(1980) 03 BOM CK 0034

Bombay High Court

Case No: First Appeal No. 737 of 1971

State of Maharashtra and Others		APPELLANT
	Vs	
V.G. Koppar		RESPONDENT

Date of Decision: March 21, 1980

Acts Referred:

- Constitution of India, 1950 - Article 14, 16, 311, 311(2)

Citation: AIR 1981 Bom 131

Hon'ble Judges: Kanade, J; Bhonsale, J

Bench: Division Bench

Advocate: C.D. Shenoy, Asstt. Govt. Pleader, for the Appellant; K.S. Ramaswami, for the Respondent

Judgement

Bhonsale, J.

The appellants, the State of Maharashtra and two others, challenge the judgment and decree passed by the Judge of the City Civil Court, Bombay, in Suit No. 3169 of 1961, decreeing the plaintiff''s suit in terms of prayer (b) of the original Pauper Petn. No. 55 of 1960, setting aside his termination of service as illegal, void and inoperative in law and that he still continues to be in the employment of the State Government with all the attendant rights and privileges of his post. The learned Judge also decreed arrears of salary and other emoluments for 38 months prior to the date of the suit. The learned Judge has further directed the respondent-plaintiff to pay to the State Government the court fees necessary on the realisation of the amount. Certain other consequential directions were also given by the learned Judge by his judgment and decree passed on Feb. 23, 1970.

2. The plaintiff V. G. Koppar, had filed this suit against the then State of Bombay, defendant No. 1 and had joined defendant No. 2, D. N. Khuredy, in his capacity as Dairy Development Commissioner and the Joint Secretary to the Government of Bombay, Agriculture and Forest Department, and the Secretary to Government of

Bombay, Agriculture and Forest Department, as defendant No. 3. In the said suit the plaintiff had prayed that the termination orders dated Oct. 31, 1956 passed by the defendant No. 2, Commissioner, be quashed and set aside as being illegal, void, ultra vires and inoperative in law and that it be declared that he still continues to be in the employment of the respondents-defendants with all the attendant rights and privileges of his post. The said orders reads as under:

"Agriculture & Forest Department
(Milk Commissioner),
Government of Bombay,
Wakefield House, Ballard Estate,
Bombay-1.

Ref. No. MC/Estt 53/Estt (6)/

31st Oct., 1956

ORDER

"The services of Shri V.G. Koppar, Chargeman (Electrical), Central Dairy are terminated with effect from the afternoon of 31st October, 1956 as they are no longer required by Government.

Shri V. G. Koppar should hand over charge to the Dairy Engineer today, and should also vacate the Government Quarters at the Milk Colony before 7th November, 1956 without fail.

Sd/-

(D. N. Khuredy),
Milk Commissioner,
Bombay."

The next prayer of the plaintiff in the suit was for recovery of a sum of Rs. 17,397.75 ps. being the arrears of salary and other emoluments from 1st of Nov., 1956 till the data of the filing of the plaint, for costs of the suit and interest on the said amount of Rs. 17,397.75 ps. from the date of the suit till payment.

3. The averments made in the plaint can be briefly summarised as follows:

The plaintiff joined the services of the then State of Bombay in its Department of Civil Supplies as a temporary Assistant Engineer (Electrical) at the Aarey Colony in the grade of Rs. 220-15-400. The appointment order was dated April 13, 1950. Subsequently, the Aarey Colony which initially used to be under the Central and was part of the Civil Supplies Department of the then State of Bombay came to be transferred under the control of Agricultural & Forest Department, defendant No. 2 was Joint Secretary and defendant No. 3 was the Secretary of the said Department at tha relevant time. Earlier, in or about 1953, the designation of the plaintiff was

changed from the Assistant Engineer to that of the Chargeman (Electrical). The qualifications required for the said post of Chargeman (Electrical) were the same as possessed by the plaintiff and the plaintiff was the senior-most Chargeman in the said Aarey Milk Colony. There were other chargeman besides the plaintiff who were all junior to him and less qualified than the plaintiff. The second defendant, Milk Commissioner, by his order dated July 27, 1956, and subsequently modified by an order of the 2nd respondent dated Sep. 5, 1956, ordered a Departmental Enquiry against the plaintiff on the ground of continued unsatisfactory performance of duties and also getting leave sanctioned from the Dairy Engineer in March, 1956 by suppressing the fact that the leave had been refused by the Special Officer a few days earlier. It was further alleged in the plaint that the second defendant by his order dated 23/24th Oct., 1956 cancelled the said Departmental Enquiry. However, as stated above, the second defendant by order dated Oct. 31, 1956, terminated the services of the plaintiff as they were no longer required by the Government.

4. The plaintiff preferred an appeal against the said order of termination to the Secretary, the third respondent, and made further representations to the third defendant, the Secretary. Considerable correspondence ensued between the plaintiff and the Government but ultimately by a letter dated March 11, 1957, the 2nd respondent Commissioner, informed the plaintiff that the plaintiff would not be reinstated in service and he would have to vacate the premises occupied by him.

5. The plaintiff further alleged that he was a permanent servant or, at any rate, a quasi-permanent servant of the then Government of Bombay, and in view of his status as a permanent or quasi-permanent servant, at no point of time he was ever given any show cause notice as to why his services should not be terminated. He further averred that the order of termination of the plaintiff, without assigning any reasons, was not only mala fide but was passed with a view to impose a penalty of dismissal and of removal from service within the meaning of Article 311 of the Constitution of India, As the order of termination, though couched in an innocent language, amounted to an order of dismissal, it was incumbent upon the defendants to have complied with the requirements of Article 311. In any case, according to the plaintiff, the order of termination of his services was mala fide and against the recognised principles of natural justice and was passed without any application of mind.

6. The plaintiff further stated in his plaint that the order of termination of his services also contravened the provisions of Article 16 of the Constitution of India, inasmuch as in view of his unblemished record of service and in view of the fact that he had discharged his duties efficiently and diligently, he alone was picked up for arbitrary, capricious and discriminatory treatment notwithstanding the fact that the three other chargemen who were less qualified and subsequently appointed in point of time were not only retained but also confirmed and made permanent with effect from Nov. 1, 1956. He gave details about the other three junior chargemen,

and regarding their appointment, qualifications, duties and the date of confirmation. The plaintiff, therefore, maintained that his services were terminated arbitrarily and without any rational basis and it was unjust, improper and illegal to terminate the petitioner-plaintiff''s services even though he was the seniormost. The principle that ought to have been followed in the matter of termination of the services of temporary chargemen was ''Last come first go'' The plaintiff further alleged that the arbitrary and capricious termination by the defendants clearly violated the protection given by Article 16 of the Constitution of India, and in view of these above contentions, he prayed for setting aside the termination as being illegal and also claimed arrears of salary from Nov., 1956 till the date of the suit as stated earlier.

7. Defendant No. 1 filed written statement which was adopted by defendants Nos. 2 and 3. It was firstly contended on behalf of the defendants that the plaintiff''s appointment was purely of a temporary character and the letter of his appointment dated April 13, 1950, made it clear, beyond any shadow of doubt, that he was to hold the post until further orders. The defendant further stated that the work, duties and the qualifications prescribed for all the four different posts of Chargemen were entirely distinct from each other, and, these posts did not constitute one Cadre. The four chargemen belonged to Electrical, Mechanical, Boiler and Refrigeration Departments, respectively. It was further contended by the defendants in their written statement that though the Departmental Enquiry was ordered to be held, it was subsequently cancelled and it was within the powers of the defendants not to continue the inquiry any further, and such dropping of Enquiry was not germane to the questions involved in this suit. The defendants, therefore, denied the status of the plaintiff, either as permanent or quasi-permanent Government servant. According to the defendants, the termination of the plaintiff''s services was in accordance with the contract of service as embodied in the letter of appointment of the plaintiff, and therefore, the question of giving any opportunity to show cause did not arise. Consequently, the defendants denied that the termination was either arbitrary or mala fide or it was with a view to impose any penalty, as alleged by the plaintiff in the plaint, as he was not a permanent employee of the defendants. It was further contended that the plaintiff had no semblance of right to seek double protection guaranteed to Government servants under Article 311 of the Constitution of India, The defendants further relied upon the representations made by the plaintiff himself which clearly indicated that he was not a permanent employee of the defendants al the relevant time when his services stood terminated. The defendants further denied that in the facts and circumstances of the case it can be said that the termination of the plaintiff''s services attracted the provision of Article 16 of Constitution. According to the defendants, there was no scope for application of principle "Last come first go" as far as the termination of the plaintiff was concerned. The consistent stand taken by the defendants in the written statement was that the plaintiff was appointed pursuant to a special contract of service and his

services had been terminated in accordance with the contract It was further denied that the plaintiff was arbitrarily picked up for termination and that there was no rational basis for doing so. The defendants, therefore, denied that the plaintiff had any case on the ground of discrimination or on the ground that the plaintiff''s termination was arbitrary or capricious.

8. The learned trial Judge on these pleadings of the parties framed as many as 9 issues. After considering the documentary and oral evidence tendered by the plaintiff and the documentary evidence produced by the defendants (as no witness was examined on behalf of the defendants) the learned trial Judge came to the conclusion that the services of the plaintiff were terminated in accordance with the contract of service as embodied in the letter of appointment dated March 6, 1950. It was further held that the plaintiff had failed to prove that he was a quasi-permanent Government servant. By answering this issue, the learned Judge has automatically repelled the- contention advanced by the plaintiff that he could be considered as a permanent Government servant. The learned Judge further held that the plaintiff was not given an opportunity to show cause why his services should not be terminated. The learned Judge also held that the termination of the plaintiff''s services was not in violation of the Rules of the first defendant, i. e., the then State of Bombay, but the same was mala fide and arbitrary. The learned Judge further negatived the plaintiff''s contention that the termination was with a view to punish him or impose upon him a penalty of dismissal. The last important finding recorded by the learned Judge was to the effect that the order of termination did contravene the provisions of Article 16 of the Constitution of India. In view of these findings arrived at by the learned Judge, he decreed the suit of the plaintiff as stated above in terms of prayer (b) of the plaint, that is, he gave a declaration that the plaintiff''s termination of services by the order passed on Oct. 31, 1956 was illegal, void, ultra vires and inoperative in law and also gave him a declaration that he will be deemed to be in the employ of the defendants with all the attendant rights and privileges of his post As far as prayer (c) of the plaint was concerned the learned trial Judge granted him arrears of salary for 38 months prior to the date of the suit. As the petition was filed in forma pauperis the plaintiff was directed to pay to the Government court-fee stamp necessary on the realisation of the amount. A deduction of Rs. 2,400/- from the future emoluments due to the plaintiff was also directed. The judgment and decree was passed on Feb. 24, 1970.

9. It is against this judgment and decree passed by the learned trial Court that the State of Maharashtra has filed this appeal Mrs. Shenoy, the learned Assistant Government Pleader appearing for the State of Maharashtra, has challenged the finding recorded by the learned trial Judge as far as the question of discrimination under Article 16 of the Constitution is concerned. For the sake of clarity it may be stated at this stage that having rejected all the contentions raised by the plaintiff that his termination order dated Oct. 31, 1956 squarely attracted the provisions of Article 311 of the Constitution of India, the learned trial Judge recorded the

following findings:

"Under the circumstances, I think that the plaintiff has not been able to make out any case attracting the provisions of Article 311(2) of the Constitution so far as his purely temporary services are concerned and hence issue No. 6 must be answered in the negative."

In other words the learned trial Judge declined to accept the very foundation of the plaintiff''s case that his termination was with a view to punish him and that his dismissal was by way of penalty.

10. Having thus decided the first and equally important issue as to whether the order of termination was within the mischief of the violation of the double protection guaranteed by the Constitution of India to a Government servant, the learned Judge next proceeded to consider whether there was denial of equality of opportunity for the plaintiff in the matter relating to employment in the post of Chargemen (Electrical) in the service of the defendant No. 1. The learned trial Judge after discussing this second issue and after discussing some leading decisions on the point recorded a finding that as far as the present case was concerned, he did not find any case of misconduct either made out or proved. He further held that:

"When there is no question of retrenchment and when a particular person is picked up for termination of services, the picking up must be for some valid reasons such as, inefficiency or misconduct and I should feel that if the benefits of Article 16 are claimed the employer must be in a position to show how it was not arbitrary."

He further held:

"It is on this background that we may have to look to the decision given by His Lordship Justice Kantawalla of Bombay High Court in Misc. Petn. No. 476 of 1963. V.N. Bhambure v. S.V. Lonkar."

The learned trial Judge quoted extensively from that judgment and after quoting tag judgment in extenso, the following finding was recorded by him :

"So far as our case is concerned, I have already slated that Ext. 1 cannot be linked with the termination of the plaintiffs services and hence to my mind, our case resembles the case of V. R. Bhambure v. S. V. Lonkar decided by His Lordship Kantawalla, J. Looking into the additional circumstances namely the background of the enquiry which was not taken to its logical end, the short notice of termination, immediate insertion of advertisement for recruiting another person show that the case of discrimination cannot be repelled. I would, therefore, answer issue No. 7 in the affirmative,"

In other words the learned trial Judge had decided the question of discrimination under Article 16 on four grounds. Firstly, he takes striking resemblance between Bhambure''s case and the present case as guidelines to decide the question of

discrimination. Secondly, in his opinion the fact that the Departmental Enquiry was not carried to its logical end and was suddenly dropped was another indication of discrimination. Thirdly, the duration of the notice of termination also indicated arbitrariness on the part of the defendants in termination of the services of the plaintiff, and lastly, in his opinion, the fact that the post was not abolished and immediate insertion of advertisement for recruiting another person for the said post would show that this was a case of discrimination.

11. The learned Assistant Government Pleader appearing for the State, has challenged these findings and conclusions reached by the learned trial Judge which were the basis for decreeing the plaintiff''s suit, and granting him declaration in terms of prayer (b) of the plaint as well as the arrears till the date of the suit. It is contended by Mrs. Shenoy, the Assistant Government Pleader, that the tenure of plaintiff''s employment was of a purely temporary character and according to her, the learned Judge had also found in favour of the State on this issue. It is further submitted by the learned Assistant Government Pleader that as the character and nature of the employment was purely temporary and as the record of the plaintiff''s services was unsatisfactory and at least on three occasions during the tenure of his service, he was either warned or given memos to improve his unsatisfactory services and warnings were issued to him. The plaintiff failed to improve, and therefore, his termination in terms of the appointment order was not only justified and was well within the powers of the Government, but the question of discrimination would not at all arise. She further submitted that the allegations regarding unsatisfactory record of his services were demonstrated by the record put through, and therefore, it cannot be characterised as either arbitrary or capricious or that the plaintiff alone was picked up for discriminatory treatment. If it was open to the State Government to terminate his services according to the terms of employment op appointment order without assigning any reason, and as reasons, in fact, for unsatisfactory work existed, the fact that such reasons did not appear in the order of termination did not matter in the least. It would have been seen, according to her, that none of the officers of the Government Of defendants Nos. 2 and 3 have acted either arbitrarily or capriciously. According to her, merely dropping of an enquiry abruptly without taking it to its logical end could not be tantamount to the exercising of arbitrary powers at its sweet-will by the officers of the first defendant State. In support of her contention, the learned Assistant Government Pleader relied upon a number of decisions and a reference to them would be made later on.

12. As against this, Mr. Ramaswami, appearing for the plaintiff, challenged the finding of the learned trial Judge that the provisions of Article 311(2) were not attracted in this case. The only concession which Mr. Ramaswami made in this case is that the plaintiffs services were temporary in nature though he faintly tried to argue that it could be said that the post held by the plaintiff in view of the subsequent developments, could be termed as quasi-permanent post. He pointed out circumstances which could lead to a conclusion that the post held by the plaintiff

was of a quasi-permanent nature. However, his main grievance was that the order of termination of the plaintiff was in the nature of visiting him with the penal consequences or by way of punishment though the language or the order did not indicate so. He further argued that it was the substance and not the form of the order which was conclusive of the nature of the order. According to him, no reasons either existed or were indicated in the order of termination, and therefore, the order of termination must be held to be by way of punishment. He challenged the finding of the learned Judge that the plain-tiff was not entitled to the protection under Article 311(2) of the Constitution of India and relied upon number of Supreme Court decisions in support of his submission,

13. As far as the question of the order of termination of the plaintiff being violative of Article 16 of the Constitution, was concerned, he tried to repel the submissions of the learned Assistant Government Pleader, by submitting that the four Chargemen constituted one cadre and relied on the averments in the evidence of the plaintiff as well as certain other averments in the plaint as well, scanty though they were. In his submission, the fact that he was the seniormost and was asked to go first was clearly an indication of discrimination. Further fact that he was asked to look after the work of Chargemen (Boiler) for a period of two months, indicated that the posts were interchangeable, and therefore, constituted one cadre and he being seniormost, could not be asked to go first in the absence of valid reasons, are also indicative of discrimination. He further submitted that even if it was held that the plaintiff, along with other three Chargemen did not constitute one cadre, if he was alone picked up for termination arbitrarily without assigning any reasons, that itself would constitute discrimination and could be held to be denial of equal opportunity in the employment in State, and therefore, there was a clear violation of the provisions contained in Article 16 of the Constitution of India. He further submitted that there was no nexus between the warnings given to him earlier in point of time and order of termination of services of the plaintiff passed on Oct. 31, 1956. He defended the finding recorded by the learned trial Judge that the order of termination of the plaintiffs services clearly violated the provisions of Article 16 of the Constitution of India.

14. From these rival contentions, the first question that falls for our determination is whether the character and tenure of the plaintiff''s services was temporary or not, As Mr. Ramaswami has himself conceded this position and the finding is also record ed by the learned trial Judge, it is not necessary to probe into this question in great details. Since, however, Mr. Ramaswami has chosen to challenge the finding of the learned trial Judge that the provisions of Article 311(2) of the Constitution of India are not attracted, we have to examine this question briefly.

15. That the protection of Article 311 of the Constitution of India is equally available to temporary as well as permanent Government servants, has now been held beyond any shade of doubt by a plethora of Supreme Court decisions and it is not at

all necessary to refer to many of them. The main decision of the Supreme Court which has been described as Locus Classicus on the subject is the decision in Parshotam Lal Dhingra Vs. Union of India (UOI), . The principles which are relevant for the disposal of this first appeal can be stated as follows:

16. (a) Article 311 of the Constitution of India makes no distinction between, permanent and temporary posts and extends its protection equally to all Government servants holding temporary or permanent posts or officiating in any of them.

(b) Protection of Article 311 is available only where the dismissal, removal or reduction in rank is sought to be inflicted by way of punishment and not otherwise. If the termination of services or reduction in rank is not by way of punishment, Article 311(2) of the Constitution is not attracted.

(c) To determine whether termination of service or reduction in rank is by way of punishment or not, one has to consider whether the servant has the right to hold the post from which he has been either removed or reduced,

(d) In case of probationary or officiating appointments to a permanent or temporary post, there is no right.

(e) Reduction in rank must be by way of punishment for it carries with it the penal consequences, and the two tests to be applied are:

(a) Whether the servant has a right to the post or rank; and

(b) Whether evil consequences visit, such as forfeiture of his pay or allowances or the loss of his seniority in his substantive rank or the stoppage or postponement of his future chances of promotion.

17. These principles have furnished principal guidelines in all future cases relating to dismissal, removal and/or reduction in rank of Government servants. Again as the Supreme Court has time and again observed the difficulty in not regarding the principles themselves, but when it comes to question of application of those principles to given facts of a particular case. Facts of two cases are never similar, and therefore, depending upon the nature and circumstances of each individual case it becomes necessary to find out as to how these principles are applicable to the facts of this case.

18. The question, therefore, which we have to determine in this case is whether the plaintiff was purely a temporary Government servant or not. The order of appointment dated April 13, 1950 reads as follows:

"No. MC/Est. 63/A
2 Office of the Milk Commissioner,
Wakefield House, Ballard Estate,
Bombay-1.

13th April, 1950.

ORDER

Mr. V. G. Koppar is appointed as an Assistant Engineer (Electrical) at the Central Dairy, Government Milk Colony Aarey on Rs. 220/- per month in the scale of Rupees 220-15-400 plus dearness allowance admissible under the rules with effect from 6tb March, 1950, until further orders.

Sd/-

Asstt. Director of Civil
Supplies (I)
Bombay."

This order is unambiguous and is incapable of any construction so as to read into it any permanency or quasi-permanency. Mr. Ramaswami did, as stated earlier, faintly tried to argue that other circumstances in the record indicated that the post was likely to be continued. He submitted that the plaintiff was sanctioned a loan of Rs. 1,500/-on Oct. 6, 1951, for purchase of a motorcycle, and a Certificate was given to him that there was a reasonable prospect of the plaintiff continuing in the Government employment till the complete repayment of the advance, i. e. 48 monthly instalments. In other words, at the date of the issue of this resolution dated Oct. 6, 1951, the plain-tiff had completed continued service of 4 years, and therefore, it could not be said that the plaintiff was working on a purely temporary basis. Mr. Ramaswami tried to read in this resolution of the Government of Bombay a quasi-permanent post, and therefore, contended that the services of the plaintiff could not be said to be of a purely temporary nature. 24th March, 1980.

19. In this case there is a written contract or agreement of service between the plaintiff and the defendants. The order of appointment, as stated above, only stated that the plaintiff was appointed as an Asstt. Engineer (Electricals) .... with effect from 6th March, 1950, until further orders. As stated above ''until further orders'' do not import any nature of permanency in the appointment of the plaintiff. Even where the terms of contract of service or the rules governing the same spell out that the employment is of a purely temporary nature, mere length of service for any number of years will be of no avail to the plaintiff to contend that the nature of his employment was of a permanent nature and not of a temporary nature. Mr. Rama swami relying upon certain observations of the Supreme Court in K.H. Phadnis Vs. State of Maharashtra, contended that in view of the length of service of the plaintiffs for 6 years and the likelihood of its continuance as well as confirmation of the services of the three junior Chargemen on Nov. 1, 1956, and also the advertisement of the post which the plaintiff had held, indicated that the employment of the plaintiff was of permanent nature or at least of quasi-permanent nature. Mr. Ramaswami, particularly relied on para 16 of the said judgment which reads as follows:

"It is true that the post which the appellant held was a temporary one, but the post continued for several years. The indications were that the post was practically of a quasi-permanent character. The appellant was reverted neither because the temporary post was abolished nor because he was found unsuitable to continue. The parent department of the appellant did not want him back."

Mr. Ramaswami placed reliance on the observation of their Lordships that "post which the appellant held was a temporary one, but the post continued for several years. The indications were that the post was practically of a quasi-permanent character". It is difficult to accept such a contention in view of the unambiguous and clear wordings of the appointment order of the plaintiff dated April 13, 1950 that he was appointed until further orders. It is true that the plaintiff continued in that post for nearly six years, but as will be indicated later on, there were several warnings issued to the plaintiff in his unsatisfactory performance, and therefore, the plaintiff could not be said to have acquired any right to that post.

20. This brings us to the second question which needs to be determined in this case, i. e. whether the plaintiff had any right to the post, notwithstanding his having held that post for nearly six years. Mr. Rama-swami had again made a faint attempt to contend that he was discharging his duties efficiently and diligently, that he was senior-most amongst four Chargemen, that having been given advance after due sanction for purchase of motor-cycle to be paid in 48 monthly instalments and having been asked to look after the duties of another Charge-man (Boiler) for a period of two months, all the indications were that the plaintiff had a right to the post which he held. Again it is not possible to accept this contention of Mr. Ramaswami. The plaintiff was holding clearly a temporary post as a probationer and in the absence of any Rules which automatically confirmed his appointment after a certain period, it could not be said that a right was created in plaintiff to the post he was holding. There is nothing on record to indicate that any representation was made by the defendants to the plaintiff that he will be confirmed and continued in the post. On the contrary, the record clearly shows that the plaintiff was time and again, given warnings, memos for his unsatisfactory record and he was even told that if he did not improve his performance, a disciplinary action would be taken against him. These memos and warnings which are dated March 24, 1956, then again on May 14, 1956 and lastly on Aug. 25, 1956 clearly indicated the unsatisfactory nature of the work put in by the plaintiff and if read carefully, it is difficult to conceive that the plaintiff would have entertained, even remotely, a hope that either he would be continued in the service or in the nature of things he had any right to the post be was holding.

21. Once it is held that the plaintiff''s holding of the post was of a purely temporary nature and that he had no right to the post he had held, a number of legal consequences follow from this position. It has been laid down by the Supreme Court in more than one decision that if the services of a temporary or probationary

Government servant are terminated, either in terms of contract of employment or in terms of the order of employment without assigning any reason whatsoever, the said action of the Government does not attract the protection given by the Constitution under Article 311 of the Constitution of India to the Government servant. The only condition that has been laid down by the Supreme Court is that in terminating the services of such a purely temporary or probationary Government servant, no stigma should be cast against him for the simple reason that termination simpliciter of a temporary and/or of a probationary Government servant is well within the rights of the Government as the incumbent does not possess any right to that post.

22. A Division Bench of this Court in : Manmath Karande v. State of Maharashtra 1979 M LJ 828 : 1980 Lab IC 260 , has considered series of Supreme Court decisions on the point as to whether the provisions of Article 311(2) of the Constitution of India are attracted where a probationer or temporary servant is removed from his post and after a survey of the authorities including the latest decision " The Manager, Government Branch Press and Another Vs. D.B. Belliappa, , the Division Bench has concluded that such, a Government servant whose services are purely of a temporary nature, can be removed without (a) assigning any reasons in the order itself (b) without holding an inquiry contemplated by Article 311(2) of the Constitution of India, and (c) without incurring the violation of further protection under Article 16 of the Constitution of India.

23. In more than one way the facts in Manik''s case are similar to the facts in the present case. In that case, the plaintiff was appointed as a temporary clerk under the order of the Collector of Solapur dated July 18, 1959, and in terms of Clause 3 of the said order, the plaintiff''s services were liable to be terminated without assigning any res'' son. By an order dated March 20, 1969, the Collector did terminate his services. On appeal to the Commissioner, the said termination order was set aside on 13th Aug., 1969 for want of one months'' prior notice. The plaintiff was then reinstated, but again discharged with effect from Sep. 22, 1970 by notice dated August 22, 1970. The plaintiff had challenged this order in appeal without success. He, therefore, instituted a suit in the trial Court and it came to be dismissed, and against the dismissal of his suit, he filed a First Appeal which was being decided by the Division Bench of this Court. Justice V. S. Deshpande who delivered the judgment of the Division Bench had, in terms, stated as follows:

"Article 311, Constitution of India, is not attracted if a probationer or temporary servant is removed from his post or even when permanent Government servant is compulsorily retired in accordance with service rules or is reduced in rank from officiating post without enquiry, provided no stigma is cast against him, the underlying reason being that the incumbent does not possess any right to the post. Article 311 is not attracted, to such cases where unsatisfactory work or conduct merely furnishes the motive and not the basis for the order."

In view of these principles laid down by this Court based on various authorities of the Supreme Court, it is not necessary further to probe these two questions, viz., whether a temporary Government servant who had no right to the post could invoke the protection of Article 311(2) of the Constitution of India.

24. The next contention of Mr. Rama-swami was that in this case, admittedly, the orders for inquiry were issued by the Milk Commissioner, and subsequently that inquiry was dropped. On July 27, 1956, Shri D. N. Khuredy, Milk Commissioner, Bombay issued an order, that he was satisfied that a prima facie case existed for a Departmental Enquiry against Shri V. G. Koppar, Charge-man (Electrical) ..... on account of continued unsatisfactory performance of his duties as Chargeman (Electrical) and also getting leave sanctioned from the Dairy Engineer in March 1956 by suppressing the fact that leave had been refused by Special Officer (DAIRY) a few days earlier. He, therefore, ordered that the Departmental Enquiry be held against the plaintiff in respect of the said conduct. One Shri A. J. Vaz, Assistant Milk Commissioner (Administration) was appointed to hold the said Departmental Enquiry. Subsequently by an order dated 5-9-1956, in partial modification of the earlier order referred to above, the inquiry was directed to be held by the Director, Government Milk Colony. However, for the reasons best known to the Authorities, this inquiry came to be dropped by an order dated 23/24th October 1956. That order reads as under:--

"Agriculture and Forests Department (Milk Commissioner) Government of Bombay,

Ref. No. MC/ESTT-DE/47/A.

Wakefield House,
Ballard Estate,
Bombay-1.

23rd/24th October, 1956

ORDER

Office Order No. MC/Estt-DE/47/A dated the 27th July 1956 subsequently modified by office Order of even number dated the 5th September 1956, ordering a Departmental Enquiry against Shri V. G. Koppar, Chargeman (Electrical, Central Dairy, Government Milk Colony, Aarey), is hereby cancelled.

(D. N. Khurody)

Milk Commissioner, Bombay.".

25. Therefore, the inquiry which was sought to be commenced on 11th July 1956 was dropped or cancelled in October 1956 and only a week thereafter by an order dated October 31, 1956, the plaintiff''s services were terminated as they no longer were required. Admittedly, no reasons were given in the order of termination. Mr. Ramaswami, therefore, contended that the mere fact that an inquiry was ordered

but subsequently dropped indicated that the Government wanted to punish the Government servant and subsequent termination without holding an inquiry was the result of the misconduct alleged against the Government servant by the Government. He, therefore, contended that such an inquiry into the misconduct was the very foundation or basis of the termination and not the motive for the order of termination. He further contended that such termination visited the plaintiff with penal consequences, and therefore, was a punishment inflicted on him within the meaning of Article 311(2) of the Constitution of India. He, therefore, contended that the form of the Order could never be conclusive and that the Court can if the case is so made out go behind it to ascertain the truth and substance of the matter, that the form of the order can never be conclusive of the subject-matter is too well-known a proposition emphasised in series of the decisions of the Supreme Court to be reiterated herein. The Court can always go behind the order to find out whether in order to get rid of the unwanted public servant the facts are negligently often assumed to exist, or have been twisted by way of pretence to terminate his services. There is no difficulty as far as this proposition is concerned and the Courts are never powerless to investigate apparently innocuous orders if materials do exist on the record to indicate as His Lordship R. S. Pathak, J. has stated in State of Maharashtra v. Veerapa R. Saboji, : (1979)IILLJ393SC "..... the innocence of the language in which the order is framed will not protect it if the procedural safeguards contemplated by Article 311(2) have not been satisfied.
In a given case, the Government servant may succeed in making out a prima facie case that the order was by way of punishment. R.S. Pathak, J. was delivering a separate but concurring judgment by giving additional reasons, where both Pathak, J. as well as Untwalia, J. had held simple termination of a probationary or temporary Government Servant without casting any stigma on him did not violate requirements of Article 311 of the Constitution. Here again, Untawalia, J. has observed that-

''This principle is beyond any dispute but the difficulty comes in the application of the said principle from case to case."

In the facts of this case, as we have seen above, it cannot be said that merely initiating an inquiry and dropping the same subsequently though might tend to create distrust that, the Government Authorities had resorted than easy course to cover embarrassment, cannot be said to attract the provisions of Article 311(2) of the Constitution of India.

26. The Supreme Court had laid down In Samsher Singh Vs. State of Punjab and Another, , that when a departmental enquiry is contemplated and if an enquiry is not in fact proceeded with, Article 311 will not be attracted unless it can be shown that the order though unexceptionable in form is made following a report based on misconduct. It is further observed:

"No abstract proposition can be laid down that where the services of a probationer are terminated it can never amount to a punishment. Before a probationer is confirmed the authority concerned is under an obligation to consider whether the work of the probationer is satisfactory or whether he is suitable for the post. In the absence of any rules governing a probationer in this respect the authority may come to the conclusion that on account of inadequacy for the job or for any temperament or other object not involving moral turpitude, the probationer is unsuitable for the job and hence must be discharged. No punishment is involved in this. The authority may in some cases be of the view that the conduct of the probationer may result in dismissal or removal on an inquiry. But in those cases the authority may not hold an inquiry and may simply discharge the probationer with a view to giving him a chance to make good in other walks of life without a stigma at the time of termination of probation. If, on the other hand, the probationer is faced with an enquiry on charges of misconduct or inefficiency or corruption, and if his services are terminated without following the provisions of Article 311(2) he can claim protection.

The fact of holding an inquiry is not always conclusive. What is decisive is whether the order is really by way of punishment. If the facts and circumstances of the case indicate that the substance of the order is that the termination is by way of punishment then a probationer is entitled to the protection of Article 311. The substance of the order and not the form would be decisive."

27. Along with this principles laid down by the Hon''ble the Supreme Court, it will be necessary now to discuss as to whether the Government is within its right or not to terminate the services of a probationer or a temporary Government servant for unsatisfactory record and without giving any reasons whatsoever. We have further to see that even if the reasons are not disclosed in the order of termination and if they exist in the record itself, whether such an action of the Government can be said to have violated the requirements of Article 311(2) of the Constitution of India. Again in more than one decision, the Supreme Court has laid down that if the services of a temporary Government servants are terminated for unsatisfactory record, provided the unsatisfactory record is not made a mere cloak of getting rid of unwanted Government servant and is proved to be demonstrably false, his services can be terminated and such termination cannot be said to be by way of punishment. In this case reference may be made to the earlier decision of the Supreme Court in Champaklal Chimanlal Shah Vs. The Union of India (UOI), . Wanchoo J. (as he then was) speaking for the Court, has observed:

"Further even though misconduct, negligence, inefficiency or other disqualification may be the motive or the inducing factor which influences the Government to take action under the terms of the contract of employment or the specific service rule, nevertheless, if a right exists, under the contract or the rules, to terminate the service the motive operating on the mind of the Govt. is wholly irrelevant. It is on

these principles which have been laid down in Parshotam Lal Dhingra Vs. Union of India (UOI), that we have to decide whether the appellant was entitled to the protection of Article 311(2)".

Their Lordships of the Supreme Court again in The Manager, Government Branch Press and Another Vs. D.B. Belliappa, have held that the services of the temporary Government servants can be terminated without any reasons and the reasons need not be disclosed in the order itself. The principle that was deduced by the Court from the earlier discussion was as follows:

"If the service of a temporary Government servant are terminated in accordance with the conditions of his service on the ground of unsatisfactory conduct or his un-suitability for the job and/or for his work being unsatisfactory, or for a like reason which marks him off a class apart from other temporary servants who have been retained in service, there is no question of the applicability of Article 16." Though the point which was being discussed was one of discrimination, these observations are equally applicable while considering the point as to whether a temporary Government servant can be terminated even without assigning any reasons for his termination in his termination orders for his unsatisfactory performance. In this particular case, as stated earlier, the plaintiff was served firstly with a letter by Special Officer (Central Dairy), Aarey on March 24, 1956, which reads as under:

"No. So. CD2/712,
Office of the Special Officer (Dairy)
Aarey Milk Colony, P. O.
(Bombay Suburban):

24th March, 1956

To
Shri V. G. Koppar,
Charge (Elec).
Unit No. 3,
Govt. Milk Colony, Aarey.

You had applied for leave in February 1956 which was refused to -you by the Special Officer Central Dairy on the grounds that you have not completed a year since return from last leave and that the work of Electrical fittings in refrigeration Section has not been completed by you.

It is now noticed by the Special Officer, Central Dairy, that you have proceeded on leave with effect from 19-3-1956 by getting your leave sanctioned by the Dairy Engineer during the casual absence of the Special Officer by hiding the material fact that the leave was refused to you a few weeks back.

You should, therefore, immediately report to duty on receipt of this letter, failing which a strong disciplinary action will be taken against you."

Sd/-

N. S. Dave,
Special Officer (Central Dairy),
Aarey."

Thereafter he was served with the memorandum dated 14th May, 1956, which reads as under:--

"No. So/CD/1218,
Office of the Special Officer,
(Central Dairy),
Aarey Milk Colony, P. O.
(Bombay Suburban),: 14th May, 1956.

MEMORANDUM

Immediately on return from my tour on 20th March, 1956, I had issued you a Memorandum in my own writing for explaining the following:

(1) Your leave for two months was not sanctioned, as you had enjoyed long leave last year and because the electrical work on the extension of refrigeration section was pending since long. In spite of this, during my absence, you approached the Dairy Engineer and got your leave sanctioned, not revealing that your leave was refused once by the undersigned and thus tried to hide the facts. Thus, you proceeded on leave and you were to be called again to resume by sending an official intimation.

(2) The spare-pump in the R. M. R. D. sampling cabin was giving trouble, which you had removed for setting it right. This was delayed by you for more than 25 days and you were often to be reminded regarding this.

(3) The electrical connection to give sufficient light to the Central Dairy Store located on the mezzanine floor was delayed sufficiently long in spite of frequent reminders to you from the undersigned. Ultimately you were to be reported orally to the Milk Commissioner, when he was here at the Dairy.

Your explanation on the above has not been received in spite of my personal frequent reminders to you. Will you, therefore, please submit your explanation within three days of receipt of this Memorandum ?

Sd/-

(N. D. Dave),
Special Officer (Central Dairy),
Aarey.

To
Shri V. Koppar,
Chargeman (Electrical)."

28. The plaintiff was also served with a confidential letter dated August 25, 1955, which runs as follows:

"Agriculture and Forests Department (Milk Commissioner) Government of Bombay.

CONFIDENTIAL

No. MC/Estt/
Wakefield House,
Ballard Estate,
Bombay.

25th August 1955

To
Shri V. G. Koppar,
Chargeman (Electrical),
Central Dairy, Aarey.

Through: Dairy Engineer, Central Dairy.

On 2nd July 1953, a warning was issued to you that you should apply more earnestly to your duties and work under you. It has been again reported that your work has not improved and you lack in tact in dealing with your subordinates. There is also a lack of supervision on your part and recently it was noticed that during the early part of June 1955, the log-book of the pump house was not properly maintained.

The work of Electrical Chargeman is a very important one and it is regretted that in spite of personal and written warnings you have not created a good reputation about yourself so far as your work is concerned. I am, therefore, to give you the final warning that if you do not show marked improvement in your performance, disciplinary action would be taken against you.

(D. H. Khurody.)

Milk Commissioner, Bombay."

A close reading of these three letters inevitably leads to one result only that the plaintiff''s performance was not satisfactory in 1955.

Last two lines of the letter dated Aug. 25, 1955 are important. The Milk Commissioner, Mr. D.N. Khurody, gave the plaintiff final warning that if he did not show marked improvement in his performance, disciplinary action would be taken against him. It is true that Mr. Ramaswami has contended that the letters dated 24-3-1956 and 14th May, 1956 were issued by Mr. N. S. Dave, Special Officer (Central

Dairy), Aarey, with whom the plaintiff had alleged some kind of ill-feeling, and therefore, according to Mr. Ramaswami, these two letters should be excluded from consideration. It is not possible to agree with this contention of Mr. Ramaswami because if the letters were wrongly addressed and out of mala fide, the plaintiff could have always resorted to further steps ventilating his grievances against Mr. Dave to superior officer. There is nothing to show that the petitioner-plaintiff had done that At the same time his Confidential Reports by Milk Commissioner, dated August 25, 1955 cannot be ignored. It cannot be said that Mr. Khurody, Milk Commissioner, had any personal animus against the plaintiff, and therefore, in our opinion, it is amply proved that the record of the plaintiff did consist of unsatisfactory performance about his work, and therefore, that could be the basis for termination simpliciter without proceeding with the inquiry which was once commenced. Dropping of inquiry abruptly does not affect, if record of the temporary Government servant was unsatisfactory. In this connection a brief reference to two Supreme Court decisions may be made at this stage.

29. In Samsher Singh Vs. State of Punjab and Another, , a Constitutional Bench of seven Judges of the Supreme Court has clearly laid down that:

"An order terminating the services of a temporary servant or probationer under the Rules of Employment and without anything more will not attract Article 311. Where a departmental enquiry is contemplated and if an enquiry is not in fact proceeded with Art, 311 will not be attracted unless it can be shown that the order though unexceptionable in form is made following a report based on misconduct."

in this case after examining the entire record we are of the opinion that the letters addressed to the plaintiff either by Dairy Officer or by the Milk Commissioner, Bombay, may furnish a motive but in any case it was not the foundation or the basis of the order of termination, and therefore, there is no scope for arguments in this case that the termination simpliciter of a temporary Government servant in any way attracted the protection of Article 311(2) of the Constitution even to a temporary Government Servant.

30. Thus, the conclusion reached by us is (a) that the plaintiff held his post as a Chargeman (Electrical) on a purely temporary basis; (b) Plaintiff''s performance of work was not satisfactory and there is ample material on record to support that conclusion; (c) reasons existed in the record to show that this unsatisfactory performance of the plaintiff may have been the motive but not the basis of the termination order of the plaintiff, and therefore, (d) the order of termination was order of termination simpliciter and was not by way of punishment and no penal consequences visited the plaintiff as laid down by the Supreme Court in the case of Parshotam Lal Dhingra Vs. Union of India (UOI),

31. In view of these conclusions, reliance placed by Mr. Ramaswami on the decision of the Supreme Court in the case of The State of Punjab Vs. Prakash Singh Cheema,

is wholly misconceived. On the facts of that case, it was held that the order of termination of services of a temporary servant was in fact by way of punishment and, therefore, protection of Article 311. was attracted. As we have held in this case, the termination was not by way of punishment, and therefore, this decision of the Supreme Court is of no assistance to Mr. Ramaswami.

32. Mr. Ramaswami then contended that this termination of the plaintiff''s services discriminated the plaintiff qua the other three Chargemen, inasmuch as, whereas the plaintiff''s services were terminated, the services of the other three chargemen were retained and they were also confirmed in their posts on November 1, 1956. The submission on the point of discrimination is two-fold. Firstly, qua other junior chargemen, the plaintiff''s dismissal smacks of unequal treatment to the public office in the matter of public employment and he was discriminated for no rhyme or reason. Secondly, even though he was discharging his duties efficiently and diligently, he was arbitrarily picked up for termination. Mr. Ramaswami vehemently argued that all the Chargemen constituted one cadre and the plaintiff alone could not have been picked up for a discriminatory treatment and his services should not have been terminated.

33. In the cross-examination-in-chief or in the cross-examination of the plaintiff neither the plaintiff nor the defendants have brought out sufficient materials before the Court to hold that there was, in fact, one cadre to which all these four Chargemen belonged. We are not in a position on this inadequate material to hold that there was one Cadre of the Chargemen. In the plaint, the plaintiff has stated that he was the seniormost Chargeman and even though he was such a seniormost chargeman, his termination was done arbitrarily without any rational basis and it was unjust. Mr. Ramaswami further submitted that the rule that ought to have been followed was the rule of ''Last come first go''. He further submitted that the plaintiff was arbitrarily picked up for termination though there was no rational basis for doing so.

34. The plaintiff has further stated that all the four chargemen were expected to work in co-ordination with the Dairy Engineer whose duty it was to keep the machinery in good working condition. When directed by the Dairy Engineer, one chargeman was looking after the duties of the other chargeman also. When leave vacancy occurred, some chargeman was asked to perform the duties of the chargeman on leave. Each chargeman stood equal chance of promotion to a higher category of Dairy Engineer as and when there would be occasion for it. He was not given any charge-sheet asking him to show cause why his services should not be terminated and that too without giving him any charge-sheet, inquiry was ordered.

35. In the cross-examination, he admitted that each chargeman was assigned different fields of work. The plaintiff was to look after Electric insulation work; another chargeman was to look after Refrigeration work and the third one was to look after Boiler. But according to the plaintiff, the work of another chargeman was

carried out by a different person as and when necessary.

36. The defendants in their written statements have only averred succinctly that these chargemen did not belong to the same cadre. In para. 2 of the written statement, it was stated that the work, duties and qualifications prescribed for all these posts are different and those posts do not constitute one Cadre. The defendants further denied that the other three chargemen were less qualified besides being junior to the plaintiff. Neither the plaintiff nor the defendants had got any material to show or anything to sustain a finding that there were a common Cadre. If there was not a common cadre to which the plaintiff and the other three chargemen belonged, then the question of discrimination could not arise. As held earlier, the plaintiffs services were terminated simpliciter without assigning any reason. But in the record there seems to be a motive of unsatisfactory performance of plaintiff''s duties by him. If this was so, it could hardly be said that the plaintiff was discriminated by the defendants or arbitrarily picked up for termination of his services. The observations quoted in D. B. Bellappa''s case 1979 Lab IC 146, would clearly indicate that unsatisfactory performance by a temporary Government servant puts him in a class apart from his juniors in the same service and his services can be terminated without assigning any reasons. The relevant observations are as follows :--

"If the services of a temporary Government servant are terminated in accordance with the conditions of his service on the ground of unsatisfactory conduct or his unsuitability for the job and/or for his work being unsatisfactory, or for a like reason which marks him off a class apart from other temporary servants who have been retained in service, there is no question of the applicability of Article 16. Conversely, if the services of a temporary Government servant are terminated arbitrarily, and not on the ground of his unsuitability, unsatisfactory conduct or the like which would put him in a class apart from his juniors in the same service, a question of unfair discrimination may arise, notwithstanding the fact that in terminating his service, the appointing authority was purporting to act in accordance with the terms of the employment. Where a charge of unfair discrimination is levelled with specificity, or improper motives are imputed to the authority making the impugned order of termination of the service, it is the duty of the authority to dispel that charge by disclosing to the Court the reason or motive which impelled it to take the impugned action. Excepting perhaps, in cases analogous to those covered by Article 311(2), Proviso (c), the authority cannot withhold such information from the Court on the lame excuse, that the impugned order is purely administrative and not judicial, having been passed in exercise of its administrative discretion under the rules governing the conditions of the service".

37. In the same judgment number of earlier judgments were quoted in support of this proposition. It is hardly necessary to refer to all of them here again. Mr. Rama-swami''s contention that while junior charge-men were arbitrarily confirmed

and the petitioner was arbitrarily picked up and terminated, could not be repelled in a better manner than was done by Wanchoo, J. (as his Lordship then was) in Champaklal Chimanlal Shah Vs. The Union of India (UOI), , as under:

"We are of opinion that there is no force in this contention. This is not a case where services of a temporary employee are being retrenched because of the abolition of a post. In such a case, a question may arise as to who should be retrenched when one out of several temporary posts is being retrenched in an office. In these circumstances, qualifications and length of service of those holding similar temporary posts may be relevant in considering whether the retrenchment of a particular employee was as a result of discrimination. The present, however, is a case where the appellant''s services were terminated because his work was found to be unsatisfactory..... (In such a case) there can be, in our opinion, no question of any discrimination. It would be absurd to say that if the service of one temporary servant is terminated on the ground of unsatisfactory conduct the services of all similar employees must also be terminated along with him, irrespective of what their conduct is. Therefore, even though some of those mentioned in the plaint by the appellant were junior to him and did not have as good qualifications as he had and were retained in service, it does not follow that the action taken against the appellant terminating his services was discriminatory, for that action was taken on the basis of Ms unsatisfactory conduct A question of discrimination may arise in a case of retrenchment on .account of abolition of one of several temporary posts of the same kind in one office but can in our opinion never arise in the case of dispensing with the services of a particular temporary employee on account of his conduct being unsatisfactory" (Parenthesis and emphasis supplied).
The principle that can be deduced from the above analysis is that if the services of a temporary Government servant are terminated in accordance with the conditions of his service on the ground of unsatisfactory conduct or his unsuitability for the job and/ or for his work being unsatisfactory or for a like reason which marks him off a class apart from other temporary servants who have been retained in service, there is no question of the applicability of Article 16." In the same judgment, Their Lordships have further observed where no special reasons have been disclosed in the order of termination and where juniors than the plaintiffs have been retained in service, it was observed that where a Government Servant''s past record marks him off a class apart from others, there is no question of discrimination as such. In our view, the records of this case also indicate that the plaintiff was marked off for termination on the basis of an intelligible differentia having a reasonable nexus with the object of maintaining the efficiency and integrity of the public service. We are of the opinion that there was no question of any discrimination whatsoever arising from the termination of the plaintiff''s services.

38. Mr. Ramaswami further argued that though there was no Cadre still the termination of the plaintiff''s service could be termed as arbitrary and capricious and

therefore, there was violation of the provisions of Article 16 of the Constitution of India. He contended that the act of the termination of the plaintiff''s service was itself arbitrary, and therefore, it was implicit in it that unequal treatment was meted out to the plaintiff. He relied on the judgment of the Supreme Court in E.P. Royappa Vs. State of Tamil Nadu and Another, where their Lordships of the Supreme Court had held in para 85 as under:

"Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is, therefore, violative of Article 14, and if it affects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous of irrelevant considerations because that would be denial of equality. Where the operative reason for State action as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of powers and that is hit by Articles 14 and 16. Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice : in fact the latter comprehends the former. Both are inhibited by Articles 14 and 16."

The above observations as well as some other general observations in the said paragraph are of immense importance which spell-out the doctrine of equality.

39. The above principles were quoted again in Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, thus : "We are in respectful agreement with these general principles. From a positive point of view, equality is antithetic to arbitrariness. In fact, equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic; while the other, to the whim and caprice of an absolute monarch". These principles, vital and important though they are, are not, strictly relevant to the facts of the present case, inasmuch as indicated above, ''the plaintiff was a class by himself on the basis of his unsatisfactory performance of service, and therefore, in such a case, by no stretch of imagination it can be said that the plaintiff was arbitrarily picked up for unequal treatment, and therefore, the question of violation of Article 16 of the Constitution of India does not at all arise in this case. A cursory finding by the learned trial Judge on the question of discrimination does not at all clench the issue. As observed earlier, in one small paragraph the trial Court has summarised its reasons as to why Article 16 of the Constitution of India was attracted. According to him, the Departmental Enquiry was not completed; as notice of termination was given to the plaintiff; the post was immediately advertised for recruitment of another person. On this basis and certain observations in an unreported decision of this Court, the learned Judge came to the conclusion that this was a case of discrimination. Besides these observations, nowhere he has analysed as to how and why the plaintiff arbitrarily picked up for unequal or discriminatory

treatment qua his junior chargemen.

40. We cannot accept this reasoning of the learned Judge so as to sustain a finding that the provisions of Article 16 were violated in this case, and therefore, with respect, we are constrained to set aside the finding recorded by the trial Court that there was discrimination against the plaintiff when his services were terminated by Order dated October 31, 1956.

41. In view of this finding we hold that the provisions of Article 311(2) of the Constitution of India are attracted in this case, inasmuch as no inquiry was held, and therefore, the plaintiff''s termination of service was not by way of punishment, and in view of the fact that no discrimination has been practised by Government in the matter of termination of the plaintiff''s services, we allow the appeal preferred by the State of Maharashtra, set aside the judgment dated February 24, 1970 in Suit No 3169 of 1961, passed by the learned Judge of the City Civil Court, Bombay, and in consequence we dismiss the suit filed by the plaintiff for the reliefs stated earlier.

42. No order as to costs throughout.

43. Appeal allowed.