what land had been allotted to the defendant-vendees in lieu of Khasra Nos. 642 *min* (3 *bighas* 15 *biswas*) *and* 643 *min* (v *bigha* 11 *biswas*) of which they were not the tenants on August 29, 1960. Accordingly, the case is remitted to the learned trial Court to determine the land allotted to the defendant-vendees in lieu of the land measuring 5 *bighas* 6 *biswas* and comprised in Khasra Nos. 642 *min* and 643 *min* and the proportionate price payable by the plaintiff-appellants to the defendant-vendees. The trial Court shall determine the above matter after affording an opportunity of hearing to the parties who are directed through their counsel to appear before it on November 27, 1972. The trial Court shall submit its report to this Court within four months of that date. This appeal will then be set down for hearing for passing the proper decree.

K. S. K.

APPELLATE CIVIL

Before Harbans Singh, C.J. and Bal Raj Tuli, J.

KHUSHI RAM GILL,—*Appellant.*

versus

THE STATE OF PUNJAB, ETC.,—*Respondents.*

L.P.A. No. 97 of 1972.

October 30, 1972.

Punjab Civil Service Rules, Volume II—Rules 5.7, 5.8, 5.9, *and* 5.10—*Government employees selected for discharge under rules* 5.7 *and* 5.8—*Rules* 5.9 *and* 5.10—*Whether apply only to such employees —Notice of discharge under rules* 5.9 *and* 5.10—*Whether can be given to all Government employees.*

Held, that rule 5.9 of Punjab Civil Service Rules, Volume II applies to a Government employee holding a permanent post before his services are dispensed with on the abolition of his post. This may refer to the selection made under rules 5.7 and 5.8, but rule 5.9(b) deals with a person holding a temporary post and is unconcerned with rules 5.7 and 5.8. Similarly, rule 5.10 cannot be said to apply to Government employees selected under rules 5.7 and 5.8. Notice of discharge as mentioned in rules 5.9 and 5.10 deals with all kinds of Govtrnment employyes, whether in permanent employment or temporary employment or for a fixed term under a contract of employment. Hence rules 5.9 and 5.10 do not apply *only* to

those Government servants who are selected for discharge under rule 5.7 and 5.8 which precede these rules.

Letters Patent Appeal under Clause X of the Letters Patent ayainst the judgment of Hon'ble Mr. Justice R. S. Narula, passed in Civil Writ No. 234 of 1966 on 24th January, 1972.

Ram Rang, Advocate, *for the appellant.*

K. P. S. Sandhu, Advocate, for Advocate-General (Punjab), *for the respondents.*

JUDGMENT

Judgment of the Court was delivered by:—

TULI, J.—The appellant, Khushi Ram Gill, was appointed as Taxation Sub-Inspector for one year only by order, dated March 5, 1949, issued by the Excise and Taxation Commissioner, East Punjab. The case was, however, forwarded to the Commissioner, Ambala Division for approval, as under the Punjab Excise Subordinate Service Rules, 1943, (hereinafter called the Rules), the appointing authority was the Commissioner of the Division. The Taxation Department was made permanent with effect from March 1, 1950, but there is no order placing the appellant on probation against a permanent post or confirming him in this post ever. On March 28, 1960, a charge-sheet was issued to the appellant by the Commissioner, Ambala Division, and after receiving his reply, the matter was enquired into by an Enquiry Officer. On the report of the Enquiry Officer, two annual increments of the appellant were stopped with cumulative effect by the Commissioner, Ambala Division, by order, dated June 19, 1961. On July 29, 1963, the appellant was served a notice under rule 5.9(b) of the Punjab Civil Servires Rules, Volume II, informing him that he would stand discharged from Government service after the expiry of one month. On receipt of that notice, the appellant, by letter, dated August 9, 1963, asked for the grounds on which his services were being terminated. In reply to that letter, he was informed, by letter, dated 26th of August, 1963, by the Excise and Taxation Commissioner, Punjab, that he had been given notice of discharge from service in terms of rule 5.9(b) of the Punjab Civil Services Rules, Volume II, and that there were no other grounds. Against the notice of discharge, the appellant filed an appeal on October 14, 1963, which was held to be not maintainable and was treated as a representation. It

was, however, rejected by the Government and the rejection was conveyed to him by letter, dated March 12, 1965. The appellant then filed Civil Writ No. 234 of 1966 in this Court on February 2, 1966, which has been dismissed by the learned Single Judge by order, dated January 24, 1972. The present appeal under Clause 10 of the Letters Patent is directed against that order.

(2) The first point argued by the learned counsel for the appellant is that in terms of the rules of service governing the appellant, he was to be deemed to be on probation in spite of the fact that he was, in the first instance, appointed temporarily but was allowed to continue in service for 14 years and should be deemed to have been confirmed in his post, and thereafter his services could not be terminated under rule 5.9(b) *ibid.* Reliance is placed on the judgment of their Lordships of the Supreme Court in *The State of Punjab* v. *Dharam Singh* (1). The appellant was appointed for one year only, in the first instance, by order, dated March 5, 1949, and no other order has been referred to or produced appointing the appellant on probation against a permanent post or confirmnig him in that post. It is true that the appellant was allowed to continue in service for about 14 years, but his status of a temporary employee did not change. He, therefore, remained throughout a temporary government servant, whose services could be terminated under rule 5.9(b) *ibid.* That rule reads as under:—

> "When it is proposed to discharge a person holding a temporary post before the expiry of the term of his appointment or a person employed temporarily on monthly wages without specified limit of time or duty, a month's notice of discharge should be given to such a person, and his pay or wages must be paid for any period by which such notice falls short of a month."

From the facts stated above, it is clear that the appellant was employed temporarily on monthly wages without specified limit of time or duty after the expiry of original one year and, therefore, he could be discharged from service by giving him a month's notice. The judgment in *Dharam Singh's case* (1) (supra) is not applicable to the case of the appellant. It cannot, therefore, be said that the appellant could not be discharged from service after giving him one month's

(1) 1968 S.L.R. 247.

notice under rule 5.9(b) *ibid*. In this view of the matter, there is no substance in the plea raised by the learned counsel for the appellant that the termination of his services is contrary to Article 311(2) of the Constitution. Article 311 of the Constitution applies to dismissal, removal from service or reduction in rank by way of punishment and does not apply to a temporary government servant whose services are terminated in terms of the service rules. This submission is, therefore, repelled.

(3) The second submission made by the learned counsel for the appellant is that rule 5.9(b) *ibid* applies only to those Government employees, who are to be selected for discharge under rules 5.7 and 5.8 of the Punjab Civil Services Rules, Volume II, which precede rule 5.9. For this submission, reliance is placed on a Division Bench judgment of the Delhi High Court in *Rajendra Sareen* v. *State of Haryana and others* (2). The relevant observations are to be found in paragraph 49 of the report reading as under:—

> "Rules 5.7 and 5.8 are followed by rule 5.9 and 5.10 in subsection B (ii) and deal with notice of discharge. It follows that the notice of discharge envisaged in rule 5.9(b) is consequent upon 'the reduction of an establishment' contemplated under rule 5.7. In the present case, it cannot be disputed that the petitioner's discharge from service was not the result of any reduction of establishment. The order terminating the petitioner's services by one month's notice is, therefore, liable to be quashed on this ground as well."

We regret that we cannot agree with the interpretation of the learned Judges. Rule 5.9(a) of the said rules applies to a Government employee holding a permanent post before his services are dispensed with on the abolition of his post, which may reasonably be interpreted to refer to the selection made under rules 5.7 and 5.8. Rule 5.9(b) deals with a person holding a temporary post and is unconcerned with rules 5.7 and 5.8. Similarly, rule 5.10 cannot be said to apply to Government employees selected under rules 5.7 and 5.8. Chapter V is divided into separate sections. Section II deals with 'Compensation Pension'. It is further divided into two parts. Part A deals with 'Conditions of Grant' and Part B deals wth 'Procedure'. In Part B, rules 5.7 and

(2) A.I.R. 1970 Delhi 132.

5.8 deal with 'Selection for Discharge' and rules 5.9 and 5.10 deal with 'Notice of Discharge'. Notice of discharge mentioned in these rules deals with all kinds of Government employees, whether in permanent employment or temporary employment or for a fixed term under a contract of employment. It cannot, therefore, be said that rules 5.9 and 5.10 apply only to those Government servants who are selected for discharge under rules 5.7 and 5.8 which precede these rules. An appeal against the judgment of the Delhi High Court was filed in the Supreme Court and that decision is reported as *State of Haryana and others* v. *Rajindra Sareen* (3). Their Lordships did not decide whether the services of Rajindra Sareen could be dispensed with under rule 5.9(b) *ibid* and left it open. It cannot, therefore, be said that the decision of the Delhi High Court was affirmed by their Lordships of the Supreme Court. Respectfully disagreeing with the view expressed by the learned Judges of the Delhi High Court, we hold that the appellant's services could be dispensed with by issuing notice of discharge under rule 5.9(b) of the Punjab Civil Services Rules, Volume II.

(4) Another submission made by the learned counsel for the appellant is that the notice of discharge was issued by the Excise and Taxation Commissioner and not by the Commissioner of the Division who was his appointing authority. The Punjab Excise Subordinate Service Rules, 1943, were amended by the Punjab Government by notification No. 1298-E&T, dated the 28th of February, 1952, under which the Excise and Taxation Commissioner has been made the appointing authority of Taxation Sub-Inspectors. There is no requirement that the notice of discharge of a temporary government employee must be given by the authority who originally appointed him. Under the service rules, the Excise and Taxation Commissioner is the appointing authority and, in our opinion, he could issue the notice of discharge, which cannot be held to be invalid because it was not issued by the Commissioner of Patiala Division or the Financial Commissioner and was issued by the Excise and Taxation Commissioner.

(5) The learned counsel then submitted that the order of discharge, in view of the preceding circumstances, was passed by way of punishment by the Excise and Taxation Commissioner and cannot be

(3) 1972 S.L.R. 112.

said to be an order of discharge simpliciter. The notice of discharge issued to the appellant, by letter, dated July 29, 1963, reads as under:—

> "You are hereby given one month's notice under Rule 5.9(b) of the Punjab Civil Services Rules, Volume II after which you shall stand discharged from Government service."

On receipt of this notice, the appellant asked for the grounds on which his services were being terminated by letter, dated August 9, 1963. In reply to that letter, the Excise and Taxation Commissioner informed him by letter, dated August 26, 1963, that he had been given notice of discharge from service in terms of rules 5.9(b) of the Punjab Civil Services Rules, Volume II, and that there was no other ground. In the meanwhile, on August 17, 1963, the appellant was communicated the following adverse remarks regarding his work and conduct for the year 1962-63:—

> "(1) Never thorough in his inspection.
>
> (2) Arrears are heavy. Did not exert to clear them as also the references.
>
> (3) Did not put his mind towards detection.
>
> (4) A bad type, should improve his reputation for honesty and integrity as also his work."

(6) These adverse remarks do not show that any punishment was being inflicted on the appellant. Under the service rules, the adverse remarks had to be conveyed to the appellant. If at all these remarks show that the work of the appellant was not satisfactory and that might have prompted the Excise and Taxation Commissioner to discharge him from service. The previous departmental enquiry held against him in 1961 had culminated in the imposition of minor punishment of stoppage of two increments and it cannot be said that a further punishment was being inflicted on the appellant as a result of that enquiry by dispensing with his services. In the circumstances of this case, it cannot be held that the order of discharge was issued by way of punishment and, therefore, the procedure prescribed in Article 311(2) of the Constitution should have been followed.

(7) The next point urged by the learned counsel for the appellant is that the appellant should be deemed to have been employed on yearly basis and therefore, his services could not be terminated

before the expiry of the financial year for which the financial sanction existed. Reliance is placed on the judgment of the Delhi High Court in *Rajendra Sareen's case* (2) (supra) and the judgment of their Lordships of the Supreme Court in that very case which have been referrred to above. Their Lordships of the Supreme Court held that the post, which Rajendra Sareen was holding, was being renewed from year to year and since that was an isolated post, his appointment to that post was coterminous with the continuance of the post in the absence of any order to the contrary. The same thing cannot be said in the present case. The post which the appellant was holding was one of the many temporary posts and not an isolated post created only for the appellant. It cannot be said that the creation and sanction of the post and the appointment of the appellant thereto were conterminous and had to exist together. The appellant was appointed against one of the temporary posts that existed in the department and, therefore, his case is clearly distinguishable from *Rajendra Sareen's case* (supra).

(8) For the reasons given above, we find no merit in this appeal which is dismissed, but the parties are left to bear their own costs.

K. S. K.

APPELLATE CIVIL

Before Harbans Singh, C.J. and Bal Raj Tuli, J.

SMT. TULSAN DEVI,—*Appellant.*

versus

SHRIMATI KRISHNI DEVI,—*Respondent.*

L.P.A. No. 182 of 1972.

November 9, 1972.

Hindu Marriage Act (XXV of 1955)—Section 11—Petition under—Whether can be made only during the life time of both the spouses—Civil suit for declaring a marriage nullity—Whether barred.

Held that section 11 of the Hindu Marriage Act,, 1955 does not expressly state that a petition for a declaration of nullity of marriage under that section cannot be made by one spouse after the