1962

aswant Sugar Mills Ltd., Meerut
v.
Lakshmichand

Shah, J.

Both the appeals therefore fail and are dismissed with costs. There will be one hearing fee.

Appeals dismissed.

1962

September 25.

UNION TERRITORY OF TRIPURA, AGARTALA

v.

GOPAL CHANDER DUTTA CHOUDHURY

(B. P. SINHA, C. J., P. B. GAJENDRAGADKAR, K. N. WANCHOO, K. C. DAS GUPTA and J. C. SHAH, JJ.)

Public Servant—Temporary employment—Termination of service—Appeal dismissed—An ex-convict for theft—Whether termination amounted to dismissal—Scope of enquiry—If same as in Industrial Dispute—Central Services (Temporary Service) Rules, 1949, r.5—Constitution of India, Art. 311.

The respondent was appointed as a constable in the Tripura Police Force. The employment was temporary. In accordance with r. 5 of the Central Services (Temporary Service) Rules, 1949, his services were terminated by giving one month's notice. The respondent appealed. The Appellate Authority wrote to him that as he was an ex-convict for theft nothing could be done for him. The respondent filed a writ petition challenging the order of termination. The Judicial Commissioner held that the order was one of dismissal as punishment on the ground that the respondent was an "ex-convict" and that as no reasonable opportunity was given to the respondent to show cause, the protection of Art. 311 was not afforded to him and the order terminating the respondents employment was invalid.

Held, that the respondent had not been dismissed by way of punishment and there was no violation of Art. 311(2). The order in terms merely terminated the service of the respondent; there was nothing in it to suggest that the termination was on account of the respondent being an "ex-convict". It could not be in the circumstances of this case inferred that an order of

dismissal was camouflaged as an order of termination. It cannot be assumed that an order *ex-facie* one of termination was intended to be one of dismissal. The onus to prove such intention lies upon the employee.

Purshotam Lal Dhingra v. *Union of India*, [1958] S.C.R. 828 and *Satish Chander Anand* v. *Union of India*, [1953] S.C.R. 655, referred to.

Held, further, that a court considering the validity of an order of termination or dismissal of a public servant is not required to investigate into the matter in the same way as an Industrial Tribunal is when considering an application under s. 33 of the Industrial Disputes Act, 1947. The Court has merely to see whether the protection prescribed by Art. 311 and the rules made under Art. 309 has been denied to the public servant. There is no similarity between an enquiry under s. 33 of the Industrial Disputes Act and an enquiry by the court when an order of dismissal of a public servant is challenged.

Chartered Bank, Bombay v. *Chartered Bank Employeis Union*, [1960] 3 S.C.R. 441, *The Management of Chandramalai Estate, Ernakulam* v. *Its Workmen*, [1960] 3 S.C.R. 451 and *Punjab National Bank Ltd.* v. *Its Workmen*, [1960] 1 S.C.R. 806, referred to

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 581 of 1961.

Appeal from the judgment and order dated January 15, 1960, of the Judicial Commissioner's court, Tripura at Agartala in Civil Misc. (Writ Petition) No. 4 of 1959.

R. Ganapathy Iyer and *P. D. Menon*, for the appellants.

D. P. Singh, for the respondent.

1962. September 25. The Judgment of the Court was delivered by

SHAH, J.—This is an appeal with a certificate granted by the Judicial Commissioner of Tripura under Art. 132(1) of the Constitution. *Shah, J.*

Gopal Chander Dutta Choudhury—hereinafter referred to as 'the respondent'—was appointed

1962

Union Territory of Tripura, Agartala
v.
Gopal Chander Dutta Choudhury

Shah, J.

a constable in the Police Force of Tripura by the Superintendent of Police, Agartala by order dated April 18, 1954. The employment was temporary and was liable to be terminated with one month's notice. On December 6, 1957, the Superintendent of Police, acting under r. 5 of the Central Services (Temporary Service) Rules, 1949, informed the respondent that his services "will be terminated with effect from 6-1-58 A. M." The respondent presented an appeal to the Chief Commissioner against the order of termination. By letter dated April 11, 1958 the respondent was informed that as he was "an Ex-convict for theft, nothing can be done for him". In reply to another application addressed to the Chief Commissioner the respondent was informed by letter dated May 26, 1958, that he was already informed in connection with his previous appeal that as he was "an Ex-convict in a case of theft" he "cannot be re-employed by the Aministration."

The respondent then filed in the Court of the Judicial Commissioner, Tripura, a petition for a writ under Art. 226 of the Constitution praying for a writ declaring that the order of the Superintendent of Police terminating his service was "illegal" and for a writ of *mandamus* or a writ of *certiorari* directing the Chief Commissioner not to enforce the said order and for an order reinstating him in the Police Force of the Tripura Administration with retrospective effect. The Tripura Administration submitted in rejoinder that the respondent being a temporary employee of the Police Force, his services were lawfully terminated under r. 5 of the Central Civil Services (Temporary Service) Rules, 1949. The Judicial Commissioner of Tripura held that the respondent was a temporary employee, but the order terminating the respondent's employment was invalid for it infringed the constitutional guarante of protection of public servants under Art. 311 which applied to temporary as well as permanent public

servants. In the view of the Judicial Commissioner, termination of employment of a temporary servant governed by the Central Civil Services (Temporary Service) Rules, 1949, will not *per se* be treated as a punishment of dismissal or removal, but it is open to the Court even if an order merely of termination of employment of a temporary employee is passed to ascertain whether the order was intended to be of termination *simpliciter* or of dismissal entailing penal consequences, and that the order dated April 11, 1958, of the Chief Commissioner passed in appeal clearly indicated that the order of the Superintendent of Police was one imposing penalty. He observed "this reply (dated April 11, 1958) will clearly indicate that though the Superintendent of Police purported to terminate his service under the Central Civil Services (Temporary Service) Rules, he meant to dismiss the petitioner from service as a punishment on the ground that he was an ex-convict and that it was intended that he should not be re-appointed in future in any department of the Government. Thus it cannot be gainsaid that the termination was in fact a punishment for previous misconduct debarring the petitioner from being employed even in the future, and that in passing the innocuous order (dated December 6, 1957—Annexure D), the Superintendent was really camouflaging his real intention. The real intention came to light, perhaps as the result of an oversight in communicating the orders in appeal to the petitioner".

We are unable to agree with the Judicial Commissioner that the termination of employment of the respondent by the Superintendent of Police by order dated December 6, 1957, was in violation of Art. 311(2) of the Constitution. It is true that before the respondent was discharged from service no enquiry was made as to any alleged misconduct, nor was he given any opportunity of showing cause against the proposed termination of employment. But it is well settled that when employment of a temporary public

1962

Union Territory of Tripura Agartala
v.
Gopal Chander Dutta Choudhury

Shah, J.

servant, is terminated pursuant to the terms of a contract, he is not entitled to the protection of Art. 311(2). As observed in *Parshotam Lal Dhingra* v. *The Union of India* (1) by Das, C. J., "a termination of service brought about by the exercise of a contractual right is not *per se* dismissal or removal, as has been held by this Court in *Satish Chander Anand* v. *The Union of India* (2). x x x x x x the termination of the service did not carry with it the penal consequences of loss of pay, or allowances under r. 52 of the Fundamental Rules". But the State may instead of exercising its contractual right seek to terminate the employment even of a temporary employee for misconduct, negligence, inefficiency or any other disqualification, and when an order of termination of employment is passed for that purpose it would amount to dismissal or removal attracting the protection of Art. 311 of the Constitution. The form in which the order is couched is not always decisive. In *Parshotam Lal Dhingra's case* (1), it was observed (at p. 863) "the use of the expression 'terminate' or 'discharge' is not conclusive. In spite of the use of such innocuous expressions, the court has to apply the two tests mentioned above, namely, (1) whether the servant had a right to the post or the rank or (2) whether he has been visited with evil consequences of the kind hereinbefore referred to? If the case satisfies either of the two tests then it must be held that the servant has been punished and the termination of his service must be taken as a dismissal or removal from service or the reversion to his substantive rank must be regarded as a reduction in rank and if the requirements of the rules and Art. 311, which give protection to Government servant have not been complied with, the termination of the service or the reduction in rank must be held to be wrongful and in violation of the constitutional right of the servant".

The question which falls to be determined is, whether the Superintendent of Police by order dated

(1) [1958] S. C. R. 828, 861. (2) [1953] S. C. R. 655.

December 6, 1957, passed an order in truth one of dismissal for misconduct, negligence, inefficiency or like cause or he enforced the contractual right of the State to terminate the employment of the respondent who was a temporary employee. The order in terms merely terminates the service of the respondent : it was not preceded by any enquiry for ascertaining whether the respondent was guilty of any misdemeanour, misconduct, negligence, inefficiency or a similar cause. In the order on appeal filed to the Chief Commissioner it is recited that the respondent was "an ex-convict for theft and therefore nothing could be done for" him, but the purport thereof is somewhat obscure. The memorandum of appeal filed before the Chief Commissioner was not tendered in evidence, and there is nothing in the order suggesting that the employment of the respondent was terminated because he had, before he was employed on April 18, 1954, been convicted by a Criminal Court for theft. It appears from the order of the Chief Commissioner dated May 26, 1958, that the respondent had applied for re-employment in the Police Force and the Chief Commissioner was of the opinion that because the respondent was "an ex-convict in a case of theft" he could not be re-employed. There is no ground for inferring that the Superintendent of Police was seeking to camouflage an order of dismissal by giving it the form of termination of employment in exercise of the authority under rule 5 of the Central Civil Services (Temporary Service) Rules. It cannot be assumed that an order *ex facie* one of termination of employment of a temporary employee was intended to be one of dismissal. The onus to prove that such was the intention of the authority terminating the employment must lie upon the employee concerned : but about the intention of the Superintendent of Police there is no evidence except the order of that authority.

Counsel for the respondent urged that as in an application made under s. 33 of the Industrial

1962

Union Territory of Tripura, Agartala
v.
Gopal Chander Dntta Choudhury

Shah, J.

Disputes Act for permission of an Industrial Tribunal to discharge workmen pending adjudication of the dispute in which the employer or the workmen are concerned, the Tribunal is bound to enter upon a full investigation and ascertain whether the employer had acted *mala fide* or that the order of discharge amounted to an unfair labour practice or that it was a case of victimisation, the Court in making an enquiry where the order of termination of employment of a temporary public servant was merely one in enforcement of a contractual right or an attempt to dismiss an employee because of misconduct, negligence or inefficiency, is also obliged to enter upon a critical investigation of the reasons which induced the authority to make the impugned order. Counsel invited our attention to the decision of this Court in *The Chartered Bank, Bombay* v. *The Chartered Bank Employees' Union* (1) and *The Management of Chandramalai Estate, Ernakulam* v. *Its Workmen*(2), and submitted that the considerations which were material in deciding an application under s. 33 of the Industrial Disputes Act were also relevant in adjuding the true nature of the order terminating employment of a public servant. In considering an application under s. 33 of the Industrial Disputes Act the Tribunal has, it is true, "to go into all the circumstances which led to the termination *simpliciter* and the employer cannot be permitted to say that he is not bound to disclose the circumstances before the Tribunal. The form of the order is not conclusive of the true nature of the order: for it is possible that the form may be merely a camouflage for an order of dismissal for misconduct. It is therefore always open to the tribunal to go behind the form and look at the substance; and if it comes to the conclusion, for example, that though in form the order amounts to termination *simpliciter* it in reality cloaks a dismissal for misconduct it will be open to it to set it aside as a colourable exercise of the power". But in our view the principle of these

(1) [1960] 3 C. S. R. 441. (2) [1960] 3 S. C. R. 451.

cases under the Industrial Disputes Act dealing with termination of employment of workmen and the authority of the Tribunal to grant permission to terminate such employment evolved in the context of maintenance of industrial peace, has no relevance in deciding whether the aggrieved public servant was by the impugned order denied the protection of the constitutional guarantee. A public servant holds a civil office during the pleasure of the President or the Governor of the State according as he holds office under the Union or the State. But to protect public servants a dual restriction is placed upon the excercise of the power to terminate employment. A public servant cannot be dismissed or removed by an authority subordinate to that by which he was appointed and that he cannot be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. These protections undoubtedly apply to temporary public servants as well as to public servants holding permanent employment. But the State is not prohibited by the Constitution from reserving a right by the terms of employment to terminate the services of a public servant, and if in the *bona fide* enforcement of that right the employment is terminated the protection of Art. 311 of the Constitution will not avail him, because such a termination does not amount to dismissal or removal from service. In *The Punjab National Bank Ltd.* v. *Its Workmen* (1), this Court pointed out that there was a substantial difference between the consequences of non-compliance with s. 33 of the Industrial Disputes Act and Art. 311 (2) of the Constitution. Compliance with s. 33 only avoids a penalty under s. 31 (1) while compliance with Art. 311 (2) makes the order of dismissal final. In a proceeding under s. 33 of the Industrial Disputes Act the Tribunal is concerned only to make a limited enquiry whether the proposal to terminate the employment of a workman was

(1) [1960] 1 S. C. R. 806.

1962

Union Territory of Tripura, Agartala
v.
Gopal Chander Dutta Choudhury

Shah, J

prima facie, bona fide or whether the employer was guilty of victimisation or any unfair labour practice. The Tribunal has merely "to consider the *prima facie* aspect of the matter, and either grant it or refuse it according as it holds that *prima facie* case is or is not made out by the employer. x x x x x The effect of the permission given by the Tribunal is only to remove the ban imposed by s. 33 of the Industrial Disputes Act. The Tribunal can neither validate a dismissal nor prevent it from being challenged in an industrial dispute; in such a dispute when raised the employer may justify his action only on such grounds as were specified in the original charge-sheet and no others". Before terminating the employment of a public servant sanction of the Court is not necessary. The order of termination of employment operates *proprio vigore* and is not made justiciable. The validity of such an order may be challenged only on the ground that the constitutional protection prescribed by Art. 311 and the rules made under Art. 309 was denied to the public servant concerned. There is no similarity between the enquiry made under s. 33 of the Industrial Disputes Act and an enquiry made by the Court where the order of dismissal of a public servant is impugned. The Court in dealing with the case of a public servant only adjudicates upon the validity of the act of the authority concerned : the Court is not called upon to sanction a proposed dismissal. The enquiry to be made by the Court is restricted to the observance of the rules prescribed by the Constitution. It would, therefore, be impossible to assimilate the content of an enquiry contemplated to be made under s. 33 of the Industrial Disputes Act before granting permission to terminate employment of a workman into the enquiry to be made by the Civil Court, when the public servant claims that he is denied the protection under Art. 311 or that his employment has been terminated in violation of rules framed under Art. 309 of the Constitution.

The appeal must therefore be allowed and the petition filed by the respondent dismissed. There will be no order as to costs throughout.

Appeal allowed.

1962

Union Territory of Tripura, Agartala
v.
Gopal Chander Dutta Choudhury

Shah, J.

M/s. MANGALORE GANESH BEDI WORKS

v.

THE STATE OF MYSORE & ANOTHER

1962

September 25.

(S. K. DAS, J. L. KAPUR, A. K. SARKAR, M. HIDAYATULLAH and RAGHUBAR DAYAL, JJ.)

Indian Coinage—Enactment levying tax in terms of naya paisa, if a taxing measure—Constitutional validity—Amendment —Effect—Indian Coinage Act, (Act 3 of 1906), as amended by Indian coinage (Amendment) Act, (31 of 1955), s. 14—Constitution of India, Arts. 255, 197, 198, 199, 202.

The appellant was a registered firm under the Mysore Sales Tax Act on which was imposed a tax of Rs. 1,16,728.44 Nps at the rate of .02 Nps per rupee on a return of over Rs.58, 36,422·26 Nps. Its grievance was that according to Mysore Sales Tax Act, it was liable to Sales Tax at the rate of 3 pies for every rupee but after the amendment of Indian Coinage Act (Act 30 of 1906) by amending Act 31 of 1955, tax was levied at the rate of .02 Nps per rupee, which made him liable to pay more than what he would have paid if charged at the rate of 3 pies per rupee. It was contended that such enhancement of tax was unconstitutional and illegal being in contravention of Article 255 of the Constitution. Objections by the appellant regarding the validity of tax were (1) that by the substitution of 2 naya paisas in place of 3 pies, a change was brought in the tax exigible by the Mysore Sales Tax Act and since this enactment enhancing the tax was not enacted according to procedure for money bills not being in accordance with Articles 198, 199 and 207 of the constitution, the tax was illegal and invalid; (2) that the Indian coinage Act, being a central Act dealing with "coinage and legal tender" under item 36 of List I, could not change the rate of tax under the Mysore Sales Tax Act.