

Chint Ram
v.
The Small
Town Com-
mittee,
Sujanpur
—
Chopra, J.

Committee in its written statement or before either of the Courts below.

In the result, the appeal is dismissed with costs.

CIVIL WRIT

Before Khosla and Falshaw, JJ.

PRITHVI RAJ BALI,—Petitioner

v.

THE STATE OF DELHI AND ANOTHER,—Respondents

Civil Writ No. 257-D of 1954.

Constitution of India, 1950—Article 311—Temporary Government Servant—Whether entitled to the protection of Article 311—Original appointment in Sind before partition by Superintendent of Police and desertion from that post resulting in dismissal as a result of partition—Fresh appointment as temporary Head Constable in Delhi Police by Deputy Inspector-General of Police after partition—Dismissal by Superintendent of Police—Whether valid.

Held, that temporary Government servants in civil employ are not entitled to the protection afforded by Article 311 of the Constitution. This Article was intended to protect permanent members of the services and not individuals who are recruited temporarily to short term posts, and as long as the service is on a temporary basis it does not matter whether it is for a few weeks or a few years. A temporary Government servant knows that he has no permanent lien on the post to which he has been appointed and can have no grievance if he is removed at short notice and without cause being assigned to him.

Held, that where the petitioner was appointed a police constable in Sind by the Superintendent of Police before partition which post he deserted as a result of partition resulting in his dismissal from service and was temporarily recruited as a Head Constable in Delhi Police by the Deputy

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Inspector-General of Police after partition, the appointment in Delhi was a fresh appointment and no authority subordinate to the Deputy Inspector-General of Police was competent to dismiss him. The Superintendent of Police, being an authority subordinate to the Deputy Inspector-General of Police, could not dismiss him.

Petition under Act 226 of the Constitution of India, praying that this Honourable Court may be pleased to give such directions orders or writs in the nature of Mandamus and/or Certiorari and/or prohibition for the following reliefs :—

- (a) *An appropriate writ, direction or order directing the respondent to produce before this Honourable Court*
- (1) *Records showing therein the appointment of the petitioner by Mr. D. W. C. Mehra, the then D.I.G. of Police, Delhi, in September, 1947, as H. C. and then as officiating A.S.I.*
- (2) *Records showing as to whether any orders had been obtained from the D. M., Delhi, under P.R. 16.38(2) before holding any departmental enquiry against the petitioner.*
- (b) *An appropriate Writ or direction or order quashing the orders of his dismissal and re-instating him with effect from the 29th February, 1952 (the date when he was dismissed).*
- (c) *For any such relief, writ or order or direction as this Honourable Court may deem fit.*
- (d) *That this Honourable Court may be pleased to award costs of the petition.*

R. R. CHHABRA, for Petitioner.

BISHAMBAR DAYAL, for Respondents.

JUDGMENT.

KHOSLA J. This petition under Article 226 of the Constitution has been referred to a Division Khosla, J.

Prithvi Raj Bench in pursuance of an order made by Dulat, J.,
Bali before whom it came up in the original instance.
and others

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Khosla, J.

The petitioner is Prithvi Raj Bali who was acting as Assistant Sub-Inspector of Police in the Delhi State. He was found guilty of stealing a number of postal orders from a letter which he handled in the Censor's office. Charges were framed against him and upon these charges an inquiry followed. The report of the Enquiry Officer was that the charges had been proved. Upon this a recommendation was made for the petitioner's dismissal and the Superintendent of Police, C.I.D., passed orders of dismissal after giving him a notice to show cause against the proposed punishment. The petitioner thereafter filed an appeal which was heard by the Inspector-General of Police, Delhi. This appeal was dismissed, and an appeal to the Chief Commissioner of Delhi, met the same fate. Finally a mercy petition was sent up by the petitioner but this too was dismissed by the Inspector-General of Police, Delhi. Thereafter the petitioner filed the present petition in this Court contending that he had been wrongfully dismissed because the officer who dismissed him was subordinate to the officer who appointed him and, therefore, the provisions of Article 311 of the Constitution had not been observed.

The reason why Dulat, J., referred this matter to the Division Bench was that there was some doubt as to the post held by the Officer who appointed the petitioner. The petitioner was originally serving in Sind where he was appointed to the post of a Police Constable by the Superintendent of Police. The case for the State is that although he was recruited afresh to the Delhi Police the appointing authority in Sind was to be deemed the appointing authority for the purposes

of Article 311 of the Constitution. The order recruiting the petitioner to the post of Head Constable was made by the Deputy Inspector-General of Police. The facts are that the petitioner deserted from his original post in Sind and was dismissed from service. He arrived in Delhi and was temporarily recruited in the Delhi Police as a Head Constable with effect from the 25th of September, 1947. The order passed by the Deputy Inspector-General of Police was as follows:—

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“Prithvi Raj Bali of Sind-Karachi Police is temporarily recruited in the Delhi Police in his substantive rank of Head Constable. He reports that he has been officiating as A.S.I. since 15th September, 1944.”

This order was substituted by a subsequent order, dated the 31st of October, 1947, which is as follows:—

“This office order No. 727/EST/27-12, dated 25th September, 1947, regarding temporary recruitment of Prithvi Raj Bali as A.S.I. of Police, with effect from 25th September, 1947, is cancelled. He is now temporarily recruited in his substantive rank of Head Constable with effect from 25th September, 1947, and promoted to Officiating Assistant Sub-Inspector, with effect from 1st October, 1947.”

Both these orders were issued by the Deputy Inspector-General of Police and it is, therefore, clear that the appointment of the petitioner was made by the Deputy Inspector-General of Police and that no authority subordinate to him was competent to dismiss him. The dismissal in the present case

Prithvi Raj was under the orders of the Superintendent of
 Bali Police, C.I.D., and, therefore, the petitioner was
 v. dismissed by an authority subordinate to the one
 The State of which appointed him.
 Delhi
 and another

Khosla, J.

The matter, however, does not rest there and this petition must be dismissed on the ground that the petitioner was not a permanent member of the Police Force. He was recruited on a temporary basis only and this Court has consistently taken the view that temporary Government servants in civil employ are not entitled to the protection afforded by Article 311 of the Constitution. ~~The~~ learned counsel for the petitioner has sought to argue that because the word 'substantive' was used in the two orders quoted above the petitioner held a permanent and substantive post, but the wording of the orders makes it quite clear that the word 'substantive' refers to the post which the petitioner held in Sind. His appointment was on a temporary basis and he was, therefore, liable to be removed at will. The Nagpur High Court has taken the same view in *Laxminarayan Chironjilal Bhargava v. Union of India* (1). At page 114 of the report the following passage appears:—

“A person cannot be deemed to be a member of a service unless he is permanently absorbed therein; nor, in our opinion, can he be deemed to be the holder of such post unless he holds it permanently. For holding a post permanently the post itself must be permanent and the incumbent must be a permanent employee. If the post itself is temporary then the person who is working thereon cannot be said to 'hold' it. Similarly, where the post is permanent

(1) A.I.R. 1956 Nag. 113

but the holder is only temporarily working on it, he cannot be said to 'hold' the post but to merely officiate in that post."

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The learned Judges referred to a decision of the Privy Council in *Shenton v. Smith* (1), which supports the view taken by the Nagpur High Court. With great respect I fully agree with this view. There is an unreported case of this High Court in which the same view was expressed.

There seems to me nothing unjust in excluding temporary Government servants from the protection of Article 311 of the Constitution. This Article was intended to protect permanent members of the services and not individuals who are recruited temporarily to short-term posts, and as long as the service is on a temporary basis it does not matter whether it is for a few weeks or a few years. A temporary Government servant knows that he has no permanent lien on the post to which he has been appointed and can have no grievance if he is removed at short notice and without cause being assigned to him. Normally temporary Government servants are recruited on a contract basis and the terms of their employment are communicated to them. In the present case the petitioner was told unmistakably that he was being temporarily recruited and he could be under no misapprehension regarding his rights. He was, therefore, liable to be removed without the procedure contemplated by Article 311 of the Constitution being followed.

In the present case the petitioner had the fullest opportunity to defend himself. Charges were framed against him and a detailed enquiry was held. The report of the Enquiry Officer was that

(1) 1895 A.C. 229

Prithvi Raj he was guilty of these charges. When he appeal-
 Bali ed to the Inspector-General of Police, his appeal
 v. was carefully considered and the Inspector-
 The State of General wrote a lengthy order in which he discus-
 Delhi sed the petitioner's case from all aspects. In a
 and others case of this type I would not be prepared to exer-
 Khosla, J. cise the extraordinary powers by Article 226 of
 the Constitution.

I would, therefore, dismiss this petition with costs.

Falshaw, J. FALSHAW, J.—I agree.

REVISIONAL CIVIL

Before Bhandari, C. J.

Mst. DHAPAN,—Petitioner

v.

RAM SARAN AND OTHERS,—Respondents

Civil Revision No. 180 of 1955.

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High Court Rules and Orders, Volume I, Chapter 1-K, para 4—Object and Scope of—Date of hearing declared a holiday—Appeal taken up next day and dismissed in default—Order of dismissal for default, whether justified—Code of Civil Procedure (Act V of 1908), Order 41, rules 17 and 19.

Held, that rule 4 appears to provide that if the presiding officer of the Court is unable to attend Court on a particular day all cases fixed for that day shall be deemed to have been automatically adjourned to the next working day and that the parties or their counsel shall attend Court on the next day, so that the next date of the hearing should be fixed in their presence.

Held further, that where the date fixed for hearing of a case happens to be a holiday, the Court is in no way justified in taking up the case on the following day and in