w Rule 11 and Sub-rule (1) of Rule 20 of the CCA Rules 1991. As noticed earlier Rule 8 of the Ad hoc Rules 2001 enjoins the application of CCA Rules 1991 to the services under the Ad hoc Rules 2001. The petitioner's appointment on ad hoc basis as Addl. District and Sessions Judge to preside over Fast Track Court and

on a tenure, from 01.04.2005 to 31.03.2010 is neither facially an appointment made under the Ad hoc Rules 2001 nor could be considered an appointment under these Rules in view of the provisions of Rule 2(4). Rule 8 of the Ad hoc Rules 2001 has therefore no application to the conditions of service of the petitioner. Be that as it may.

25. The CCA Rules 1991 are made by the Governor of Andhra Pradesh in exercise of the power conferred by the proviso to Article 309 of the Constitution. Rule 9 of these Rules occurs in Part-IV, a chapter dealing with Penalties and Disciplinary Authorities. Explanation (viii) of Rule 9 is one of the exceptions enumerated as not amounting to penalty within the meaning of Rule 9 and enjoins that the termination of the services of a Government Servant appointed on probation, during or at the end of the probation, in accordance with the terms of his appointment or the rules or orders governing such probation, shall not amount to a penalty within the meaning of provisions of Rule 9.

26. As is apparent from the order of appointment of the petitioner (the terms of which are spelt out in G.O. Rt. No. 430 dt 27.3.2006), the petitioner on ad hoc appointment as Addl. District and Sessions Judge to preside over the Fast Track Court has not been put on probation. The terms of appointment enjoin a tenure of 5 years from 01.04.2005 to 31.03.2010 with no power reserved or a clause in the terms of appointment, enabling an earlier termination from service. As already noticed the provisions of the Ad hoc Rules 2001 do not apply to these appointments. No other rules or orders governing the probation of the petitioner has been brought to the notice of this Court by the respondents. In the circumstances Explanation (viii) to Rule 9 of the CCA Rules, 1991 is inapplicable and cannot justify the impugned order of termination of the service of the petitioner.

27. Rule 11 of the CCA Rules 1991 also occurs in Part-IV thereof. Sub-rule (i) of Rule 11 specifies that the High Court of A.P. may impose on the members of the A.P. Judicial Service any of the penalties specified in Clauses (i) to (vi) of Rule 9. This provision even if applicable has no bearing on the validity of the impugned order qua the grounds of challenge set out as issue (A).

28. Rule 20 of the CCA Rules 1991 sets out the procedure for imposing penalties. Sub-rule (1) enacts that no order imposing any of the penalties specified in Clauses (vi) to (ix) of Rule 9 shall be made except after an enquiry held as far as may be in the manner provided in these Rules and Rule 21 or in the manner provided by the Public Servants (Inquiries) Act, 1850 (Central Act 27 of 1850), or the A.P. Civil Services (Disciplinary Proceedings Tribunal) Act, 1960 or the A.P. Lokayukta and Upa-Lokayukta Act, 1983, where such inquiry is held under the said Act. The other sub-rules of Rule 20 enumerate a detailed procedure for conduct of disciplinary inquiry.

29. It is the admitted factual position that the petitioner was issued no show cause notice calling for her explanation (to any specified allegation) nor was the

detailed process of a disciplinary enquiry enjoined by Rule 20(1) of the CCA Rule 1991 followed. In fact no quasi-judicial process preceded the impugned order.

30. In the light of the legal position under the CCA Rules analyzed supra, and the uncontested factual position, the reference in the impugned order to the exercise of power under Explanation (viii) to Rule 9 r/w Rule 11 and Sub-rule (1) of Rule 20 of the CCA Rules 1991 is a reference that is wholly irrelevant.

31. We accordingly hold that Explanation (viii) to Rule 9 r/w Rule 11 and Rule 20(1) of the CCA Rules 1991 have no application and do not per se legitimize the exercise of power by the 1st respondent leading to the impugned order. Issue (A) is answered accordingly.

Issues(B)and (C)

32. The petitioner's contention on issues (B) and (C) are in the alternative. She impeaches the impugned order (i) on the ground that it was issued without notice or opportunity to her to put forth her defence to any specified allegation and in the context of the fact that the termination was stigmatic; and (ii) that in the absence of any charge relating to integrity no disciplinary action could have been initiated for erroneous judgments passed in exercise of judicial functions and the appropriate remedy against an erroneous judgment is by way of an appeal or a revision, by an aggrieved party.

33. It is the indisputable factual position that the petitioner was issued no show cause notice specifying any allegation nor was she called upon to explain any charge of misconduct before the impugned order was issued. The impugned order refers to the observation of one of the Hon'ble Judges of the Division Bench of this Court while dealing with CrI. A. No. 971 of 2005 and in relation to a judgment (delivered by the petitioner in SC No. 376 of 1996 dated 23.6.2005 as the Presiding Officer of the Court of II District and Sessions Judge (FTC) Medak at Sangareddy) and sets out the observations (already extracted above in this judgment). These observations do not point to any integrity issue in the petitioner's conduct of office. The observation is as regards the competence of the petitioner in the performance of judicial functions. The assessment is that "it is not safe to assign Sessions Cases (to the petitioner) unless her performance in other cases is evaluated." Para-3 of the impugned order also refers to the assessment by the High Court of the other judgments delivered by the petitioner in other Sessions Cases and the satisfaction of the High Court that the petitioner's judgments are slipshod and devoid of reasons in respect of the conclusions; and the casual approach evident from the petitioner's judgments with regard to determination of criminal cases involving the life and liberty of individuals.

34. Such satisfaction of the High Court led to the conclusion that it was not desirable to continue the petitioner in service and an appropriate recommendation to the 1st respondent followed, for terminating her services. While there is no allegation with regard to the integrity of the petitioner as such,

there is certainly on record (we have carefully perused the original record of the High Court containing the observations of the Committee; which led to the impugned order) as is also recorded in paragraphs 2 and 3 of the impugned order, the explicit, clear and expressed conclusion by the High Court is that the petitioner's performance (as a Judicial Officer) was grossly incompetent, casual and negligent and way below the expected standards for exercise of judicial functions, as a District and Sessions Judge.

35. The foundation for the impugned order is thus gross incompetence, which is clearly stigmatic. No order of termination from public service could be imposed in the circumstances without at least a fair and reasonable opportunity provided to the petitioner for meeting the allegations and considering her explanation if any offered to such allegations. Such is the requirement of Article 14 of the Constitution, even if the CCA Rules 1991 have no application, since the employment of the petitioner is clearly public employment.

Elucidation of the relevant principles on analysis of precedents:

36. In *Parshotam Lal Dhingra Vs. Union of India (UOI)*, (a Constitution Bench judgment) S.R. Das, C.J (per majority) summed up the relevant principles as under:

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, (emphasis) Except in these two cases the appointment to a post, permanent or temporary, on probation on an officiating basis or a substantive appointment to a temporary post gives to the servant so appointed no right to the post and his service may be terminated unless his service had ripened into what is, in the service rules, called a quasi-permanent service.

Considering the posit of a fixed tenure appointment in a temporary post the *Parshotam Lal Dhingra Vs. Union of India (UOI)*, . majority held:

(26) The foregoing conclusion, however, does not solve the entire problem, for it has 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. 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 servant's 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 has been guilty of some misconduct, negligence, inefficiency or other disqualifications 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).(emphasis)

The contrast between the termination of appointment when made to a permanent post before the age of superannuation as stipulated under the service rules and the termination before the determination of the tenure for which a person is appointed either to a permanent or temporary post on the one hand and termination of the service of a person appointed to a permanent post on probation during or at the end of period of probation on the other, is also lucidly brought out in the *Parshotam Lal Dhingra Vs. Union of India (UOI)*, majority opinion thus:

This aspect of the matter is recognized in the Explanation to Rule 49 of the 1930 Classification Rules which correspond to the Note to Rule 1702 of the Indian Railway Code and Rule 3 of the 1955 Rules and Rule 13 of the 1957 Rules, for all those rules expressly say that the termination of such an appointment does not amount to the punishment of dismissal or removal within the meaning of those rules. Likewise if the servant is appointed to officiate in a permanent post or to hold a temporary post other than one for a fixed term, whether substantively or on probation or on an officiating basis, under the general law, the implied term of his employment is that his service may be terminated on reasonable notice and the termination of the service of such a servant will not per se amount to dismissal or removal from service. This principle also has been recognized by the Explanations to Rule 49 of the 1930 Classification Rules corresponding to the Note to Rule 1702 of the Indian Railway Code and Rule 5 of the 1949 Rules and Rule 3 of the 1955 Rules and Rule 13 of the 1957 Rules.

The generic principles have been summarized in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, as under:

Shortly put, 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, (emphasis) But if the servant has no right to the post, as where he is appointed to a post, permanent or temporary either on probation or on a officiating basis and whose temporary service has not ripened into a quasi-permanent service as defined in the Temporary Service Rules, the termination of his employment does not deprive him of any right and cannot, therefore, by itself be a punishment. One test for determining whether the termination of the service of a Government servant is by way of punishment is to ascertain whether the servant, but for such termination, had the right to hold the post. If he had a right to the post as in the three cases hereinbefore mentioned, the termination of his service will by itself be a punishment and he will be entitled to the protection of Article 311. (emphasis) In other words and broadly speaking, Article 311(2) will apply to those cases where the Government servant, had he been employed by a private employer, will be entitled to maintain an action for wrongful dismissal, removal or reduction in rank. To put it in another way, if the Government has, by contract, express or implied, or, under the rules, the right to terminate the employment at any time, then such termination in the manner provided by the contract or the rules is, prima facie and per se, not a punishment and does not attract the provisions of Article 311.

37. In Jagdish Mitter Vs. The Union of India (UOI), a Constitution Bench Judgment) the appellant a temporary 2nd Division Clerk employed in the Postal Department was discharged from service w.e.f. the stipulated date. The order of discharge stated that the appellant "having been found undesirable to be retained in Government service" is served with a month's notice of discharge w.e.f. November 1st 1949. Whether the order of discharge was simpliciter or punitive was considered. The Supreme Court held (at 34-35):

It is obvious to say that it is undesirable to continue a temporary servant is very much different from saying that it is unnecessary to continue him. In the first case, a stigma attaches to the servant, while in the second case, termination of service is due to the consideration that a temporary servant need not be continued, and in that sense, no stigma attaches to him, (emphasis) It seems that anyone who reads the order in a reasonable way, would naturally conclude that the appellant was found to be undesirable, and that must necessarily import an element of punishment which is the basis of the order and as its integral part. When an authority wants to terminate the services of a temporary servant, it can pass a simple order of discharge without casting any aspersion against the temporary servant or attaching any stigma to his character. As soon as it is shown that the order purports to cast an aspersion on the temporary servant, it would be idle to suggest that the order is a simple order of discharge. The test in such cases must be does the order cast aspersion or attach stigma to the officer when it purports to discharge him? If the answer to this question is in the affirmative, then notwithstanding the form of the order, the termination of service must be held, in substance, to amount to dismissal, (emphasis) That

being so, we are satisfied that the High Court was in error in coming to the conclusion that the appellant had not been dismissed, but had been merely discharged.

38. In *Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc.*, , (7 Judge Constitution Bench) the validity of Rules 148(3) and 149(3) of the Indian Railway Establishment Code which provide for and authorize the Railway administration to terminate the services of permanent servants to whom the Rules apply merely on giving a notice for the specified period or payment of salary in lieu thereof, fell for consideration in the context of a challenge that these Rules are ultra vires Article 311(2) of the Constitution. The majority opinion held (Das Gupta and Shah JJ dissenting) that the impugned Rules are inconsistent with and ultra vires the provisions of Article 311(2) of the Constitution. With regard to right of a Government servant and in the context of the protection afforded by Article 311(2), the *Moti Ram Deka* majority affirmed the principles spelt out in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, . and reiterated the principles thus (at Para 13 of the report):

It may be taken to be settled by the decision of this Court that since 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. The protection afforded by Article 311(2) is limited to the imposition of three major penalties contemplated by the Service Rules, viz., dismissal, removal or reduction in rank. It is true that the consequences of dismissal are more serious than those of removal and in that sense, there is a technical distinction between the two: but in the context, dismissal, removal and reduction in rank which are specified by Article 311(2) represent actions taken by way of penalty. In regard to temporary servants, or servants on probation, every case of termination of service may not amount to removal. In cases falling under these categories, the terms of contract or service rules may provide for the termination of the services on notice of a specified period, or on payment of salary for the said period and if in exercise of the power thus conferred on the employer, the services of a temporary or probationary servant are terminated, it may not necessarily amount to removal. In every such case, courts examine the substance of the matter, and if it is shown that the termination of services is no more than discharge simpliciter effected by virtue of the contract or the relevant rules, Article 311(2) may not be applicable to such a case. If, however, the termination of a temporary servant's services in substance represents a penalty imposed on him or punitive action taken against him, then such termination would amount to removal and Article 311(2) would be attracted. Similar would be the position in regard to the reduction in rank of an officiating servant.

Considering the aspect as to whether a Government servant holding a permanent post has a right to continue in service subject only to the rule of superannuation or compulsory retirement as provided by the rules, the *Moti Ram Deka etc. Vs.*

General Manager, N.E.F. Railways, Maligaon, Pandu, etc., . majority held (per Gajendragadkar J):

A person who substantively holds a permanent post has a right to continue in service, subject, of course, to the rules of superannuation and the rule as to compulsory retirement. If for any other reason that right is invaded and he is asked to leave his service, the termination of his service must inevitably mean the defeat of his right to continue in service and as such, it is in the nature of a penalty and amounts to removal. In other words, termination of the services of a permanent servant otherwise than on the ground of superannuation or compulsory retirement, must, per se amount to his removal, and so, if by Rule 148(3) or Rule 149(3) such a termination is brought about, the Rule clearly contravenes Article 311(2) and must be held to be invalid.

39. In *Dr. Bool Chand Vs. The Chancellor, Kurukshetra University*, , (3 Judges per curiam opinion, per Shah J) the service of the appellant a Vice Chancellor of the Kurukshetra University was terminated by an order of the Chancellor. Earlier the Chancellor passed an order suspending the appellant from the office of Vice Chancellor and also issued a notice requiring the appellant to show cause why his services be not terminated. The appellant also had submitted his representation there against. The appellant contended that there was no power to terminate the tenure of office of a Vice Chancellor. The Supreme Court noticed that there was no express provision in the Kurukshetra University Act or the Statutes there under empowering the termination of the tenure of office of a Vice Chancellor. The Supreme Court however held that such silence in the Rules is not a bar to termination. The court held "the power to appoint ordinarily implies a power to determine the employment"(para 4). Though the Apex Court rejected the appellant's argument that since his appointment was on tenure it could not be determined before the tenure for any reason whatsoever, the court held that the power to appoint a Vice Chancellor having its source in the University Act, the investment of such power carries with it the power to determine the employment. The court however added a caveat:

? but the power is coupled with duty. The power may not be exercised arbitrarily: it can be only exercised for good cause, i.e. in the interests of the University and only when it is found after due enquiry held in manner consistent with the rules of natural justice, that the holder of the office is unfit to continue as Vice-Chancellor.(emphasis)

40. Since an opportunity was provided to the appellant by the Chancellor and the High Court also found adequate material to justify the conclusion that the appellant's service ought to be terminated, the Supreme Court rejected the appeal and up held the order of termination. The relevant and binding principle deducible from *Dr. Bool Chand Vs. The Chancellor, Kurukshetra University*, judgment is that even in a case of tenure appointment and in the absence of any term in the contract of appointment or the relevant rule providing for termination of service before the tenure, the tenure could be determined, as the power to

appoint carries with it an inherent and corollary power to terminate the appointment; however the termination should be for a just and reasonable cause and must be preceded by a reasonable opportunity. This principle is applicable even where the specified and strict procedure consequent on application of the provisions of Article 311(2) are not attracted.

41. In *Debesh Chandra Das Vs. Union of India (UOI)*, , (2 Judges Bench) (Per Hidayatullah, CJ), the appellant a member of the Indian Civil Service of the Assam cadre came on deputation to the Government of India in 1940 and eventually became a Deputy Secretary at the Union. After a stint back in the State cadre he returned to the Government of India in 1961 as Secretary, PSC. In course of time he was appointed as Secretary, Government of India until further orders, in 1964. In July 1966 the Cabinet Secretary of the Union addressed the appellant that on a review of his performance it was decided that he should be reverted to his parent cadre or he may proceed on leave preparatory to retirement or accept some other post lower than that of Secretary to Government of India. Despite the appellant's representation in September 1966, he was informed that the Government had decided to revert him to his parent cadre or he may inform if he decides to proceed on leave preparatory to retirement. Thereafter he was appointed as Special Secretary to serve under one of his juniors despite his being next to the Cabinet Secretary in terms of seniority. The appellant challenged the order on the grounds that it amounted to reduction in rank; he was terminated from the post of Secretary to Government of India before the five year tenure; and that the termination was stigmatic in view of the three alternatives proposed by the letter of the Cabinet Secretary dated 20.6.1969 and such reversion was not preceded by the procedure enjoined under Article 311(2). The Supreme Court held:

12. Now Das held one of the tenure posts. His tenure ordinarily was five years in the post. He got his Secretaryship on July 30, 1964 and was expected to continue in that post for five years, that is, till 29th July 1969. The short question in this case is whether his reversion to the Assam State before the expiry of the period of his tenure to a post carrying a smaller salary amounts to reduction in rank and involves a stigma upon him

13. Reversion to a lower post does not per se amount to a stigma. But we have here evidence that the reversion is accompanied by a stigma. In the first letter issued to him on June 20, 1969 by Mr. Dharma Vira (Cabinet Secretary) it was said that Government was considering whether the persons at top level administrative posts were capable of meeting the new challenges or must make room for younger men. The letter goes on to say that he may choose one of three alternatives: accept a lower post at the Centre, go back to a post carrying lower salary in Assam or take leave preparatory to retirement. The offer of a lower post in Delhi is a clear pointer to the fact of his demotion. It clearly tells him that his reversion is not due to any exigency of service but because he is found wanting. The three alternatives speak volumes. This was not a case of

reverting him to Assam at the end of a deputation or tenure. He can be retained in the Central Services provided he accepts a lower post, and the nal alternative that he may retire cl(rly shows that the Government is ber jpon removing him from his present post in the next letter this fact is recognized because on September 7, 196 he is offered only two alternatives, "he alternative of a lower post is advisedly dropped because it discloses too clearly a stigma. If any doubt remained it is cleared by the affidavit which is now filed. Paragraphs 7 and 10 of the affidavit read as follows:

7. With reference to the allegations made in Paragraphs 13 to 23 of the said application, I make no admission in respect thereof except what appears from relevant records. I further say that the performance of the petitioner did not come to the standard expected of a Secretary to the Government of India.

10. The allegations made in Paragraph 26 of the said application are correct. I further say that the said representation was rejected by the Prime Minister in view of the standard of performance f the petitioner.

14. Now it has been ruled again and again in this Court that reduction in rank accompanied by a stigma must follow the procedure of Article 311(2) of the Constitution. It is manifest that if this was a reduction in rank, it was accompanied by a stigma. We are satisfied that there was a stigma attaching to the reversion and that it was not a pure accident of service.

The Supreme Court concluded:

17. Finally we have to consider whether his reversion to Assam means a reduction in rank. It has been noticed about that no State Service (the highest being Chief Secretary"s) carries the emoluments which Das was drawing as a Secretary for years. His reversion would have meant a big drop in his emoluments. Das was prepared to go to Assam provided he got his salary of Rs. 4,000/- per month but it was stated before us that that was not possible. Das was prepared to serve at the Center in any capacity which brought him the same salary. This too was said to be not possible. This case was adjourned several times to enable Government to consider the proposal but ultimately it was turned down. All that was said was that he could only be kept in a lower post. If this is not reduction in rank we do not see what else it is. To give him a Hobson"s choice of choosing between reversion to a post carrying a lower salary or staying here on a lower salaried post, is to indirectly reduce him in rank.

18. Therefore, we are satisfied that Das was being reduced in rank with a stigma upon his work without following the procedure laid down in Article 311(2). We say nothing about a genuine case of accident of service in which a person drafted from a State has to go back for any reason not connected with his work or conduct. Cases must obviously arise when a person taken from the State may have to go back for reasons unconnected with his work or conduct. Those cases are different and we are not expressing any opinion about them. But this case is clearly one of reduction in rank with a distinct stigma upon the man. This

requires action in accordance with Article 311(2) of the Constitution and since none was taken, the order of reversion cannot be sustained. We quash it and order the retention of Das in a post comparable to the post of a Secretary in emoluments till such time as his present tenure lasts or there is an inquiry against him as contemplated by the Constitution.

42. In *State of Haryana and Others Vs. Rajindra Sareen*, , (2 Judges Bench) (per Vaidialingam, J) the respondent entered the service of the composite State of Punjab as the State Press Liaison Officer at Delhi (SPLO) in a cadre post in the Public Relations Department of the State. After certain intervening postings and on crossing the efficiency bar he was posted as a Deputy Director (Press). Another individual was however having a lien on this post. As there was a revival of the post of SPLO the respondent was posted thereat. After the bifurcation of the States of Punjab and Haryana he continued in the service of Punjab State on deputation till by an order dated 31.10.1968 he was terminated from service in the post of SPLO. The respondent successfully challenged his termination before the State High Court inter alia on the ground that the impugned order of termination amounted to determination of his service before the stipulated tenure. On an appeal by the State the Supreme Court though reversing the conclusions recorded by the High Court with regard to mala fides and extraneous considerations, dismissed the State's appeal and affirmed the conclusions of the High Court that the respondent's appointment as the SPLO was on a tenure co-terminus with the post but subject to the rules with regard to age of superannuation and the right of the State to take disciplinary action for any conduct in office, in accordance with law. The Apex Court held:

101 As we have already held that the appointment of the respondent must be considered to be coterminous with continuance of the post of State Press Liaison Officer, it follows that the State had no power to terminate the services of the respondent when the post itself was continuing. If any action by way of disciplinary proceedings was being taken, then the State should have complied with Articles 311(2) of the Constitution, which they have admittedly not done in this case.

Further

703. To conclude, we accept the contentions of the State that the impugned order is not vitiated by mala fides and that the respondent did not become a permanent Government servant on his appointment as Deputy Director (Press). But we further hold that in view of the circumstances of this, case, indicated earlier, the respondent's appointment as State Press Liaison Officer was coterminous with the continuance of the post and as such the order, dated October 31, 1968, terminating the services of the respondent, when the post was admittedly in continuance, the order of termination is illegal.

43. In *M. Ramanatha Pillai Vs. The State of Kerala and Another*, . Constitution Bench per Ray, C.J. a batch of Civil Appeals in matters arising from the States of

Kerala, Punjab and Haryana, the Supreme Court considered the issue whether the Government could terminate the services whether permanent or tenurial consequent upon abolition of posts without following the procedure enjoined by Article 311. Referring to and reiterating the principles enunciated in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, and *Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc.*, the Supreme Court held that where a post is abolished in a good faith and not arbitrarily, mala fide or as a mask of some penal action, no disciplinary enquiry under Article 311 or under the relevant service rules is warranted and that abolition of posts per se does not amount to infliction of penalty like dismissal, removal or reduction in rank.

44. It requires to be noticed that in *M. Ramanatha Pillai Vs. The State of Kerala and Another*, the Constitution Bench reiterated the principle explicated in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, and *Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc.*, thus:

? An appointment to a temporary post for a certain specified period gives the servant 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.

45. *State of Bihar Vs. Dr. Yogendra Singh Col (Retired) and Others*, a decision relied upon by the petitioner, does not offer much assistance for determination of the points at issue in this writ petition. The respondent was a Professor in a private Medical College in Bihar, who was entitled to an age of superannuation of 62 years as per the agreement with the Management and the Regulations made under the relevant University Act. The Management of the college was taken over by the State under a legislation, Section 6(1) of which provided that an employee of the private management ceases to be such employee and in terms of proviso to Section 6(1) the respondent had become an employee of the State Government on ad hoc basis. The respondent successfully challenged the termination of his service before the age of 62 years, in the High Court. Allowing the State's appeal the Supreme Court held that in view of Section 6(1) of the relevant Act the respondent's entitlement under the contract with his erstwhile employer came to an end and he became an ad hoc employee of the State and was thereafter covered by the conditions of service applicable to the employees of the State Government. As his tenure with the State was precarious and there was statutory provision in Section 6(3) enabling the State to terminate the service of any person employed on an ad hoc basis, the respondent had no right to continue up to the age of 62 years, held the Supreme Court.

46. A Constitution Bench of the Supreme Court in *Union of India and Another Vs. Tulsiram Patel and Others*, defined "Tenure" to mean the period for which an incumbent of office holds it (per Madon, J - at Para 40 of the report).

47. *Dr. D.C. Saxena Vs. State of Haryana and Others*, (2 Judges Bench - per Khalid. J) is also a case relating to curtailment of a tenure and termination before

completion of a tenure. The appellant was appointed as Chairman of the Haryana Board of School Education by an order dated 10.12.1985 while he was serving as Professor Director of Punjabi University Regional Centre, Bhatinda. He resigned the post of Professor Director on such appointment and took over as Chairman of the Board, in December 1985. This order of appointment enumerated the tenure of office as under: "His tenure of office shall be for a period of two years from the date of assuming charge. The Government may, however, curtail the tenure at any time." By an order dated 7.6.1986 the term of office was curtailed with immediate effect and it was directed that the appellant would cease to function as Chairman from 8.6.1986. A Division Bench of the Punjab & Haryana High Court having dismissed the writ petition challenging this order, the petitioner moved the Supreme Court by way of special leave. The Supreme Court concurred with the result recorded by the High Court and dismissed the appeal. The Supreme Court held that Section 4A of the Haryana Board of Secondary Education Act, 1969 makes the office of the Chairman subject to the pleasure of the State Government and the terms of the tenure spelt out in the order of appointment of the appellant also enable curtailment of the tenure. In the circumstances the provisions of Section 9 of the Act which requires affording of an opportunity before directing removal did not apply, held the Supreme Court.

48. It requires to be noticed that the decision in Dr. D.C. Saxena Vs. State of Haryana and Others, was considered and distinguished in L.P. Agarwal (11 infra).

49. In Dr. L.P. Agrawal Vs. Union of India and others, , the appellant was appointed as the Director of All India Institute of Medical Sciences, New Delhi (AIIMS) by an order dated 6.4.1979 "for a period of five years or till he attains the age of 62 years, whichever is earlier". By an order dated 24.11.1980 he was retired from service in public interest on tendering of three months' pay and allowances in lieu of notice. Under the relevant recruitment Rules the post of Director is a tenure post for 5 years inclusive of one year on probation. The writ petition by the appellant challenging the premature determination of his tenure having been rejected by the High Court, he preferred an appeal to the Supreme Court by leave. Allowing the appeal the Supreme Court held that as the petitioner was appointed as the Director of AIIMS by direct recruitment on a tenure, the question of superannuating or prematurely retiring the incumbent of such a post does not arise. Neither the provisions of Regulation 30(3) or 35 of the AIIMS Regulations 1968 which, inter alia enable the appointing authority (i) to prematurely retire any employee by a notice/payment in lieu of such notice; or (ii) apply the regulations and rules as applicable to Central Government servants regarding stipulated conditions of service and thereby make applicable the Fundamental Rules, are applicable to the petitioner's conditions of service as he was appointed on a tenure, held the Supreme Court. The analysis by the Supreme Court of the relevant principle being apposite, is extracted:

16. We have given our thoughtful consideration to the reasoning and the conclusions reached by the High Court. We are not inclined to agree with the

same. Under the Recruitment Rules the post of Director of the AIIMS is a tenure post. The said rules further provide the method of direct recruitment for filling the post. These service-conditions make the post of Director a tenure post and as such the question of superannuating or prematurely retiring the incumbent of the said post does not arise. The age of 62 years provided under proviso to Regulation 30(2) of the Regulations only shows that no employee of the AIIMS can be given extension beyond the age. This is obviously been done for maintaining efficiency in the Institute-Services. We do not agree that simply because the appointment order of the appellant mentions that "he is appointed for a period of five years or till he attains the age of 62 years", the appointment ceases to be to a tenure-post. Even an outsider (not an existing employee of the AIIMS) can be selected and appointed to the post of Director. Can such person be retired prematurely curtailing his tenure of five years? Obviously not. The appointment of the appellant was on a Five Years Tenure but it could be curtailed in the event of his attaining of age of 62 years before completing the said tenure. The High Court failed to appreciate the simple alphabet of the service jurisprudence. The High Court's reasoning is against the clear and unambiguous language of the Recruitment Rules. The said rules provide "Tenure for five years inclusive of one year probation" and the post is to be filled "by direct recruitment". Tenure means a term during which an office is held. It is a condition of holding the office. Once a person is appointed to a tenure post, his appointment to the said office begins when he joins and it comes to an end on the completion of the tenure unless curtailed on justifiable grounds. Such a person does not superannuate, he only goes out of the office on completion of his tenure. The question of prematurely retiring him does not arise. The appointment order gave a clear tenure to the appellant. The High Court fell into error in reading "the concept of superannuation" in the said order. Concept of superannuation which is well understood in the service jurisprudence is alien to tenure appointments which have a fixed life span. The appellant could not therefore have been prematurely retired and that too without being out on any notice whatsoever. Under what circumstances can an appointment for a tenure be cut short is not a matter which requires our immediate consideration in this case because the order impugned before the High Court concerned itself only with premature retirement and the High Court also dealt with that aspect of the matter only. This Court's judgment in Dr. Bool Chand Vs. The Chancellor, Kurukshetra University, relied upon by the High Court is not on the point involved in this case. In that case the tenure of Dr. Bool Chand was curtailed as he was found unfit to continue as Vice-Chancellor having regard to his antecedents which were not disclosed by him at the time of his appointment as Vice-Chancellor. Similarly the judgment in Dr. D.C. Saxena Vs. State of Haryana and Others, has no relevance to the facts of this case.

50. In Dr. L.M. Nath Vs. Dr. S.K. Kacker and Others, , in a per curium opinion of a two Judge Bench an interim order of the Delhi High Court was reversed while allowing the appeal. The respondent was appointed as Director of AIIMS on a 5

year tenure on 15.10.1990. The tenure expired by 14.10.1995. In June 1995 the Apex Body of the AIIMS appointed a Select Committee for selection of the Director. The Select Committee decided not to reappoint the respondent as Director while considering his case along with others. However, in view of the stay orders by the High Court in another pending writ petition, the process of selecting another Director could not be finalized. The governing body of the AIIMS, in the circumstances exercising power under Rule 7(4) of the AIIMS Rules 1958 appointed the appellant who was serving as Head of the Centre for Community Medicine and Dean, AIIMS to look after the functions of the Director w.e.f. F.N. of 15.10.1995 for a period of up to 6 months or till a new Director is appointed. In a writ petition filed by the respondent, the High Court by an interim order restrained the AIIMS from giving effect to or implementing the order dated 15.10.1995 by which the appellant was directed to look after the functions of the Director and further ordered that the respondent should continue to hold the office of Director until further orders by the High Court. Allowing the appeal the Supreme Court held that the tenure of the respondent as Director came to an end on the AN of 16.10.1995 and in the absence of an order extending the tenure, the respondent has no right to continue thereafter and the AIIMS was justified in making an interim arrangement till a regular Director is appointed. This decision has no application to the facts and circumstances or the relevant principles applicable to the case on hand.

51. In 2001 (2) AWC 1291 (SC) . Two Judges Bench the respondent was appointed as General Manager (Finance) on a three years tenure w.e.f. 6.8.1991. His services were terminated on 10.6.1993 and as per the terms of contract three months" salary in lieu of three months" notice was paid to him. The respondent challenged the termination and a Division Bench of the High Court allowed the writ petition and quashed the order of termination holding that though the termination was facially innocuous, in view of the stand spelt out in the counter affidavit was penal in nature and having been passing without affording any opportunity to the respondent, was invalid. The Supreme Court concurred with the High Court and held that the letter of the Commissioner Hand Looms and Director of Hand Looms and Textiles dated 19.5.1993 was the foundation for the termination and indicated that the termination was based on misconduct though the order was facially innocuous. Since the tenure for which the respondent was appointed was over by the time the matter came to be heard, the Supreme Court held that the respondent could not be reinstated but is entitled to all the benefits flowing from the terms of appointment for the period 10.6.1993 (date of termination) to 6.8.1994 (date till which the tenure was available).

52. In Union of India (UOI) and Another Vs. Shardindu, , the validity of premature termination of a tenure appointment again fell for consideration. Under the provisions of the National Council for Teachers Education Act 1993 (the Act) the respondent was appointed w.e.f. 22.1.2004 as the Chairperson of the National Council for Teachers Education (NCTE) on a fixed tenure of 4 years or till

he attains the age of 60 years, whichever is earlier. Even before the expiry of the stipulated tenure, the Central Government by an order dated 18.11.2005 purported to terminate the respondent's deputation. He was repatriated to his parent cadre with immediate effect from the date of the order. The reason stated for the termination was that in an enquiry conducted against the respondent in his parent cadre - the State of UP, in 2004 for an incident in 2001 the respondent was placed under suspension and disciplinary proceedings were also initiated. On facts, the respondent while functioning as the Chairperson, NCTE continued to have lien in his parent post in UP State. The respondent's challenge to the order of termination was upheld by a learned single Judge and Division Bench of the Delhi High Court and the order of termination set aside. The Union appealed by special leave. On an analysis of the provisions of the Act and the NCTE Rules 1994, the Supreme Court found that the respondent had not incurred any of the disqualifications spelt out in the relevant and applicable statutory environment; the respondent was appointed on a fixed tenure of 4 years or till he attains the age of 60 years - a tenure specified u/s 4 of the Act; pending disciplinary proceedings in respect of the respondent's conduct in the State service was not a ground under the provisions of the Act which disqualified him to continue as the Chairperson, NCTE. The order of termination of the respondent was invalid, held the Supreme Court while concurring with the decision of the High Court and dismissing the appeal.

53. On the principles deducible from the precedents above, the conclusion is compelling that as the petitioner's tenure is to enure up to 31.03.2010 with no power reserved for determination of the tenure before the said date, no order of termination could have been issued on an assumption that the petitioner's tenure was ad hoc or temporary. From the precedents this position is also established that even in cases of a tenured appointment to a public service, termination even before the end of the stipulated tenure could be ordered but only for just and sufficient reasons and after following the procedure (if any, under the relevant statutory rules or the procedure enjoined by Article 311(2) of the Constitution, if applicable). Even in cases where the provisions of Article 311(2) of the Constitution are not applicable and no statutory rules govern the substance and procedure of discipline and conduct, the public employer is nevertheless required to follow a fair and reasonable procedure; of issuing a show cause notice; calling for explanation to clear and specified charges of misconduct, gross negligence or the like; considering the explanation if any submitted; and thereafter recording an appropriate decision after duly and fairly considering the record of the inquiry. This is an obligation enjoined by Articles 14 and 16 of the Constitution. Termination of the service of the petitioner before the stipulated tenure i.e., 31.03.2010, is punitive and is stigmatic, in view of the law declared in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, , *Jagdish Mitter Vs. The Union of India (UOI)*, , *Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc.*, and *Debesh Chandra Das Vs. Union of India (UOI)*, . This is the binding principle deducible from other binding precedents as

well - vide Benjamin (A.G.) v. Union of India (1967) 1 LLJ 718; Samsher Singh Vs. State of Punjab and Another, ; Radhey Shyam Gupta Vs. U.P State Agro Industries Corporation Ltd. and Another, ; Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others, ; AIR 2000 1706 (SC) .

54. The decision of the Supreme Court in Pavanendra Narayan Verma Vs. Sanjay Gandhi P.G.I. of Medical Sciences and anr, , is distinguishable in the facts and circumstances of this case. The appellant was temporarily appointed to the post of Joint Director in the respondent-Organisation. The appointment was terminable at a month's notice or on payment of one month's pay. He was also put on probation for a specified period which was variable at the discretion of the competent authority. The initial probation period was twice extended and within a week of the extended period his services terminated in terms of the appointment letter, on the ground that even during the extended probation period his work and conduct were not found to be satisfactory. The order was passed after a summary enquiry. The appellant unsuccessfully challenged his termination contending that it was punitive and stigmatic, before the High Court. Dismissing the appeal by special leave, the Supreme Court (2 judges bench - per Ruma Pal, J) concurred with the respondent-employer that the enquiry was held merely to assess the appellant's fitness for being continued on probation and since the termination was in the context of the temporary nature of petitioner's appointment and on assessment of his suitability during the extended period of probation, the order was neither punitive nor stigmatic.

55. On behalf of the petitioner it is further contended that since there is no complaint or allegation as to the petitioner's integrity even disciplinary action cannot be initiated for a mere error in judicial functioning and the appropriate remedy for an aggrieved litigant against an erroneous judgment is only by way of review, appeal or revision. In support of this contention the learned Counsel for the petitioner places reliance on the following decisions:

Govinda Menon Vs. Union of India (UOI), ; Union of India and others Vs. A.N. Saxena, ; Union of India v. R.K. Desai, (1993) 2 SCC 49; Kashi Nath Roy Vs. State of Bihar, ; Braj Kishore Thakur Vs. Union of India, ; Zunjarrao Bhikaji Nagarkar Vs. U.O.I. and Others, ; and Ramesh Chander Singh Vs. High Court of Allahabad and Another, .

56. It is the undisputed and established factual position in this case that not only was there no disciplinary inquiry initiated against the petitioner (a show cause notice issued, explanation called for followed by charge-sheet and enquiry) nor even the minimal opportunity of a show cause notice soliciting explanation on any allegation was afforded. On an analysis of the precedents as applicable to the factual matrix of the petitioner's case we have already concluded supra that in view of the petitioner's tenured appointment valid up to 31.03.2010 no order terminating her service could have been issued except for a just cause and after following the enjoined and stipulated or a reasonable and fair procedure. Since

no disciplinary procedure at all, even the minimal process of audi alteram partem was followed prior to the impugned order of termination, the order of termination must perish.

57. In the above circumstances, we do not consider it appropriate or necessary to determine whether in the context of the allegations pertaining only to the quality of the judicial performance of the petitioner, a disciplinary inquiry is legitimate. This would be an academic exercise in the facts and circumstances of this case. It is for the substantive disciplinary authority - the 2nd respondent to consider in the first instance, i.e. whether the alleged conduct of the petitioner may lawfully be proceeded against in a disciplinary inquiry or other administrative measures such as appropriate training would meet the institutional requirements. In the factual setting of this case the issue whether a departmental inquiry could be initiated for a mere erroneous judgment or even a merely incompetent judgment, is a moot issue. We therefore decline to determine this issue.

58. In the result, the writ petition is allowed. The order of the 1st respondent dated 29.12.2006 in G.O. Ms. No. 180 Law (LA & J SC.F) Department is declared ab initio void and unsustainable and is quashed. The petitioner shall be entitled to all consequential benefits such as reinstatement into service and the resultant benefits such as salary and emoluments including arrears w.e.f. 29-12-2006 the date of the order of termination till the date of reinstatement.

In the facts and circumstances of the/case however, there shall be no order as to costs.