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**(1966) 11 MP CK 0014**

**In the Madhya Pradesh High Court**

**Case No : Miscellaneous Petition No. 514 of 1964**

V.P. Gidroniya

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

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**Date of Decision : 03-11-1966**

**Acts Referred:**

Constitution of India, 1950 — Article 311

**Citation :** AIR 1967 MP 231 : (1970) ILR (MP) 249 : (1967) JLJ 79 : (1968) 1 LLJ 664

**Hon'ble Judges :** P.V. Dixit, C.J.;N.M. Golvalkar, J

**Bench :** Division Bench

**Advocate :** R.K. Pandey, for the Appellant; K.K. Dubey. Govt. Advocate, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Dixit, C.J.—The petitioner in this case prays for the issue of a writ of certiorari for quashing an order dated the 7th May, 1964, of the State Government suspending him pending an enquiry on certain charges against him and for quashing a notice issued to him on 1st August, 1964, asking him to file his reply to the charges which are the subject-matter of the enquiry. He also prays that a direction be issued to the opponents prohibiting them from proceeding with the departmental enquiry against him.

2. The petitioner is a probationary Naib Tahsildar While he was posted in 1961 at Bilaigarh, the Commissioner, Raipur Division, passed an order for the holding of an enquiry against him on as many as thirteen charges, and also made an order on 3rd August, 1961, suspending him pending the departmental enquiry. Later on, it came to the notice of the Government that the Commissioner. Raipur Division, was not competent to order a departmental enquiry against the petitioner with a view to impose on him a major punishment, and the orders passed by the Commissioner directing the holding of a departmental enquiry and suspending the applicant were invalid. Therefore, on 7th May, 1964, the

Government passed two orders, one setting aside the Commissioner's order, dated the 3rd August, 1961, suspending the petitioner and another placing him again under suspension pending the departmental enquiry ordered this time by the Government itself. On 1st August, 1964, a notice was issued to the petitioner to file his reply to the charges framed against him.

3. In the meantime on 6th June, 1964, the petitioner gave a notice to the Government for the purpose of putting an end to his services. That notice was received by the Government on 9th June, 1964. The material portion of the notice ran as follows:

"Whereas the undersigned hold no charge this day and is not duly and intends to bring the termination of his employment with the Government of M.P. forthwith on receipt of this writing and

Whereas as required by the service rules the undersigned do hereby forfeit and relinquish his claim for one month's pay or allowance whichever is necessary. Now therefore this notice is hereby served as required under the rules on receipt whereof the relationship of employer and employee now existing between the Government of Madhya Pradesh and the undersigned shall cease to exist and consequently all rights, duties and obligations arising from and under the aforesaid relationship shall hereafter absolutely cease." (sic)

4. There is no dispute in regard to the aforestated facts. It is also not disputed that the petitioner being a probationary Government servant is governed by Madhya Pradesh Government Servants (Temporary and Quasi-permanent Service) Rules, 1960, (hereinafter called the Rules). The notice, which the applicant gave to the Government for terminating his services purported to be under Rule 12 of the Rules. That rule is in the following terms-

"12. (a) Subject to any provision contained in the order of appointment or in any agreement between the government and the temporary government servant, the service of a temporary government servant who is not in quasi-permanent service shall be liable to termination at any time by notice in writing given either by the government servant to the appointing authority or by the appointing authority to the Government servant:

Provided that the services of any such Government servant may be terminated forthwith by payment of him of a sum equivalent to the amount of his pay plus allowances for the period of the notice, or as the case may be, for the period by which such notice falls short of one month or any agreed longer period:

Provided further that the payment of allowances shall be subject to the conditions under which such allowances are admissible.

(b) The period of such notice shall be one month unless otherwise agreed between the Government and the Government servant."

Shri Pandey learned counsel for the petitioner argued that the right of the

Government to proceed against in employee departmentally subsisted only so long as the relationship of master and servant between the Government and the employee existed; and that if this relationship ceased, then the Government could no longer punish the employee departmentally. It was urged that under Rule 12 of the Rules an employee had the right to put an end to this relationship at any time by giving a notice in writing in that behalf; and that Sub-rule (b) of Rule 12 no doubt required that the period of such notice shall be one month, but it was open to the Government servant concerned to forgo his claim for salary and allowances for the period of the notice and end the relationship of master and servant immediately on receipt of the notice by the Government. Learned counsel further submitted that the notice, which the applicant gave on 6th June, 1964, distinctly stated that the petitioner's employment would stand terminated immediately on receipt of the notice by the Government, and the applicant would have no claim to any salary or allowances for any period after the receipt of the notice by the Government; and that consequently the petitioner's employment stood terminated when the Government received the notice on 9th June, 1964, and thereafter the Government could not proceed with the departmental enquiry directed to be held against him or ask him to file any reply to the charges framed against him.

5. In reply Shri Sen. learned Advocate-General, said that when the petitioner was suspended by the Government's order, dated the 7th May, 1964, pending the departmental enquiry against him the whole contract of employment was suspended: and, therefore, the petitioner could not during the period of suspension, exercise the right given to him by Rule 12 of having his services terminated by giving a notice to the Government in that behalf Learned Advocate-General further contended that the notice, which the applicant gave, was not in conformity with Rule 12(b) of the Rules inasmuch as the notice did not say that the petitioner desired that his services should stand terminated on the expiry of one month after the receipt of the notice by the Government; and that under Rule 12(b) a temporary Government servant had no right whatsoever to curtail this period of notice by volunteering to give up his claim to salary and allowances for the statutory period of the notice.

6. In our judgment, this application must be dismissed. It is no doubt true that the right of the employer to proceed against an employee departmentally subsists only so long as there remains the relationship of master and servant between them: this right cannot be claimed by the employer after the relationship has ceased to exist Rule 12 lays down that the services of a temporary servant, who is not in quasi-permanent service, shall be liable to termination any time by a notice in writing given either by the Government servant to the appointing authority or by the appointing authority to the Government servant. The period of such a notice has been prescribed by Sub-rule (b) of Rule 12 as one month. The proviso to Sub-rule (a), however, lays down that the services of any temporary Government servant may be terminated forthwith by payment to him of the amount of salary and allowances for the

period of the notice or for the period by which such notice falls short of one month or any agreed longer period. On the submissions made by the learned counsel appearing for the parties, two questions arise for determination, namely, first, whether during the period of suspension the petitioner could exercise the right given to him of having his services terminated by giving a notice to the Government in that behalf; and secondly, whether the notice, dated the 6th June, 1964 which the applicant gave to the Government, was one in conformity with Rule 12 of the Rules.

7. Taking the question of the petitioner's right to give a notice under Rule 12 of the Rules for termination of his services, it must first be noted that the appointing authority possesses two powers to terminate the services of a temporary public servant. It can either discharge him purporting to exercise its powers under the terms of the contract of employment or the relevant rule. In such a case, Article 311 of the Constitution does not apply. The appointing authority can also act under its powers to dismiss or remove a temporary servant by way of punishment after complying with Article 311(2) of the Constitution. Even after a format departmental enquiry has been initiated against a temporary servant, it is open to the authority to form the view that it is not necessary or expedient to terminate the services of a temporary servant by issuing an order of dismissal or removal against him and to stop the departmental enquiry and then pass an order of discharge in terms of the contract of employment or the relevant rule. The question when such an order of discharge would amount to an order of dismissal or removal attracting Article 311 of the Constitution, does not arise for consideration in this case. This aspect of the matter has been dealt with in *Jagdish Mitter Vs. The Union of India (UOI)*, The point to be noted here is that where the appointing authority elects to dismiss or remove a temporary servant after holding a departmental enquiry and in accordance with Article 311(2) of the Constitution, then while the departmental enquiry is pending, neither the temporary Government servant nor the appointing authority can put an end to the services of the Government servant by passing an order in terms of the contract of employment or the relevant rule. The departmental enquiry has to be stopped first before the services of a temporary servant can be terminated in the exercise of the powers under the terms of the contract of employment or the relevant rule. As the departmental enquiry directed by the Government against the petitioner was pending on 6th June, 1964, and is still pending, the petitioner is precluded from exercising his right under Rule 12 of the Rules and giving a notice to the appointing authority for termination of his services, and consequently the notice that he gave on 6th June, 1964, was altogether ineffective and invalid.

8. The fact that the petitioner was suspended pending the departmental enquiry does not in any way alter the position. On the other hand, it reinforces the conclusion that during the period of suspension a temporary Government servant cannot exercise the right of having his services terminated by giving notice to the appointing authority. It is clear and established beyond all doubt by authorities

that if the appointing authority has the power to suspend a Government servant during the pendency of a departmental enquiry against him the ""suspension" does not put an end to the relationship of master and servant between him and the employer. This proposition follows from the decisions of the Supreme Court in *Om Prakash Gupta Vs. The State of Uttar Pradesh*, and *Mohammad Ghouse Vs. State of Andhra*, The first decision namely in the case of *Om Prakash Gupta Vs. The State of Uttar Pradesh*, makes it clear that where an order of suspension is made against a Government servant pending an enquiry and an order of dismissal by way of penalty is passed against him as a result of the enquiry, then the order of suspension ceases to exist. If "suspension" is regarded as equivalent to a total termination of the employment, then the occasion for passing an order of removal or dismissal against a Government servant can never arise. In the case of *Mohammad Ghouse Vs. State of Andhra*, , it has been distinctly observed in the penultimate paragraph of the judgment that an order of suspension pending an enquiry is neither one of dismissal nor of removal from service within Article 311 of the Constitution. These two decisions of the Supreme Court make it abundantly clear that "suspension" is not "termination"" of employment. The applicant cannot, therefore, contend that when the Government suspended him pending the departmental enquiry. the relationship of master and servant between him and the Government disappeared and thereafter the Government had no power to hold any departmental enquiry against him.

9. The effect of ""suspension" has been considered by the Supreme Court in *The Management of Hotel Imperial, New Delhi and Others Vs. Hotel Workers" Union*, at p. 1345. In that case, following the decisions in *Hanley v. Pease and Partners Ltd.* 1915 1 KB 698 *Wallwork v. Fielding.* 1922 2 KB 66. *Secretary of State Vs. Surendra Nath Goswami*, and *Rura Ram Vs. Divisional Supdt., N.W. Rly., Lahore*, , the Supreme Court has held that "where there is power to suspend either in the contract of employment or in the statute or the rules framed thereunder the suspension has the effect of temporarily suspending the relation of master and servant with the consequence that the servant is not bound to render service and the master is not bound to pay." Thus "suspension" is not a rescission of the relationship of master and servant relegating the parties to the original position they were in before the relationship of employer and employee came into existence. That relationship is suspended only temporarily during the period of suspension. Whenever a Government servant is suspended from the office he holds it is merely a direction, that so long as he holds the office and until he is legally dismissed or removed he must not do anything in the discharge of the duties of his office. Now, Rule 12 of the Rules, when it gives to the Government servant as well as to the appointing authority the right to terminate the employment of a temporary Government servant, pre-supposes that the relationship of employer and employee is operative. When this relationship is suspended for the time being as a result of the Government servant's suspension, the obligation imposed on both sides under the contract of employment or the relevant rules are suspended. It follows, therefore, that

during the period of suspension of a temporary Government servant, who is not in quasi-permanent service, there cannot be any termination of the Government servant's services by a notice given either by the Government servant or by the appointing authority That being so. the notice, which the applicant gave to the Government on 6th June, 1964, while he was under suspension was wholly invalid and had not the effect of totally terminating the relationship of master and servant between him and the Government from the date on which the notice was received by the Government so as to preclude the Government from proceeding with the departmental enquiry The petitioner's contention that the Government is not entitled to proceed with the enquiry after receipt of his notice dated the 6th June, 1964, must, therefore, be rejected.

10. The notice, which the applicant gave to the Government, was also not in conformity with Rule 12 of the Rules. Leaving aside the curious wording of the notice, it did not at all say that the petitioner's services should be terminated one month after the receipt of the notice by the Government. The period of notice prescribed by Sub-rule (b) of Rule 12 cannot be altered unless both the Government and the Government servant agree to the alteration. Under the proviso to Sub-rule (a), the Government has no doubt the power to terminate the services of a temporary employee forthwith by payment to him of the salary and allowances for the period of the notice, or for the period by which such notice falls short of one month. But Rule 12 does not confer on the Government servant the right to quit service at any time without giving a notice as required by sub Rule (b) and just by saying that he would make no claim to salary and allowances after the date from which he considers himself as no longer in service The object of giving one month's notice by the Government to the Government servant is to afford him an interregnum during which he should find other employment without incurring loss of pay and allowances for the period of the notice. Likewise, when the Government servant gives notice to the Government, its purpose is to enable the Government to make arrangements for the carrying on of the work being done by the Government servant. Whereas the object of the notice is served when the Government decides to terminate the services of a temporary Government servant forthwith without notice by payment to him of the salary and allowances for the period of the notice, that object is clearly not effected when the Government servant decides to leave the service from any moment he likes without giving any notice to the Government even if he forgoes the pay and allowances for the period of the notice. In our opinion, the notice, which the petitioner gave to the Government for termination of his services, did not manifestly satisfy the requirements of Rule 13 of the Rules.

11. For the foregoing reasons, this petition is dismissed. The petitioner complained before us about the long delay in the completion of the disciplinary enquiry against him. The complaint is undoubtedly justified. It is clearly not in the interest either of the Government or of the Government servant that a disciplinary enquiry should drag on and be conducted for years in a leisurely manner. The disciplinary enquiry was started against the petitioner in 1961 and

he was first suspended on 3rd August, 1961. Five years have elapsed since then and there is yet no conclusion of the enquiry. If the Government does not intend to retain the petitioner in service, it should either conclude the disciplinary proceedings as expeditiously as possible or reinstate him in service and then terminate his service in accordance with Rule 12 of the Rules. In the circumstances of the case, we leave the parties to bear their own costs. The outstanding amount of security deposit shall be refunded to the petitioner.