

HARTWELL PRESCOTT SINGH

v.

THE UTTAR PRADESH GOVERNMENT
AND OTHERS.(S. R. DAS C.J., VENKATARAMA AIYAR, JAFER IMAM,
A. K. SARKAR and VIVIAN BOSE, JJ.)

1957

September 19.

Government Servant—Temporary appointment —Officiating in a high post—Order of Reversion—Whether reduction in rank—Petitioner to establish reversion by way of penalty—Termination of service according to conditions of service rules—Validity—Whether dismissal or—removal—Constitution of India, Art. 311.

The appellant who was holding a post in a temporary capacity in the Subordinate Agriculture Service, Uttar Pradesh, and was shown in the gradation list as on probation, was appointed with the approval of the Public Service Commission of the United Provinces, to officiate in Class II of the said service as a Divisional Superintendent of Agriculture. After holding the said officiating post for about 10 years, he was reverted to his original temporary appointment in the face of his protest. Thereafter his services were terminated by giving one month's notice under rule 25, clause (4) of the Subordinate Agriculture Service Rules.

The appellant contended that Art. 311 of the Constitution applied even to a temporary appointment because it was a civil post held under the Government; that the termination of service amounted to dismissal, or removal from his post, as it conveyed an imputation of inefficiency and unsatisfactory work, and that the order of reversion to his original post amounted to a reduction in rank, as it was by way of penalty.

Held, that reversion from a temporary post held by a person does not *per se* amount to reduction in rank. To decide whether the reversion is a reduction in rank, the post held must be of a substantive rank; and further it must be established that the order of reversion was by way of penalty.

Termination of service does not amount to dismissal or removal from service within the meaning of Art. 311 of the Constitution, if it is in accordance with the terms of the conditions of service. In principle there is no clear distinction between the termination of services under the "terms of a contract", and that in accordance with the "terms of conditions of service".

Satish Chandra Anand v. Union of India, (1953) S.C.R. 688, and *Shyam Lal v. The State of Uttar Pradesh*, (1955) 1 S.C.R. 26, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal
No. 100 of 1957.

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Appeal by special leave from the judgment and order dated October 21, 1955, of the Allahabad High Court Civil Miscellaneous Application O. J. No. 120 of 1954.

S. N. Andley, Rameshwar Nath and P. L. Vohra, for the appellants.

G. C. Mathur and C.P. Lal, for the respondent.

1957. September 19. The following Judgment of the Court was delivered by

Imam J.

IMAM, J.—This is an appeal by special leave against the decision of the Allahabad High Court dismissing the appellant's application under Art. 226 of the Constitution.

From the affidavit filed in the High Court by the Personal Assistant to the Director of Agriculture of the Government of Uttar Pradesh and the appellant, it would appear that the appellant was appointed from time to time in a temporary capacity to the Subordinate Agricultural Service of the Uttar Pradesh Government by the Director of Agriculture. He served in that service during the periods detailed below:—

(a) *In Group II of the Subordinate Agricultural Service :*

- (i) From November 16, 1936 to March 18, 1937.
- (ii) From April 1, 1937 to June 29, 1937.
- (iii) From August 9, 1937 to December 31, 1937.
- (iv) From January 6, 1938 to February 22, 1943.

(b) *In Group I of the Subordinate Agricultural Service :*

From February 23, 1943 to April 24, 1944. While he was still in the Subordinate Agricultural Service he was appointed to officiate in the United Provinces Agricultural Service Class II as a Divisional Superintendent of Agriculture with effect from April 25, 1944, with the approval of the Public Service Commission of the United Provinces. He served in

Class II of the United Provinces Agricultural Service in a temporary capacity for about ten years when he was reverted to his original appointment in the Subordinate Agricultural Service by an order of the Uttar Pradesh Government dated May 3, 1954. The appellant protested against his reversion and handed over charge on May 16, 1954 and went on leave until October 2, 1954. In the meanwhile, a notice dated September 13, 1954, terminating the appellant's services in the Subordinate Agricultural Service was issued to him by the Director of Agriculture. The notice purported to be under r. 25 cl. (4) of the Subordinate Agriculture Service Rules. This notice stated that the appellant's services would not be required after the expiry of one month from the date of the issue of the order terminating his services. The appellant challenged the validity of the aforesaid orders of reversion and termination of his services. The High Court in dismissing his application came to the conclusion that the appellant had not been dismissed or removed from service and that Art. 311 of the Constitution did not apply in the circumstances of the case. The High Court dismissed an application filed by the appellant for the issue of a certificate that the case was a fit one for appeal to this Court.

It was conceded before us on behalf of the appellant that at no time was he confirmed in any post either in the Subordinate Agricultural Service or in the United Provinces Agricultural Service Class II. In our opinion, the finding of the High Court that the appellant had failed to establish that he was confirmed as a member of the Subordinate Agricultural Service, based upon the materials before it, was a correct finding. The further finding of the High Court that the appellant's contention that he had been absorbed in the the permanent cadre of the United Provinces Agricultural Service had not been substantiated appears to us also to be a correct finding upon the materials on the record.

In considering the case of the appellant we must proceed on the basis that no time was the appellant appointed permanently either to the United Provinces

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Agricultural Service or to the Subordinate Agricultural Service. At all times he was temporarily employed. Mr. Andley's contention on behalf of the appellant had been that Art. 311 of the Constitution applied even to a temporary appointment because the appellant held a civil post under the Government of the State of Uttar Pradesh although he may not have been a member of a Civil Service of that State. The order terminating his services amounted to dismissal or removal from the post as it conveyed an imputation of inefficiency and unsatisfactory work and the order reverting him from the post held by him in the United Provinces Agricultural Service to his original appointment in the Subordinate Agricultural Service amounted to a reduction in his rank, as it was by way of penalty. The mandatory provisions of Art. 311 not having been complied with the aforesaid orders passed against the appellant were illegal. The question for consideration, therefore, is whether the orders terminating the appellant's services and reverting him to his original appointment in the Subordinate Agricultural Service amount to removal, dismissal or reduction in rank within the meaning of the provisions of Art. 311 of the Constitution.

The decisions of this Court in *Satish Chandra Anand v. The Union of India* (1) and in *Shyam Lal v. The State of Uttar Pradesh* (2) clearly establish that termination of the services of a person employed by the Government does not amount in all cases to dismissal or removal from service. In the former case the termination was in accordance with the terms of the contract and in the latter case it was by way of compulsory retirement of a member of a Service under Art. 465A of the Civil Service Regulations. This Court held that in neither case the termination of the services of the person concerned amounted to dismissal or removal from service within the meaning of Art. 311 of the Constitution. In the present case the appellant was employed in a temporary capacity in the Subordinate Agricultural Service and was shown in the Gradation List as on probation. His conditions of service

(1) [1953] S.C.R. 655.

(2) [1953] 1 S.C.R. 26.

were governed by the Subordinate Agriculture Service Rules. Rule 25(4) of these Rules permits the Director of Agriculture to terminate the services of a person on probation by giving him one month's notice if that person has not made sufficient use of his opportunities or if he has otherwise failed to give satisfaction. The termination of the appellant's services under r. 25(4) does not amount to dismissal or removal from service within the meaning of Art. 311 as it was in accordance with the terms of the conditions of service applicable to the appellant. In principle, we cannot see any clear distinction between the termination of the services of a person under the terms of a contract governing him and the termination of his services in accordance with the terms of his conditions of service. The order complained against did not contravene the provisions of Art. 311 and was therefore a valid order.

Reversion from a temporary post held by a person does not *per se* amount to reduction in rank because the temporary post held by him is not his substantive rank. For the purposes of this appeal it is unnecessary to decide in what circumstances a reversion would be regarded as reduction in rank as the appellant has not established as a fact that the order of reversion passed against him was by way of a penalty. The order of reversion, therefore, did not contravene the provisions of Art. 311 and was a valid order.

The appeal is accordingly dismissed with costs.

Appeal dismissed.

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