(1963) 12 AHC CK 0012

Allahabad High Court (Lucknow Bench)

Case No: Writ Petition No. 484 of 1962

Prasidh Narain Singh		APPELLANT
	Vs	
State of Uttar Pradesh and Another		RESPONDENT

Date of Decision: Dec. 9, 1963

Acts Referred:

- Constitution of India, 1950 - Article 311

Citation: AIR 1964 All 278

Hon'ble Judges: M.C. Desai, C.J; R.N. Sharma, J

Bench: Division Bench

Advocate: Iqbal Ahmad and K.S. Varma, for the Appellant; Standing Counsel, for the Respondent

Final Decision: Dismissed

Judgement

M.C. Desai, C.J.

This is a petition, for certiorari to quash an order dated 13-9-1962, passed by opposite party No, 2, the Development Commissioner, U.P., terminating the petitioner''s services. The petitioner was appointed to the temporary post of Assistant District Planning Officer on 22-3-1957. In the order of appointment it was clearly stated that he was appointed on the basis of a recommendation made by the Public Service Commission, U.P., and that the post was "temporary and cart be terminated at any time without notice." The appointment was neither substantive nor on probation. Subsequently the petitioner was appointed as Block Development Officer Mathura which again was a temporary post. In May, 1961, the President of Vikas Samiti Mathura, and pradhan of Bindraban Bangar Gaon Samaj published a pamphlet containing allegations against him. A Sub-Divisional Magistrate, Sri Mohammad Ibrahim under the District Magistrate''s direction held an enquiry into the allegations and found them baseless. Thereafter the petitioner was transferred to Lucknow as a Block Development Officer on 16-84961. On 31-10-1961 the

Development Commissioner issued an order suspending him but the order was not served upon him, he was not suspended and later the order was withdrawn.

The Minister for Community Development informed the petitioner orally of the charges on account of which the suspension order was passed and he submitted an explanation on 6-11-1961. The Minister asked the Assistant Development Officer (Accounts) to enquire into the charges made against the petitioner and the enquiry was held by him from December 1 to December 5, 1961. On 26-12-1961 the order dated 31-10-1961 suspending the petitioner was withdrawn. On 19-4-1962 the District Magistrate, Mathura, in his annual confidential report on the petitioner''s work at Mathura for the period 1-4-1961 to 9-8-1961 said that he left very heavy unutilized balances in all the items or grant-in-aid, that the agricultural work in the Block or which he was in charge was almost at a stand-still since his assumption of charge because the Block had been converted into a hot bed of party politics on account or complaints of corruption and mischief and relations between the staff and the public in general had become very strained and that the integrity certificate was withheld because many, complaints of corruption and embezzlement were under enquiry. On 26-7-1962 a copy of this annual report was given to the petitioner. On 13-9-1962 the Development Commissioner passed the impugned order, which reads as follows:

"The services of Sri Prasidh Narain Singh Temporary Block Development Officer .....are no longer required by this Department. His services are therefore terminated with effect from the date of the service of this order. Sri Singh will get one month''s pay in lieu of notice."

A copy of the order was sent to the District Magistrate Lucknow, with the direction to relieve the petitioner immediately and another copy was sent to the petitioner. The post of Block Development Officer that was being held by the petitioner has not been abolished and continues even now. On 14-9-1962 after receiving a copy of the impugned order the petitioner made a representation to the Chief Minister, who sent for the record. Nothing came out or the representation and the petitioner filed the petition.

2. The petitioner''s contentions are these. The post, though temporary, was not abolished and so long as it was not abolished his services could not be terminated. Termination of his services amounted to his removal from service within the meaning of Article 311 of the Constitution because the object behind it was to punish him for misconduct or inefficiency. The removal was in violation or its provisions because it was not preceded by a notice to show cause why he should not be removed. The termination also was mala fide.

3. The petition was opposed on behalf of the state and the Development Commissioner. In the counter-affidavit it was said that the enquiry made by the Sub-Divisional Magistrate was incomplete and the Assistant Development

Commissioner was asked to hold the enquiry by the Development Commissioner. The petitioner''s contentions were denied.

4. It is not in dispute that charges were levelled against the petitioner by the President of Vikas Samiti and others and that they were enquired into at first by a sub-Divisional Magistrate and then by the Assistant Development Commissioner. The results of these enquiries are not known and the reports, if any, made by the enquiring officers nave not Been brought to our notice. The allegation made by the petitioner that the District Magistrate, Mathura, had informed him that the complaints made against him by the President of the Vikas Samiti, Mathura were baseless and that he was exonerated of the charges levelled against him nag been branded as vague and hence not admitted by the Development Commissioner. It is difficult to see what vagueness there was in the assertion made by the petitioner and the Development Commissioner should not have taken shelter behind the lame excuse that it was vague; he should have admitted or denied that the District Magistrate had informed the petitioner that the allegations made against him were baseless and that he stood exonerated of the charges levelled against him. The District Magistrate, Mathura, in his annual remarks dated 19-4-1962 referred to an enquiry into complaints of corruption and embezzlement made against the petitioner but the result of the enquiry is not made known. The impugned order does not purport to be an order passed by way of punishment or on any ground not complimentary to the petitioner, no reason for terminating his services is given at all and there is nothing to suggest that they have been terminated because he was found to be undesirable or unsuitable or that there were complaints against him about misconduct or inefficiency.

Since none of the enquiry reports has been placed before us we cannot say that anything wrong was found against the petitioner and that consequently his services were terminated. The petitioner''s own case is that the Sub-Divisional Magistrate had found nothing against him, that he had explained to the Assistant Development Commissioner that the charges levelled against him were baseless, that the Minister had thereafter informed him that the charges levelled against him had not been substantiated and that even the order of suspension was withdrawn on 26-12-1961. So it is not his case that till 26-12-1961 the opposite parties had any intention or occasion to punish him. Then remains the enquiry referred to by the District Magistrate in his confidential report; it is not known what was the result of it. The petitioner''s allegation that he was informed by the Deputy Development Commissioner that the order terminating his services was the result of the enquiry made by the District Magistrate, Mathura is denied by the opposite parties and there is nothing to substantiate it. From the mere fact that the District Magistrate held an enquiry against the petitioner it cannot be presumed that the termination of his services was by way of punishment; it could not be by way of punishment if the result of the enquiry was in the petitioner''s favour. If the petitioner stood exonerated at the end of the enquiry there could not arise any occasion for

punishing him and if still his services were terminated it could not be said that he was removed within the meaning of Article 311. Unless the petitioner could show that the enquiry resulted in findings adverse to him he could not contend that the opposite parties passed an order removing him in the guise of an order terminating his services. An order which would not other wise be an order of removal does not become such merely because it follows an enquiry against the government servant.

5. Article 311(2) enjoins that a member of a civil service of a State or holding a civil post under a State shall not

"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."

The petitioner''s services have been terminated without his being given any opportunity of showing cause against the termination and Article 311(2) would have been contravened only if the termination amounted to removal within its meaning. It has been settled by the Supreme Court that dismissal, removal or reduction in rank within the meaning, of the Article is dismissal, removal or reduction in rank by way of punishment. There is no difficulty about dismissal because it is always by way of punishment; there is not only termination of the services but also he loses an accrued benefits and is debarred from service in future. A difficulty, arises in respect of removal and reduction in rank because a civil servant can be removed or reduced in rank either by way of punishment or otherwise. Since we are not called upon in this case to consider the meaning of reduction in rank we shall confine ourselves only to the question of meaning of removal. When a civil servant is removed from service by way of punishment there is termination of his services but there is termination of his services also when, he retires either voluntarily or compulsorily or is retrenched on the post being abolished or his appointment comes to an end by efflux of time or when they are temporary and are terminated because they are so. When he retires voluntarily or is retrenched or quits office because the contract of service comes to an end by efflux of time he is not removed by way of punishment even though there is termination of his services.
What is to be noted is that termination of service is either the result of an action taken or is the very act done by the superior authority. It is the result when the superior authority removes the civil servant by way of punishment or when his service automatically comes to an end by efflux of the time for which it was accepted or of his reaching the age at which under the contract or rules of service he is required to quit office, it is the act itself when the superior authority has the power to terminate his services at its will and does so. There is no question of punishment when he quits office by ettlux of time or on reaching a certain age or when his services are terminated just in exercise of the superior authority''s right to terminate them at its will. If the termination results from loss of the right to remain in service further under the contract of service, since the cause of the termination has

absolutely nothing to do with the conduct and work of the civil servant and would operate even if his conduct and work have been found to be exemplary, it does not amount to removal. Similarly if the post to which he was appointed itself is abolished it means that the Government does not require his services any longer and the retrenchment does not amount to removal as he would have been retrenched howsoever exemplary his conduct and work had been. When a civil servant is appointed permanently or for a fixed term he has a right to remain in service until the age of superannuation or expiry of the term; after reaching the age of superannuation or on expiry of the term fixed in the contract of service he is left with no right to remain further in service and termination of his services on this ground is not removal because it is without regard to his conduct and work. Termination of his services before reaching the age of retirement or expiry of the term results in a loss of service till the age of retirement or the expiry of the term and is, therefore, punishment. He is punished because he is deprived of further service to which he had a right under the contract. It is punishment notwithstanding the fact that he is deprived of further service under the contract of service itself because the contract of service can provide for premature termination of his services by way of punishment. He can be punished under the Contract or rules of service.

A temporary civil servant, unlike a permanent civil servant, has no fixed tenure; the very nature of his service is that subject to the rules of service it can be terminated at any time. Since he has on no day a right to remain in service on the following day terminating his services with effect from the following day it does not deprive him of any right and may not, therefore, be punished but Article 311 does not distinguish between permanent civil servants and temporary civil servants and applies to both alike. Even a temporary servant cannot be dismissed, removed or reduced in rank without being given a reasonable opportunity of showing cause against the action. The difficulty that does not arise when a permanent civil servant''s services are terminated before he reaches the age of superannuation or the end of the term for which he was appointed, arises when a temporary civil servant''s services are terminated because they can be terminated just because they are no longer required or his conduct or work has not been satisfactory and he does not deserve to be retained in service any longer or on the ground that his work or conduct is so bad that he must be punished through discharge from service.

A temporary civil servant is as much liable to be punished with dismissal or removal as a permanent civil servant. When he is removed, he is punished even though it may be argued that the removal does not deprive him of any right of further service since being a temporary servant he had on the day of removal no right to remain in service further. Though he had actually no right to remain in service further he would have done so if his conduct or work had not been found to be had and since he would have remained in service further but for his bad work or conduct it means that his services had been terminated not on the ground that they were no longer

required or that they were terminable at the will of the superior authority out on the ground of his being found to be deserving of punishment, the termination of his services is the result of punishment of removal inflicted upon him and is to be distinguished from its being the very act done by the superior authority in exercise of its right. This is a finding adverse to his interests and the well-known principle of natural justice itself would require that he should be given a reasonable opportunity of being heard before it is arrived at that is the basis of the provision in Article 311(2).

The question of punishing a civil servant arises when a finding that his work or conduct is so bad: that he deserves to be discharged from service is arrived at and before this finding is arrived at he must be heard. There is no necessity of his being heard when his services are terminated not for the reason that his work or conduct has been bad but for the reason that the superior authority has the right to terminate them at its pleasure without assigning any ground. When a permanent civil servant is superannuated or required to quit office on expiry of the term for which he was appointed, there is no question of giving him an opportunity of being heard because there is nothing which he can say against the superannuation or his quitting office on expiry of the term, when under the terms of the contract itself he has to quit office there is no occasion for his being called upon to explain why he should not be made to quit office. In, the same way when a temporary servant is asked to quit office on the ground that his services are no longer required or are liable to be terminated at the Government''s pleasure, there is nothing he can say against it, it being his contract of service and there is, no occasion for his being called upon to explain. But an occasion does arise for calling upon him to explain when the reason for calling, upon him to quit is a controversial intangible fact, that his conduct or work is bad on account of which he must be discharged front service is a controversial matter on Which two opinions are not only possible but also quite likely. The finding that his conduct or work has been bad is to be reached from evidence which may be untrue or unbelievable or can be rebutted.
There is, therefore, a natural connection between the finding and his being required to be heard before it is given and a temporary civil servant must be heard before his services are terminated on the ground of his bad work or conduct even though the termination does not involve loss of any right. It may also be said that the principle of natural justice is attracted because the reason for terminating his services is uncomplimentary to him and gives him a bad name. One has property in one''s good name and is deprived of the property when one is given a bad name The principle of natural justice that a person should not be deprived of his property without being heard applies when he is deprived of his property in good name. Then a civil servant is given a bad name it amounts to punishing him because he is deprived of this property and consequently terminating services of a temporary servant on the ground that his work or conduct has been found to be bad amounts to removal within the meaning of Article 311.

6. No difficulty arises when the superior authority in its order discharging a temporary civil servant from service states either that it is passed by way of punishment or that it is passed on account of his work or conduct having been found to be bad; no difficulty arises also when the superior authority terminates the services simply on the ground that they are no longer required or that they are terminable at its will without giving arty reason uncomplimentary to the Civil servant. When the services are no longer required because the post is abolished or the purpose for which they had been requisitioned has been achieved terminating them cannot possibly be said to be a punishment. When the post is retained or the purpose has not been achieved it means that there is still need for his services and if they are still terminated it must be either because the is punished with dismissal or removal or because the superior authority exercises its discretion of terminating them at its will on account of his work or conduct being found to be not good or upto the mark. There are degrees of unsatisfactory work or conduct. It may be so bad that punishment is called for, or it may be merely unsatisfactory so that only an exercise of the right of terminating the services at will is called for- Doing an act, which is not called a punishment, in exercise of a right conferred by contract is not a punitive act and, therefore, terminating services in exercise of the right of terminating them at will cannot be said to be a punishment, but it is not a punishment also when the reason for exercising the discretion is uncomplimentary to the civil servant. Even when one has discretion one exercises it according to relevant facts; when an authority has discretion to terminate a civil servant''s services it terminates them when there is reason for doing so and the reason would always Be uncomplimentary to the civil servant. Merely because the reason is uncomplimentary the exercise of the discretion does not cease to be so and the termination of services does not become anything worse than simple termination of services. Termination of services does not become removal because the reason for terminating them is a fact uncomplimentary to The civil servant.

7. if the superior authority passes an order against a temporary servant with the intention to punish him and the result of the order is that his services are terminated it cannot be doubted that he has been punished. Whether the superior authority has an intention to punish him or not is a question of fact depending upon circumstances. An intention to punish cannot be assumed to exist. If We superior authority intends to punish a temporary civil servant with removal for a sufficient ground it will naturally punish him with removal instead of merely terminating his services. When it intends to punish him, but has not a sufficient ground for removing him it may decide to terminate his services and may either give the ground for doing so or refrain from giving it. In the latter case the order would be a simple order of termination of services; even though the superior authority took the action on account of the civil servant''s unsatisfactory work or conduct so fang as nothing about it is stated in the order it cannot be said to amount to a punishment. When the order however recites the fact that the services are terminated on account

of his work or conduct being unsatisfactory it may be said that the principle of natural justice requires that he should be given an opportunity to explain why the finding about his work or conduct being unsatisfactory should not be reached. Termination of services, except when they are no longer required or the purpose for which they were requisitioned has been achieved, would generally fie on a ground uncomplimentary to the civil servant; still It would not amount to removal, it should not, therefore, matter whether the reason for terminating the services is disclosed in the order or not; even if it is not disclosed it can generally be presumed to be something uncomplimentary to the civil servant. What is material is the distinction between exercising the discretion of terminating the services at will and punishing the civil servant direct by removing him from service. What is to be seen is what the superior authority does; does it decide to punish him or does it merely decide to terminate his services in exercise of its discretion?

8. If there is nothing to indicate that the civil servant was found to be of unsatisfactory work or conduct it is clearly not a case of punishment. Even if some complaints were against him and even if they were enquired into it they were found to be unsubstantiating there would be no intention to punish him and, therefore, the termination of his services cannot be a punishment. Even when there is some material to indicate that he might be thought to be deserving of punishment, it would be rash to assume that his services have been terminated by way of punishment. An authority having two grounds for passing an order is not obliged to pass it on both and may pass it on either. If it passes it on one, it does not become an order passed on the other simply because it could have been passed on the other. The holding of an enquiry does not necessarily lead to the presumption that the authority intends to punish him if the result of the enquiry is adverse to him; it might have held the enquiry not with a view to punish him if the result was adverse to him but with a view to exercising the discretion of terminating his services at will if the result was adverse to him. It depends upon the nature of the guilt proved against the civil servant; IF it is serious the superior authority may decide to punish him and if it is petty it may simply decide to terminate his services in exercise of its discretionary power.

9. The law, as expounded by the supreme court, has made a distinction between exercising the power or terminating the services at pleasure on account of an uncomplimentary fact and terminating them on the ground of the existence of that fact. In the former case the termination results from the exercise of the power of termination at will and in the latter case it is the direct consequence of the fact that the civil servant is unsuitable, the distinction between the two cases is more or less that between termination without any reason and termination for an uncomplimentary reason; the former is not a case or punishment whereas the latter is. This distinction may not have much practical value but it does exist in theory and has been recognised by the Supreme Court in the form of distinction between "motive" and "ground."

In Shyam Lal Vs. The State of Uttar Pradesh and The Union of India (UOI), S.R. Cas, J., as he then was, speaking for the court said at page 374:

"It is true that this power of compulsory retirement may be used when the authority exercising this power cannot substantiate the misconduct which may be the real cause for taking the action but what is important to note is that the directions in the last sentence in Note 1 to Article 465A make it abundantly clear that an imputation or charge is not in term''s made a condition for the exercise of the power ....

In the present case, there was no doubt some imputation against the appellant which he was called upon to explain but it was made perfectly clear . . . . that the Government was not holding any formal enquiry .... and that before taking action for his compulsory retirement the Government desired to give him an opportunity to snow cause .... the enquiry was to help the Government to make up its mind as to whether it was in the public interest to dispense with his services. It fellows, therefore, that one of the principal tests for determining whether a termination of service amounts to ..... removal is absent in the case of compulsory retirement."

In The State of Bombay Vs. Saubhagchand M. Doshi, Venkatarama Aiyar, J. said at page 895:

"When the Government decides to retire a servant before the age of superannuation, it does so for some goad reasons, and that, in general would be misconduct or inefficiency.....The fact to be noted is that while misconduct and inefficiency are factors that enter into the accounts where the order is one of dismissal or removal or of retirement, there is this difference that while in the case of retirement they merely furnish the background and the enquiry, if held--and there is no duty to hold tin enquiry--is only for the satisfaction of the authorities who have to take action, in the case of dismissal or removal, they form the very basis on which the order is made and the enquiry thereon must be formal, and must satisfy the rules of natural justice and the requirements of Article 311(2)".

There is no distinction in principle between termination of services of a temporary civil servant at will and compulsory retiring a civil servant on his reaching a certain age in accordance with the rule of service, the latter being nothing more than an action at the will of the Government. The status of a civil servant who has reached the age at which he can be compulsorily retired is not different from that of a temporary civil servant. These two decisions make it clear that the holding of an enquiry even if it results in a finding unfavourable to the civil servant does not by itself convert the termination of services into removal within the meaning of Article 311. What is material is not the fact that an enquiry was held but the reason for its being held. If it was held to enable the authority to decide whether the discretion of terminating his services under the contract of service (because he was a temporary servant or had reached a certain age) should be exercises or not, the termination is not by way of punishment, but if it was held to enable the authority to decide

whether he should be punished or not, the termination is by way of punishment. Even if an authority can terminate the services under the contract of service it may decide to punish him. When termination of services can result either from exercise of the power conferred by the contract of service or by way of punishment it is open to the authority to adopt either of them and consequently there can be termination of services by way of punishment ever though they could be terminated by exercising the power conferred by the contract. Services can be terminated on the ground that the civil servant has no right to remain further in service or on the ground that regardless of the question of his having or not having the right he must be punished by termination of his services; the latter is a case of removal but not the former.

The whole law has been explained by the supreme Court in the well-known case of Parshotam Lal Dhingra Vs. Union of India (UOI), S. R. Das, C. J. said as follows:

". . . .the substantive appointment to a permanent post gives the servant ..... a right to hold the post until . . . . he attains the age of superannuation or is compulsorily retired .... or the post is abolished . . . An appointment to a temporary post for a certain specified period also gives the servant .....A right to hold the post for the entire period of his tenure .....Except in these two cases the appointment to a post, permanent or temporary, ...gives to the servant .... no right to the post and his service may be terminated unless his service had ripened into ..... a quasi-permanent service. (P. 42)

.....The words ''dismissed'', ''removed'' ''and reduced in rank'' as used in the service rules, were well understood as signifying or denoting the three major punishments which could be inflicted on Government servants ....It is only .....where the Government intends to inflict those three forms of punishments that the Government servant must be given a reasonable opportunity of snowing cause ....If the termination of service is sought to be brought about otherwise than by way of punishment, then the Government servant .... cannot claim the protection of Article 311(2). (P. 47).

.....Where a person is appointed substantively to a permanent post ..... he cannot be turned out .....unless the post itself is abolished or unless he Is guilty of misconduct, negligence, inefficiency or other disqualifications ..... Termination of service of such a servant ..... must per se be a punishment ... Again where a person is appointed to a temporary post for a fixed term ..... his service cannot ..... be terminated before the expiry of that period unless he has been guilty of some misconduct, negligence ..... the premature termination of the service of a servant so appointed will prima facie be a dismissal or removal ..... Further, take the case of a person who having been appointed temporarily ..... is to be in quasi-permanent service ..... Except in the three cases just mentioned a Government servant has no right to his post and the termination of service ..... does not .... amount to a dismissal or removal by way of punishment. ..... if the servant has no right to the

post, as where he is appointed to a post ..... temporary ..... and whose temporary service has not ripened into a quasi-permanent service ..... the termination of his employment does not deprive him of any right and cannot, therefore, by itself be a punishment ..... 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 ..... is, prima facie and per se, not a punishment. (P.48),

Cases may arise where the Government may find a servant unsuitable for the post on account of misconduct, negligence, ...If such a servant was appointed to a post, ... temporary, ... then the very transitory character of the employment implies that the employment was terminable at any time on reasonable notice .... The Government may proceed to take action against the servant in exercise of its powers under the terms of the contract of employment .....But the Government may take the view that a simple termination of service is not enough and that the conduct of the servant has been such that he deserves a punishment entailing penal consequences ..... in such a case the servant will be entitled to the protection of Art 311(2).

.....Any and every termination of service is not a dismissal, removal ..... A termination of service brought about by the exercise of a contractual right is not per se dismissal or removal ..... The misconduct, negligence..... may be the motive or the inducing factor which influences the Government to take action under the terms of the contract ..... or the specific service rule, nevertheless, if a right exists ..... to terminate the service the motive operating ..... is .... .wholly irrelevant ..... Even if the Government has, by contract or under the rules, the right to terminate the employment without going through the procedure preserved for inflicting the punishment of dismissal or removal .... the Government may, nevertheless, choose to punish the servant and it the termination of service is sought to be founded on "misconduct, negligence .... then it is a punishment" (P. 49).

In J.S. Varma Vs. State of U.P., this Court said at page 476 that

"Government were entitled to terminate the plaintiff''s services for any reason whatsoever and their motives m getting rid of him are irrelevant"

and that

"there is a difference between motives which are locked within the bosom of the removing authority or confined to the files, and reasons which are published to the whole world."

J.S. Varma was held to be entitled to the protection of Article 311 because though he was in temporary service and the order terminating his services was innocently worded it was found that his services were terminated on account of his being found to be undeserving and, therefore, by way of punishment and not in the simple exercise of the power of terminating services at will. The State of Bihar Vs.

Gopi Kishore Prasad, is distinguishable because there the order expressly was for discharge from service on account of dishonesty. Sinha, C. J. pointed out at page 692 that "if the Government proceeded against him in the direct way" (without holding any enquiry into his conduct).

"without casting any aspersions on his honesty or competence, his discharge would not, in law, have the effect of a removal from service by way of punishment" and that instead the Government chose course "branding him as a dishonest and an incompetent officer."

In Dalip Singh Vs. The State of Punjab, compulsory retirement from service was held not to attract the provisions of Article 311 because the order did not purport to fie passed on any charge of misconduct or inefficiency. It purported to have been passed for administrative reasons and contained no imputation or charge against the civil servant. The fact that his misconduct or inefficiency influenced Government action under the rule regarding compulsory retirement was held to be of no consequence, The State of Uttar Pradesh Vs. Om Prakash Garg, is a case of temporary servant discharged after a month''s notice from temporary service in accordance with the Temporary Servants Rules. An entry was made in his character roll to the effect that he was suspected of obtaining illegal gratification, that an inquiry was made and that for a technical reason he could not be prosecuted and the very next day the notice terminating his services after a month was served upon him without any cause being assigned. Beg, J. held that it was a case of removal. We regret that we cannot agree with our learned brother and the judgment cannot be reconciled with the decisions of the Supreme Court noticed above. There was nothing to show that the termination of his services entailed any penal consequences fn future. Whatever stigma or slur was caused by the adverse entry would have remained even if his services had not been terminated. Moreover a character roll is a contigential document and there is no question of its causing a stigma or slur after the termination of his services, mere was no justification for saying that the State Government did not merely exercise its power of terminating the temporary services of the civil servant in accordance with the Temporary Servants Rules. State of U. P. v. Madan Mohan Nagar 1963 All LJ 934 is easily distinguishable from the facts of the instant case because there the order compulsorily retiring Madan Mohan Nagar was based on the finding that he had outlived his utility. The compulsory retirement on account of this reason given for it was treated by a Bench of this Court as a punishment. In one sense it was because Madan Mohan Nagar got a bad name and thereby suffered or was punished.

10. In the instant case the temporary services of the petitioner were terminated in accordance with the rules made by the State Government in exercise of the power conferred by Article 309 of the Constitution and contained in paragraph 114 of the Manual of Government orders. Under them the State Government has the power to terminate the services of any temporary servant after a month''s notice without

assigning any cause; the temporary services were by their nature terminable on a month''s notice, the State Government simply exercised the power conterrea upon it by these rules and did not terminate the petitioners services on the ground that he did not deserve further retention in service or with an idea to punish him. The termination did not entail any penal consequences in future and did not deprive him of any rights that might have been accrued to him. He was deprived of further service but he had no right to it. Since he was not said to be unsuitable for further service he did not lose any property in his good name.

The facts that enquiries were held were wholly irrelevant and further it is not shown that they resulted in any findings adverse to him. When it is not shown that there was any occasion for the State Government to punish him it could not be said that the termination of the services was punitive and not a mere exercise of the power to terminate them at will. It is immaterial that the post was not abolished because his services in their nature were terminable on a month''s notice regardless of the question whether the post itself was abolished or not. A temporary servant has no lieu over the post so long as it exists; he is not appointed for the duration of the post. He is a temporary and not a servant for a fixed term or for so long as the post to which he is appointed exists and consequently he cannot claim the right to remain on the post for any particular duration. It is also immaterial that certain civil servants junior to him are still in service; their retention in service will not by itself make termination of his services removal within the meaning of Article 311. That services of temporary civil servants junior to him are not terminated is not the criterion for deciding whether termination of his services is by way of punishment or not. The State Government''s power to terminate temporary service of a civil servant at will is not restricted by any rule that it must terminate services of the junior most temporary civil servants first. It is immaterial that no agreement was taken from the petitioner regarding his services being terminated on a month''s notice; he is bound by the rules made by the State Government under Article 309.

11. No case of mala fides was made out at all.

12. In the result we dismiss this petition with costs.