(1960) 12 BOM CK 0017

Bombay High Court

Case No: A.F.O.D. No. 395 of 1959

B.M. Pandit		APPELLANT
	Vs	
Union of India and Others		RESPONDENT

Date of Decision: Dec. 23, 1960

Acts Referred:

- Central Civil Services (Temporary Service) Rules, 1949 - Rule 3, 5

Citation: AIR 1962 Bom 45 : (1961) 63 BOMLR 581 : (1961) ILR (Bom) 831

Hon'ble Judges: V.S. Desai, J; Abhyankar, J

Bench: Division Bench

Advocate: S.B. Sukthankar, for the Appellant; V.H. Gumaste, Assistant Govt. Pleader, for the Respondent

Judgement

V.S. Desai, J.

(1) The appellant, who is the original plaintiff, has filed a suit in forma pauperis in the City Civil Court at Bombay for declaration that the Memo. Dated 15th December 1956 terminating his service amounted to an order of dismissal and the same was illegal and wrongful and, therefore, he continued to be in Government Service on the same rank and on the same post from the date on which he was discharged and for recovering damages in the sum of Rs. 20,000 and costs of the suit. The suit was dismissed with costs by the Trial Court and against that decree of the trial Court the plaintiff has filed the present appeal in forma pauperis.

(2) The plaintiff, who had for some time worked in the Army, joined the Office of the Joint Controller of Imports and Exports as a temporary lower division clerk on 4th July 1946. On 16th November 1950, he was promoted as an upper division clerk but in April 1956, he was again reverted to the grade of lower division clerk. Against this revision the plaintiff filed a Writ petition in the High Court of Bombay. He, however, withdrew the same on the 12th December 1956. Thereafter by a memorandum dated 15th December 1956 the plaintiff w as informed by the Joint Chief Controller

of Imports and Exports that his services were terminated under Rule 5 of the Central Services (Temporary Service) Rules, 1946 with effect from the date of the service of the order on him. He was also informed by the said Memo that he would be paid a sum equivalent to the amount of his pay plus allowances for one month which was the period of the notice due to him, stating further that the payment of allowances would be subject to the conditions under which such allowances were otherwise admissible. The plaintiff appealed to the President of India against the said order terminating his services but the appeal was rejected. The plaintiff thereafter filed the present suit for the reliefs as already stated. The plaintiff''s case was that the order terminating his services amounted to an order of dismissal and inasmuch as no notice to show cause was served upon him and no enquiry was held, he has been denied the safeguards as provided by Article 311 of the Constitution and therefore, the order was illegal, void and inoperative. His case further was that under the Central Services (Temporary Service) Rules, 1949 he was entitled to be deemed to be a quasi-permanent servant and the Rule 5 of the said Rules under which his services were purported to be terminated was not applicable to his case. He also complained that the order terminating his services was passed with the ulterior purpose of punishing him for having filed a Writ petition in the High Court challenging his reversion and the order, therefore, was passed mala fide. It was also alleged in the plaint that there was a violation of Article 14 and 16 of the Constitution but those contentions were abandoned at the trial.

(3) Apart from the technical contentions as to the legality and validity of the statutory notice given by the plaintiff before filing the suit, the main contentions raised by the defendants-respondents in resisting the plaintiff''s suit were that the plaintiff was a temporary employee as a lower division clerk and although he had been appointed to officiate in the temporary post of upper division clerk with effect from 16th November 1950, he had no right to the said post and not even to the post of the lower division clerk since his appointment was only temporary. It was contended that the plaintiff''s reversion was perfectly lawful and was made following the recommendations of the Special RE-organisation Unit appointed by the Government. The reversion of the plaintiff was not the result of any punitive or penal action taken by the defendants against the plaintiff. It was contended that the plaintiff had all along been a purely temporary servant and had never been declared either permanent or quasi-permanent. His case, therefore, was governed by Rule 5 of the Central Civil Services (Temporary Service) Rules of 1949 and the order dated 15th December 1956 terminating his services under Rule 5 of the said Rules was perfectly legal and valid. The allegations of the plaintiff as to the damages suffered by him or as to the order passed against him being with an ulterior purpose or motive or mala fide were denied by the defendants.

(4) The learned trial Judge held that the plaintiff could not be deemed to be a quasi-permanent servant under the Central Civil Service Rules as alleged by him and his case, therefore was governed by Rule 5 of the Central Civil Services (Temporary

Service) Rules, 1949, (hereinafter referred to as the Service Rules). He also held that the order terminating the plaintiff''s services did not amount to an order of dismissal and did not, therefore, attract the provisions of Article 311 of the Constitution. It was also held by him that the order was neither mala fide nor passed for the ulterior purpose of punishing the plaintiff as alleged by him. In view of these conclusions the learned trial judge dismissed the plaintiff''s suit with costs.

(5) In this appeal Mr. S. B. Sukthankar, the learned advocate, who appears for the appellant, had argued in the first place that the order dated 15th December 1956 though worded as an order terminating the services under Rule 5 of the Service Rules is in reality an order of dismissal. His submission is that the authorities were annoyed because the plaintiff had filed a Writ petition challenging his reversion from the upper division clerk to the lower division clerk. It is, therefore, that the authorities have availed themselves of the power to terminate the service and have used that power for a collateral purpose. Mr. Sukthankar in support of his submission has invited out attention to two circumstances. The first of these circumstances relates to a representation which was made by the plaintiff at the time of his appointment and in respect of which representation there was an enquiry some time about the month of June 1956. It appears that at the time when the plaintiff was taken in service in the office of the Joint Controller of imports and Exports in 1946, he had made a representation that he had passed the Matriculation examination of the University of Bombay. In 1952, he had supported the said representation by stating that the Matriculation certificate had been handed over by him to the Military authorities at the time when he had joined the Army and in April 1954 he had again asserted that he had passed the Matriculation examination probably in the year 1930 and had also indicated the subjects in which he had appeared in that examination. It appears that the authorities had found out that these declarations were false and had, therefore, served a charge-sheet in the plaintiff in June 1956 and called upon him to show cause why disciplinary action, which may inter alia include prosecution, should not be taken against him. The enquiry thereafter was held and it was decided a s evidenced by the Memo dated 18th September 1956 of the Joint Chief Controller of Imports and Exports that the future increments of the plaintiff should be stopped until such time as he was able to pass the Matriculation examination from a recognised University, and that he should be debarred from future promotion to a higher grade. These facts, according to Mr. Sukthankar, show that the authorities were displeased and dissatisfied with the plaintiff. The second circumstance is that although the authorities had decided to deal with the plaintiff''s case in the manner as indicated in the Memo dated 18th September 1956, to which reference is already made, the plaintiff had filed a Writ application in the High Court challenging his reversion. This action of the plaintiff, according to Mr. Sukthankar, must have increased the displeasure and annoyance of the authorities still further and they must have decided to punish the plaintiff by dismissing or removing him from service. Since the plaintiff''s fault in making the

false representation had been already dealt with and suitable punishment had been given by the Memo of 18th September 1956, there was no other ground available to the authorities to dismiss the plaintiff. They, therefore, availed themselves of the power of terminating his service under Rule 5 of the Service Rules and passed the present order. It is, therefore, that he urges that this is a case where the power of terminating the service of a temporary servant has been used for the collateral purpose of punishing him and removing him from service. Mr. Sukthankar points out that the fact the present order terminating the service of the plaintiff has been passed within three days of the date on which the petition filed by him in the High Court was withdrawn by him supports his case that the power of termination has been used for a collateral purpose.

(6) We are not impressed by this argument of Mr. Sukthankar. In the first place neither of the two circumstances to which he has invited out attention are sufficient to raise an inference which Mr. Sukthankar wants us to draw. If the fault of the plaintiff in making false representation deserves the penalty of dismissal in the opinion of the authorities, they could have very well imposed that penalty on the plaintiff in the enquiry which was held against him. The further circumstance that the petition had filed a Writ petition in the High Court cannot, in our opinion, be regarded as any good, sufficient or adequate reason for the authorities to decide to dismiss the servant, especially when the petition filed had been withdrawn by the petitioner himself. Secondly the submission which Mr. Sukthankar had made, relates to the bona fides of the action taken by the authorities. It is difficult to understand how an employee is entitled to question the motive of his employer if the employer has a right to dispense with his services at any time and has terminated his services in the exercise of that right. If Rule 5 of the Service Rules was, applicable to the case of the plaintiff and if the order terminating the service is such as could be passed in conformity with the said rule, the notice operating in the mind of the authority in passing the said order would be wholly irrelevant. In our opinion, therefore, this contention which Mr. Sukthankar has raised is not sustainable.

(7) The next and a more serious contention urged by Mr. Sukthankar is that the appellant was entitled to be deemed to be a quasi-permanent servant under the Service Rules and Rule 5 under which the order terminating his services is purported to have been passed is not applicable to his case. The order, therefore, is contrary to law and is illegal and invalid. The claim of Mr. Sukthankar''s client to be deemed to be a quasi-permanent servant is based on the fact that he has been in continuous service for a period of more than three years. He relies on Rule 3 of the said Rules for his claim that he must be deemed to be a quasi-permanent servant. Rule 3 in the said Service Rules reads thus:

"A Government servant shall be deemed to be in quasi-permanent service-

(I) if he has been in continuous Government service for more than three years;

(ii) if the appointing authority, being satisfied as to his suitability in respect of age, qualifications, work and character of employment in a quasi-permanent capacity, has issued a declaration to that effect, in accordance with such instructions as the Governor-General may issue from time to time."

It will be noticed that there is no conjunction "and/or" between (i) and (ii) of this rule. Indeed in two decisions: one an unreported decision of this Court and the other a decision of the Supreme Court the rule as quoted contains the conjunction "and" after (i) and before (ii) in the rule. We have, however, found from the copy of Gazette of India in which these rules are published that the rule is as we have quoted above without there being any conjunction between (i) and (ii) of the said Rule. The learned Assistant Government Pleader has stated that there has been no amendment of this rule after its first publication in 1940 and the conjunction "and" does not occur in the rule between (i) and (ii).

(8) Mr. Sukthankar for the appellant has contended that in either of the cases mentioned in (i) or (ii) of the rule, the Government servant is entitled to be deemed to be in quasi-permanent service. In other words, he wants the rule to be read as if the conjunction "or" was there after the portion in (i) and before the portion in (ii) of the rule. The learned Assistant Government Pleader on the other hand argued that on a proper construction of this rule considered in the light of the scheme of these rules, a Government servant in order to be deemed to be in quasi-ferment service must satisfy both (i) and (ii) of the rule. In other words, his argument is that the rule has the same meaning and effect which it would have had if the conjunction "and" was there between the two parts. He has argued that it is not possible to read this rule in the manner as suggested by Mr. Sukthankar for the appellant.

(9) Before proceeding to consider what is the true interpretation of this rule, we will refer to the two decisions in which this rule was put before the Court and considered by it. The first is an unreported decision of this Court given by Mr. Justice Tendolkar on 8th October 1956 in Kodiate Kurion v. Union of India, Misc. Appln. No. 237 of 1956. The petitioner is that case was a temporary Government servant in the Department of Atomic Energy, whose services were terminated under Rule 5 of the said Rules. It was contended on behalf of the petitioner that since he had been in continuous Government service for more than three years he was entitled to be deemed to be in quasi-permanent service under Rule 3 and was, therefore, entitled to the benefit of Rule 8 and his service was not liable to be terminated under R. 5. This contention was negatived by Mr. Justice Tendolkar on the ground that Rule 3 required the fulfilment of two conditions one of which was a continuous service for more than three years and the other was that the appointing authority must have issued a declaration as is required in sub-rule (ii) of Rule 3. It was held, therefore, that the satisfaction of condition (I) only of rule 3 was not sufficient to entitle a temporary Government servant to be deemed to be in quasi-permanent service. The rule, however which has been quoted in the said decision contained, as we have

already stated, the conjunction "and" between the two conditions contained in (i) and (ii) of Rule 3. Mr. Sukthankar , therefore, is entitled to argue that the decision in the said case cannot be regarded as the correct interpretation of the rule inasmuch as the correct rule was not before the Court. The other decision is the Supreme Court decision in the case of K.S. Srinivasan Vs. Union of India (UOI), . In that case the claim of the appellant-petitioner to be deemed to be in quasi-permanent service in respect of the post of the Assistant Station Director was negatived on the ground that the requirements of Rule 3 (ii) were not satisfied. In considering that question their Lordships of the Supreme Court had to consider rule 3 and the several other rules in the said Service Rules, Rule 3 has been quoted in their Lordships'' judgment at page 424 of the report. The rule, however, has been quoted with the words "and" appearing between conditions (I) and (ii) contained in the rule. The appellant was undoubtedly in continuous Government service for a period of more than three years. It was not, however, contended that by that reason alone he was entitled to the status of a quasi-permanent servant. The argument, therefore, which is contended before us by Mr. Sukthankar was not put before the Supreme Court and indeed could not be put if the rule contained the conjunction "and" between the two conditions stated in Rule 3. This decision of the Supreme Court also, therefore, cannot prevent Mr. Sukthankar from raising the contention which he seeks to raise in the present case. We may refer to another case at the present stage which is also a decision of the Supreme Court in the case of Parshotam Lal Dhingra Vs. Union of India (UOI), . In that case their Lordships of the Supreme Court have considered exhaustively the scope and extent of the protection afforded by Article 311 of the Constitution to Government servants. It was held that under Article 311(1) the punishment of dismissal or removal could not be inflicted by an authority subordinate to that by which the servant was appointed and under Article 311(2) the punishment of removal, dismissal of reduction in rank could not be meted out to the Government servant without giving him a reasonable opportunity to defend himself and the principle embodied in Article 310(1) that the Government servant held office during the pleasure of the President or the Governor as the case may be was qualified by the provisions of Article 311 which gave protection to the Government servant. Their Lordships observed:-

"The next result is that it is only in those case where the Government intends to inflict those three forms of punishments that the Government servant must be given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. It follows, therefore, that if the termination of service is sought to be brought about otherwise than by way of punishment, then the Government servant whose service is so terminated cannot claim the protection of Article 311(2)."

Their lordships then proceeded to consider as to when an order for the termination of service can be regarded as by way of punishment. In considering this question their Lordships considered when a Government servant can be said to have a right

to hold the post because one of the tests which determined whether the termination of the service was by way of punishment was to consider whether the termination deprived the servant of the right to hold the post. Their Lordships in this connection considered the different categories of Government servants and came to the conclusion that there were only three cases in which the Government servant had a right to his post and except in those three cases, he had no right to the post and the termination of his service did not amount to a dismissal or removal by way of punishment. Now the three cases, in which, their Lordships of the Supreme Court observed, a Government servant had a right to his post, were:

1. The Government servant appointed substantively to a permanent post or,

2. Temporary servants appointed for a fixed term whose services in the absence of a contract or a service rule permitting its premature termination cannot be terminated before the expiry of that period and,

3. A servant appointed temporarily to a post whose service ripens into a quasi-permanent services as defined in the 1949 Temporary Service Rules.

In considering the last of three cases. Their Lordships made these observations:

"Further take the case of a person who having been appointed temporarily to a post, has been in continuous service for more than three years or has been certified by the appointing authority as fit for employment in a quasi-permanent capacity, such person, under Rule 3 of the 1949 Temporary Service Rules, is to be in quasi-permanent service which, under Rule 6 of those Rules, can be terminated (I) in the circumstances and in the manner in which the employment of a Government servant in a permanent service can be terminated or (ii) when the appointing authority certifies that a reduction has occurred in the number of post available for Government servants not in permanent service. Thus when the service of a Government servant holding a post temporarily ripells into a quasi-permanent service as defined in the 1949. Temporary Service Rules, he acquires a right to the post although his appointment was initially temporary and, therefore, the termination of his employment otherwise than in accordance with Rule 6 of those Rules will deprive him of his right to that post which be acquired under the Rules and will prima facie be punishment and regarded as a dismissal or removal from service so as to attract the application of Article 311."

Mr. Sukthankar has relied on these observations and contented that they contain the interpretation of Rule 3 by the Supreme Court that on either condition (i) or (ii) in Rule 3 being satisfied a temporary servant is entitled to be deemed to be in quasi-permanent service.

(10) We do not think that this contention of Mr. Sukthankar is correct. The case before their Lordships of the Supreme Court was not of a temporary servant who claimed to be in quasi-permanent service by reason of having been in continuous

service for more than three years. It was a case of a servant who had complained of a reduction in rank. The interpretation of R. 3 of the said Service Rules was not directly involved in the said case. Those Rules had been referred to and considered by their Lordships of the Supreme Court only for the purpose of considering the classes of Government servants who could be said to have a right to their posts. One of such classes was that of persons who were entitled to be deemed to be in quasi-permanent service. No doubt their Lordships in this context observed that where a person appointed temporarily to a post has been in continuous service for more than three years or has been certified by the appointing authority as fit for employment in a quasi-permanent capacity, such person is to be deemed to be in quasi-permanent service; but with great respect, in the context in which these observations occur, they are obiter and not intended to mean an interpretation of Rule 3 of the said Service Rules. We do not, therefore, agree with the contention of Mr. Sukthankar that in view of the observations contained in the said decision we should take it as concluded that Rule 3 has to be interpreted so as to mean that a Government servant who is in continuous service for more than three years must be deemed to be in quasi-permanent service even if there is no declaration issued as is required under R. 3 (ii). The question before us, therefore, cannot be said to have been concluded by any one of the three decisions which have been cited before us.

(11) In order to be able to decide upon the proper construction of the said rule and to ascertain its correct meaning , it will be desirable to understand the scheme of the Rules, Rule 1, sub-rule(2) of the said Rules makes the rules applicable to all persons who hold civil posts under the Government of India and who are under the Rule making control of the Governor-General but who do not hold a lien on any post under the Government of India or any Provincial Government excepting such categories as are excluded under Sub-rule (3). It is not necessary to enumerate these categories given in the sub-rule(3) because it is nobody''s case that the appellant falls in any of these categories . Rule 2 gives the meaning of certain expressions used in these Rules unless there is anything repugnant in the subject or context. The expression "Government service " as used in Government of India , and the expression "quasi-permanent Service " means temporary service commencing from the date on which a declaration issued under the Rule 3 takes effect and consisting of periods of duty and leave (other than extraordinary leave) after that date . The expression "temporary service " has been defined in Rule 2(d) as meaning officiating service in a permanent post under the Government of India , Rule 2 (c) defines the expression "specified post " to mean the particular post or the particular grade of posts within a cadre in respect of which a Government servant is declared to be quasi-permanent under Rule 3, which we have already quoted.

Rule 4 provides:

" (a) A declaration issued under Rule 3 shall specify the particular post or the particular grade of posts within a cadre , in respect of which it is issued and the date

from which it takes effect.

(b) Where recruitment to a specified post is required to be made in consultation with the Federal Public Service Commission no such declaration shall be issued except after consultation with the Commission.

Rule 5 states that the service of a temporary Government servant, who is not in quasi-permanent service, shall be liable to be terminated at any time by a notice in writing given by the servant to the appointing authority or by the appointing authority to the Government servant and the period of such notice shall be one month unless otherwise agreed to by the Government and the Government servant . Rules 6,7,8,9 and 10 deal with the conditions of service of a temporary Government servant whose service has ripened into a quasi-permanent service, the rights to which he is entitled and the safeguards which are provided in respect of the termination of such service. It is by reason of these rules that the Government servant in quasi-permanent service gets a right in respect of the post held by him and is consequently afforded protection in respect of the said right. Thus under Rule 6 it is provided that his service shall be liable to termination in the same circumstances and in the same manner as a Government servant in permanent service except when the appointing authority concerned has certified that a reduction has occurred in the number of posts available for Government servants not in permanent service. But even in the case where such contingency arises, the termination is to be regulated in the manner provided in the two provisos to the said rule. Rule 7 makes the quasi permanent servant eligible for a permanent appointment in the circumstances as specified in the said rule and provision is made in the said rule for the preparation of a list in order of preference of persons in quasi-permanent service who gives the quasi-permanent servant the benefit of the same conditions of service in respect of leave allowances and such other matters as are afforded to a Government servant in permanent service. Rules 9 and 10 relate to the benefits of gratuity and pension available to a Government servant in quasi-permanent service.

(12) It will thus be seen from the scheme of the Rules that the first four rules provide for the extent of the application of the rules: the meaning of quasi-permanent service: the circumstances in which the temporary service will ripen into quasi-permanent service: the eligibility of the servant to obtain the said status., the eligibility of the servant to obtain the said status, the conditions which will have to be satisfied in that connection and the time from which the quasi-permanent service will be taken to have commenced. The rules 6 to 10 provide for the consequences which result on the service ripening into quasi-permanent service. Rule 5 specifically states that unless the Government servant, by which expression is temporary Government servant, is in quasi-permanent service, his service can be terminated by a month''s notice.

(13) As we have already pointed out as to what is meant by quasi-permanent service, how and when it comes into existence and what conditions are required to be satisfied in order that the temporary service may develop or ripen into a quasi-permanent service is provided in the first four rules of the said Service Rules. These four rules therefore, will have to be considered together in order to ascertain their true meaning and effect. Reading Rule 2 (b) and 2 (d) together it follows that officiating and substantive service in a temporary post and officiating service in a permanent service under the Government of India is temporary service and that such temporary service gets the status of quasi-permanent service and commences as such from the date on which a declaration issued under Rule 3 takes effect. Unless a declaration as is referred to in Rule 3 is issued, the service of a temporary Government servant cannot get the status of a quasi-permanent services When we go to Rule 3 we find that a declaration is not to be issued as a matter of course but that the appointing authority has to be satisfied as to the suitability of the temporary Government servant in respect of age, qualifications, work and character of employment in quasi-permanent capacity. Moreover, we find from Rule 4 that the declaration has to be issued with reference to a particular post or a particular grade of post within the cadre and has to specify the date from which the declaration would take effect and if the specified post be such that recruitment to it must be made in consultation with the Federal Public Service Commission, the Federal Service Commission will have to be consulted before the Rules 3 (ii) and 4 (a) and (b) are in amplification of rule 2(b), which merely states when the circumstances the temporary service commences: under what circumstances the temporary service becomes quasi-permanent service: what consideration as to the suitability and qualifications of the temporary Government servant are to be taken into consideration and what procedure is required to be followed in quasi-permanent service is to be found in the Rs, 3 and 4 to which we have already referred. It will also be seen from the same rules that the commencement of the quasi-permanent service is with grade of post with in a cadre. It is in the light of these provisions that Rule 3 has to be considered. That rule states that a Government servant shall be deemed to be in Quasi-permanent service.
(i) if he has been in continuous Government service for more that three years,

(ii) if the appointing authority being satisfied as to his suitability in respect of age, qualification, work and character for employment in a quasi-permanent capacity, has issued a declaration to that effect, in accordance with such instructions as the Governor-General may issue from time to time .

Mr. Sukthankar has argued that under sub-rule (I) of this rule every temporary Government servant who has been in continuous Government service for more than three years is entitled to be deemed to be in quasi-permanent service irrespective of whether the declaration as is referred to in the second part of this rule is issued or not. In our opinion, the contention urged by Mr. Sukthankar cannot be accepted. It

seems to us that the continuous service for more that three years makes the Government servant eligible for being considered as to whether his service should be declared to be quasi-permanent service with reference to a specified post or in a cadre and it is by itself not sufficient to give his service the status of quasi-permanent service in the absence of the required declaration. Rules 3 and 4 as we have already pointed out, contain the considerations, which are to be borne in mind by the appointing authority in the matter of the declaration and the procedure which he will have to follow in making the declaration. It seems to us that rule (3) (I) is one of the considerations which the appointing authority has to bear in mind when it is considering the question of declaring the service of the temporary servant as quasi-permanent service. As we have seen, the declaration, which is contemplated, is not a general declaration stating that the service is declared to be quasi-permanent service. It is a declaration given with regard to the specified post or a particular grade of post in a cadre. Moreover, as we have already seen from the meaning of quasi-permanent service, such service does not commence as quasi-permanent service until the declaration issued declaring it to be quasi-permanent service takes effect. If the interpretation which is contended for by Mr. Sukthankar is accepted the result will be that the Government servant will be deemed to be in quasi-permanent service even when his temporary service has not commenced as quasi-permanent service and even in the absence of his suitability as to age or other qualifications being considered by the appointing authority. Moreover, his status as a quasi-permanent servant will not be with reference to any particular post or any particular grade of post within a cadre. This again appears to be inconsistent with the scheme and object of the rules. The object and purpose of the rules is to give the temporary servant some right to a particular post or to a particular grade of post in a cadre and all further provisions of these rules appear to confer upon him certain rights and benefits and provide safeguards with reference to the specified post in respect of which his service is declared to be quasi-permanent service. Thus in Rule 6 the quasi-permanent servant is afforded the same protection as is available to a Government servant in permanent service except where a reduction has occurred in the number of posts available for Government service not in permanent service but even in that contingency the termination has to be governed by the two provisos to the said rule. These two provisos have reference to the specified post held by the quasi-permanent servant. Rule 7 makes the quasi-permanent servant in whose case a declaration has been issued eligible for a permanent appointment and sub-rule (2) of this rule makes provision for the preparation of the list. Rule 8 again has reference to a quasi-permanent post in a specified post. Rule 9 also provides for the computation of gratuity payable to the Government servant in the circumstances as mentioned in the said rule and that the gratuity will be computed for the period of quasi-permanent service on the basis of the pay admissible for the specified post on the last day of his service. Rule 10 which relates to the qualifying service for the grant of pension and gratuity provides that the entire period of his quasi-permanent

service will be deemed to be a part of the qualifying service: the period of the quasi-permanent service as we have seen from the definition of the term "quasi-permanent service" commences from the date on which the declaration to the specified post takes effect.

(14) It is thus clear to us on considering the various rules and the scheme underlying them that it is essential for the temporary Government service to ripen into quasi permanent service that a declaration must be issued as is provided in R. 3 (ii) and that a mere continuous service for more than three years is not sufficient to give the status of quasi-permanent service to the temporary service of a Government servant. In our opinion, therefore. Rule 3 (I) of the said rules lays down only one of the conditions which are required to be satisfied. It does not by itself suffice to give the status of quasi-permanent service to his temporary service.

(15) In our view, therefore, although the conjunction "and" does not appear between the two parts of Rule 3 the conditions as laid down in both the parts of this rule have to be satisfied in order that the Government servant may be deemed to be in quasi-permanent service.

(16) Mr. Sukthankar has argued that in view of Rule 3 (I) the appointing authority was bound to make a declaration in the case of every Government servant who had been in continuous Government service for more than three years. At any rate, he has urged, the question as to whether such a declaration should be made in his case or not had to be considered before his service had become more than three years old. If without considering the case within that period a temporary Government servant is allowed to continue in temporary service it must be taken that his service is deemed to be in quasi-permanent service and the further declaration as is required by R. 3 (ii) is a mere matter of formality and procedure. We cannot accept this argument of Mr. Sukthankar in view of the provisions of R. 3 (ii) and 4. According to us the declaration as to quasi-permanent service is not a matter of course depending on the length of service. It requires the fulfilment and satisfaction of several considerations and conditions and unless the said considerations and conditions are fulfilled the temporary service does not ripen into quasi-permanent service. It is also not obligatory nor is it intended by these rules in our opinion that the question as to whether the declaration should be made in the case of a given temporary Government servant has to be considered before his service becomes three years old and in the absence of such decision being taken within three years of his service, the temporary servant if continued further in service must be deemed to be in quasi-permanent service. In our view, therefore, the contention which Mr. Sukthankar has raised on the construction and interpretation of the said service rules fails and his client is not entitled to be deemed to be in quasi-permanent service so as to make the Rule 5 of the said service rules under which his service is terminated not applicable to his case.

(17) The result, therefore, is that the appeal fails and is dismissed. Since the appellant is a pauper we do not make any order regarding the costs of this appeal. The appellant, however, will have to pay to the Government the Court-fees which he would have been required to pay on the Memorandum of appeal if he had not been permitted to appeal as a pauper. A copy of the decree will be sent to the Collector of Bombay under Order 14 Rule 33 of the Civil Procedure Code.

(18) Appeal dismissed.