APPELLATE CIVIL

Before Prem Chand Pandit, J.

UNION OF INDIA,—*Appellant*

versus

KARTAR SINGH AND ANOTHER,—*Respondents*

Regular Second Appeal No. 496 of 1965.

February 23, 1967

Central Civil Services (Temporary Service) Rules (1949)—*Rule* 5—*Temporary servant—Order terminating service without giving any notice or pay and allowances in lieu of notice—Whether illegal.*

Held, that under rule 5 of the Central Civil Services (Temporary Service) Rules, 1949, the appointing authority was fully empowered to terminate the services of a temporary government servant who had not been made quasi-permanent, by giving him one month's notice in writing. According to the proviso, the services of such a Government servant could also be terminated *forthwith,* if he was paid a sum equivalent to the amount of his pay plus allowances for the period of the notice, i.e., one month. In other words, if the appointing authority decides to terminate the services of the Government servant forthwith, it has to give him one month's salary. That does not, however, mean that if the said pay or allowance is not given, the order would not be effective or would become invalid. The rule does not say that the payment of the salary and the allowances is a condition precedent for making the order effective. The rule also does not say that the salary and the allowances have to be paid along with the passing of the order terminating the services. It cannot be said that if the salary is not paid simultaneously, the government servant is entitled to come back to service. The order will come into force on the day it is passed and all that the government servant is entitled to is the salary and allowances for the notice period. He can ask for them and if the government refuses to pay the same, he can institute a suit for their recovery. The order, however, cannot be kept in abeyance or rendered invalid, because the said payment has not been made in the first instance. Under this rule, the appointing authority is vested with the right of terminating the services of the Government servant forthwith and correspondingly the government servant has a right to demand salary and allowances for the notice period from the government. The order terminating the services forthwith of a temporary servant does not become invalid and without jurisdiction merely because the salary and the allowances for the notice period were not paid to him when the order was passed.

Second Appeal from the decree of the Court of Shri Ram Pal Singh, Senior Sub-Judge with Enhanced Appellate Powers, Narnaul, dated the 28th day of November, 1964, *affirming with costs that of Shri Joginder Nath, Sub- Judge, 1st Class, Charkhi-Dadri, dated the 18th August,* 1964, *granting the plaintiff a decree for declaration to the effect that the plaintiff still held the post of Mail Peon in the Narnaul City, Post Office, Central Civil Services, Class IV, under the Union of India and the order, dated 3rd April,* 1963, *passed by defendant No. 2,—vide Memo. No. 17/2/62-63, was illegal and that he was entitled to recover the arrears of pay from 6th April,* 1963, *and leaving the parties to bear their own costs.*

C. D.. DEWAN, ADVOCATE, for the Appellant.

D. C. GUPTA, ADVOCATE, for the Respondents.

JUDGMENT

PANDIT, J.—This is a defendant's appeal against the decree of the learned Senior Subordinate Judge, Narnaul, confirming on appeal the decision of the trial court decreeing the plaintiff's suit.

The facts of this case are now no longer in dispute. Kartar Singh, plaintiff, was a mail peon in Post Office, Narnaul and was a Class IV employee. He was a temporary government servant and was not made quasi-permanent. His services were terminated on 3rd of April, 1964, by the Superintendent, Post Offices, Gurgaon, defendant No. 2, who passed the following order:-

> "Shri Kartar Singh an approved candidate of the Unit of IPOs., Narnaul, who was on deputation as orderly Peon Divisional Office and again transferred to his parent unit and now working as mail peon, Narnaul City,—*vide* IPOs; Narnaul XP/LK/3-10-66, is hereby removed from service under Rule 5 of C.C.S (TS), Rule, 1949, with immediate effect."

The plaintiff, thereafter, filed a suit, out of which the present second appeal has arisen, against the Union of India and Superintendent, Post Offices, Gurgaon, defendants 1 & 2 for a declaration that the above-mentioned order passed by defendant No. 2 removing him from service was un-constitutional, void and without jurisdiction inasmuch as no show-cause notice or charge-sheet was given to him. It was also stated that the plaintiff was entitled to recover the arrears of pay.

The defendants contested the suit and pleaded, *inter alia,* that the services of the plaintiff were terminated under rule 5 of the Central Civil Services (Temporary Service) Rules, 1949 and as such Article 311 of the Constitution did not apply in the instant case.

The trial Judge came to the conclusion that the impugned order was illegal, because the plaintiff was removed from service with immediate effect and one month's notice as provided in rule 5 had not been given to him. It was, however, found by him that Article 311 of the Constitution was not attracted, as it had not been satisfactorily proved that the plaintiff was either a permanent or quasi-permanent servant. On these findings, the suit of the plaintiff was decreed.

Against this decision, the Union of India went in appeal before the learned Senior Subordinate Judge, Narnaul. He held that rule 5 did not authorise the removal of a government servant from service even though he might be a temporary hand. Article 311 of the Constitution, according to the learned Judge, applied to all Government servants whether permanent or temporary so far as their dismissal, removal or reduction in rank was concerned. Since the plaintiff was removed from service, the provisions of Article 311 of the Constitution applied to the present case. As, admittedly, no show-cause notice was ever given to the plaintiff, the impugned order could not be maintained. He, accordingly, confirmed the finding of the trial court to the effect that the said order was without jurisdiction and unconstitutional though on different grounds, because; according to him; the same violated the mandatory provisions of Article 311 of the Constitution. As a result, the appeal was dismissed.

The Union of India has come here in second appeal.

As I have said before, the counsel for the parties were agreed that the plaintiff was a temporary hand and had not been made quasi-permanent. It is true that in the impugned order, the words were that the plaintiff had been *removed* from service, but since these words were followed by "under rule 5 of the Central Civil Services (Temporary Services Rules), 1949," it was clear that he was not actually removed from service, but his services were *terminated.* The mere fact that defendant No. 2 had inadvertently used the words 'removed from service' would not convert the 'termination of service' into 'removal from service' thereby bringing

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into operation the provisions of Article 311 of the Constitution. As a matter of fact, learned counsel for the respondent, frankly conceded that Article 311 of the Constitution could be of no assistance to the plaintiff. He, however, maintained that since the termination of services of the plaintiff was against the provisions of rule 5, inasmuch as one month's notice as provided by this rule, was not given to him, the impugned order was liable to be set aside on that ground alone. The sole question for decision in this case, therefore, is whether there is any merit in this contention of the learned counsel.

Relevant part of rule 5 reads as under:—

"(a) The service of a temporary government servant who is not in quasi-permanent service shall be liable to termination at any time by notice in writing given either by the Government servant to the appointing authority, or by the appointing authority to the government servant.

(b) The period of such notice shall be one month, unless agreed to by the Government and by the Government servant:

Provided that the service of any such government servant may be terminated forthwith by payment to him of a sum equivalent to the amount of his pay plus allowances for the period of the notice or as the case may be, for the period by which such notice falls short of one month or any agreed longer period:

* * * * *".

A plain reading of this rule would show that the appointing authority was fully empowered to terminate the services of a temporary government servant who had not been made quasi-permanent, by giving him one month's notice in writing. According to the proviso, the services of such a Government servant could also be terminated *forthwith*, if he was paid a sum equivalent to the amount of his pay plus allowances for the period of the notice, i.e., one month. In other words, if the appointing authority decides to terminate the services of the Government servant forthwith, it has to give him one month's salary. That does not, however, mean that if the said pay or allowance is not given, the order would not be effective or would become invalid. The rule does not say that the payment of the salary and the allowances is a condition precedent for making the order effective. The rule also

does not say that the salary and the allowances have to be paid along with the passing of the order terminating the services. It cannot be said that if the salary is not paid simultaneously, the government servant is entitled to come back to service. The order will come into force on the day it is passed and all that the government servant is entitled to is the salary and allowances for the notice period. He can ask for them and if the Government refuses to pay the same, he can institute a suit for their recovery. The order, however, cannot be kept in abeyance or rendered invalid, because the said payment has not been made in the first instance. Under this rule, the appointing authority is vested with the right of terminating the services of the Government servant forthwith and correspondingly the government servant has a right to demand salary and allowances for the notice period from the government. In my view, therefore, the trial Judge was in error in holding that simply because the salary and the allowances for the notice period were not paid to the plaintiff when the impugned order was passed, the same became invalid and without jurisdiction. I would, consequently, accept this appeal, reverse the decisions of the courts below and dismiss the plaintiff's suit. In the circumstances of this case, however, I will leave the parties to bear their own costs in this Court. I may mention that the learned Deputy Advocate-General, who appeared on behalf of the Union of India, made a statement at the bar that the salary and the allowances due to the plaintiff under rule 5 would be paid to him within one month from today.

B.R.T.

FULL BENCH

Before A. N. Grover, Harbans Singh and D. K. Mahajan, JJ.

JUGAL KISHORE,—*Petitioner*

versus

DR. BALDEV PARKASH,—*Respondent*

Election Petition No. 9 of 1967.

September 1, 1967

Representation of the People Act (XLIII of 1951)—Ss. 109 and 110—Application for leave to withdraw election petition—How to be dealt with—Application not made bona fide—*Whether must be refused.*