

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ WRIT PETITION (CIVIL) 2553 OF 2007

Reserved on : 30th July, 2009
Date of Decision : 10th August, 2009

MANGAL SINGH

..... Petitioner

Through: Mr. Kumar Parimal, Adv.

versus

THE CHAIRMAN, NATIONAL RESEARCH DEVELOPMENT
CORPORTION AND OTHERS.

..... Respondents

Through: Mr. Ashwini Kumar Mata,
Senior Adv. with
Ms. Manmeet S. Sethi and
Dr. Singh, Adv.

CORAM:
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the Reporter or not? Yes.
3. Whether the judgment should be reported in the Digest? Yes.

JUDGMENT

SIDDHARTH MRIDUL, J.

1. By way of the present writ petition the Petitioner seeks a direction to quash the order no. 07-NRDC(361)/2004 dated 6th April, 2004 passed by the Respondent thereby terminating the service of the Petitioner and the order dated 1st December, 2006 passed by the Appellate Authority rejecting the appeal dated 17th June, 2004.
2. The brief facts as are necessary for the adjudication of the present writ petition are that:

- (a) The Petitioner was appointed on daily wage basis on 25th May, 1996 as Data Entry Operator Grade-III in the Respondent-Corporation. The Respondent-Corporation further vide order dated 6th June, 2000 appointed the Petitioner on contractual basis for a period of three years with effect from 6th June, 2000. The Respondent-Corporation vide order dated 5th June, 2003 further extended the period of appointment of the Petitioner for one more year with effect from the 6th June, 2003.
- (b) The Respondent-Corporation vide order dated 12th February, 2004 transferred the Petitioner to the Regional Office, Bangalore for two months or till the work was completed. The Petitioner joined the Regional Office, Bangalore on 11th March, 2004. However, since the weather conditions did not suit the Petitioner and he suffered from allergic bronchitis syndrome, the Petitioner vide representation dated 22nd March, 2004 and 31st March, 2004 requested the Respondent-Corporation to call him back to the Head Office immediately. Further vide a representation dated 1st April, 2004 the Petitioner informed the Regional Manager, Bangalore about his going back to Delhi on the ground that the health of the Petitioner was deteriorating day by day.
- (c) Thereafter, the Petitioner immediately upon coming back to Delhi informed the Head Office of the Respondent-

Corporation vide his representation dated 7th April, 2004 and annexed thereto a copy of his medical certificate dated 22nd March, 2004.

- (d) The Respondent-Corporation issued a office memorandum dated 22nd April, 2004 calling upon the Petitioner to explain in writing about the submission of a fake and forged mark sheet and certificate in respect of his graduation degree from Magadha University, Patna within a period of three days from the receipt thereof and asked the Petitioner to show cause why disciplinary action be not taken against him under the rules of the Corporation governing his service conditions. The Respondent Corporation vide another office memorandum dated 26th May, 2004 extended time upto 31st May, 2004 to submit the explanation to the said office memorandum.
- (e) The Petitioner in response to the office memorandum dated 24th April, 2004 and 26th May, 2004 submitted his explanation and denied the allegations. Thereafter, the Respondent-Corporation abruptly vide order dated 4th June, 2004 terminated the service of the Petitioner.
- (f) The Petitioner being aggrieved with the order dated 4th June, 2004 preferred Civil Writ Petition No. 4603 of 2005 praying for the following relief:

“(a) Quash the Order No. 07 NRDC (361)/2004 dated 4.6.2004 passed by the Respondent No.5 herein terminating the services of the petitioner.

- (b) Direct the respondent-Corporation to reinstate the petitioner with all the benefits of backwages and continuity of service.
 - (c) And pass any other order or orders as Your Lordships may deem fit and proper to meet the ends of justice.”
- (g) The Respondent-Corporation filed counter affidavit in the said Civil Writ Petition No. 4603 of 2005 before this Court and made various allegations against the Petitioner and further stated that the termination order was passed because the Petitioner had intentionally violated the terms and conditions of the Respondent-Corporation with malafide intentions and thereby played fraud.
- (h) This Court vide order dated 4th October, 2006 directed the Respondent–Corporation to decide the appeal filed by the Petitioner within a period of three months and reserved liberty to the Petitioner to approach the Court again, if need so arises, in accordance with law.
- (i) Thereafter, the Respondent-Corporation vide order dated 1st December, 2006 rejected the appeal of the Petitioner herein and upheld the termination order dated 4th June, 2004 passed by the competent authority.
- (j) Aggrieved by the aforesaid action on behalf of the Respondent-Corporation the Petitioner has filed the present writ petition.

3. On behalf of the Petitioner Mr. Kumar Parimal, counsel urged that the order of termination was a punitive and stigmatic order and

should not have been passed without conducting a full-fledged departmental enquiry. Counsel for the Petitioner also argued that the Petitioner was a temporary employee, inasmuch as, under the service regulations of the Respondent an employee whose services have been engaged for specific period, extendable from time to time, was a temporary employee, and as such the services of the Petitioner could not have been dismissed without complying with the requirements of Article 311 of the Constitution of India, and that the services of the Petitioner could not have been discharged either without giving him a month's notice or pay in lieu thereof.

4. On the other hand, on behalf of the Respondent-Corporation Mr. Ashwini Kumar Mata, senior counsel submitted that the jural relationship between the parties was that of a contract for fixed term and that the Respondent-Corporation had decided not to extend the period of the Petitioner's service on the ground of misconduct. Learned senior counsel further urged that the impugned order was not a dismissal but merely a communication of the Respondent-Corporation's decision not to extend/renew further the contract of the Petitioner.

5. Before considering the rival submissions on behalf of the parties it would be relevant to extract the judicial pronouncements relied upon by them in support of their submissions.

6. Learned counsel appearing on behalf of the Petitioner firstly relied upon the judgment of the Supreme Court in ***Radhey Shyam Gupta v. U.P. State Agro Industries Corporation Ltd. and***

Another ([1999] 2 Supreme Court Cases 21). In that case whilst considering the question of termination of service of a temporary employee the Supreme Court observed:

“34. But in cases where the termination is preceded by an enquiry and evidence is received and findings as to misconduct of a definitive nature are arrived at behind the back of the officer and where on the basis of such a report, the termination order is issued, such an order will be violative of the principles of natural justice inasmuch as the purpose of the enquiry is to find out the truth of the allegations with a view to punish him and not merely to gather evidence for a future regular departmental enquiry. In such cases, the termination is to be treated as *based* or *founded* upon misconduct and will be punitive. These are obviously not cases where the employer feels that there is a mere cloud against the employee’s conduct but are cases where the employer has virtually accepted the definitive and clear findings of the enquiry office, which are all arrived at behind the back of the employee even though such acceptance of findings is not recorded in the order of termination. That is why the misconduct is the *foundation* and not merely the motive in such cases.”

7. Counsel for the Petitioner then relied upon a decision of the Supreme Court in ***Hari Ram Maurya v. Union of India and Others*** ([2006] 9 Supreme Court Cases 167). In that case the Supreme Court considered whether the termination of service is punitive and an enquiry therefore is mandatory where a clear charge of bribery is leveled against a temporary employee and the services of the employee have been terminated without holding an enquiry. The Supreme Court said:

“3. From the order of termination Annexure P-7, it appears that the same refers to the show-cause notice dated 20-8-2002 which is to be found at Annexure P-5. It is stated therein that the appellant demanded kickback with a view to help the complainant to get a favourable order in the pension matter. That being so, there was a clear charge of bribery leveled against the appellant. No doubt, the appellant was a temporary employee, but if he is sought to be removed on the ground that he was guilty of the charge of bribery, it becomes necessary for the

respondent Union of India to hold an inquiry and thereafter to act in accordance with law. In this case, admittedly, no inquiry was conducted, and that is obvious even from Annexure P-7, the letter described as disengagement of casual labour. We, therefore, allow this appeal and set aside the order of the High Court as also the order of termination Annexure P-7 dated 30-9-2002. This, however, will not prevent the respondents from taking action in accordance with law."

8. Counsel for the Petitioner lastly relied on the decision of the Constitution Bench of the Supreme Court in ***Jagdish Mitter v. The Union of India*** (AIR 1964 Supreme Court 446). In that case the Supreme Court observed:

"(9) It is also now settled that the protection of Art. 311 can be invoked not only by permanent public servants, but also by public servants who are employed as temporary servants, or probationers, (vide Parshottam Lal Dhingra's case, 1958 SCR 828: (AIR 1958 SC 36))(p. 858 (of SCR): (at p.48 of AIR)) and so, there can be no difficulty in holding that if a temporary public servant or a probationer is served with an order by which his services are terminated, and the order unambiguously indicates that the said termination is the result of punishment sought to be imposed on him, he can legitimately invoke the protection of Art. 311 and challenge the validity of the said termination on the ground that the mandatory provisions of Art. 311(2) have not been complied with. In other words, a temporary public servant or a probationer cannot be dismissed or removed from service without affording him the protection guaranteed by Art. 311(2).

(10) It is true that the tenure held by a temporary public servant or a probationer is of a precarious character. His services can be terminated by one month's notice without assigning any reason either under the terms of contract which expressly provide for such termination or under the relevant statutory rules governing temporary appointments or appointments of probationers. Such a temporary servant can also be dismissed in a punitive way; that means that the appropriate authority possesses two powers to terminate the services of a temporary public servant; it can either discharge him purporting to exercise its power under the terms of contract or the relevant rule, and in that case, it would be straightforward and direct case of discharge and nothing more; in such a case, Art. 311 will not apply. The authority can also act under its power to dismiss a temporary servant and make an order of dismissal in a straightforward way; in such a case, Art. 311 will apply."

9. On behalf of the Respondents learned senior counsel relied upon the following judgments:

1. ***State Bank of India and Ors. v. S.N. Goyal*** (JT 2008 (6) SC 398).
2. ***Secretary, State of Karnataka and Ors. v. Umadevi and Ors.*** (JT 2006 (4) SC 420).
3. ***India Literacy Board and Ors. v. Veena Chaturvedi and Ors.*** (JT 2005 (2) SC 435).
4. ***Surendra Prasad Tewari v. Uttar Pradesh Rajya Krishi Utpadan Mandi Parishad & Ors.*** (JT 2006 (8) SC 504).
5. ***Rajasthan State Road Transport Corporation & Anr. v. Bal Mukund Bairwa*** (JT 2009 (2) SC 423).

10. In ***State Bank of India & Ors.*** (supra) the Supreme Court observed:

“11. Where the relationship of master and servant is purely contractual, it is well settled that a contract of personal service is not specifically enforceable, having regard to the bar contained in Section 14 of the Specific Relief Act, 1963. Even if the termination of the contract of employment (by dismissal or otherwise) is found to be illegal or in breach, the remedy of the employee is only to seek damages and not specific performance. Courts will neither declare such termination to be a nullity nor declare that the contract of employment subsists nor grant the consequential relief of reinstatement. The three well recognized exceptions to this rule are:

- (i) where a civil servant is removed from service in contravention of the provisions of Article 311 of the Constitution of India (or any law made under Article 309);

(ii) where a workman having the protection of Industrial Disputes Act, 1947 is wrongly terminated from service; and

(iii) where an employee of a statutory body is terminated from service in breach or violation of any mandatory provision of a statute or statutory rules.

There is thus a clear distinction between public employment governed by statutory rules and private employment governed purely by contract. The test for deciding the nature of relief - damages or reinstatement with consequential reliefs - is whether the employment is governed purely by contract or by a statute or statutory rules. Even where the employer is a statutory body, where the relationship is purely governed by contract with no element of statutory governance, the contract of personal service will not be specifically enforceable. Conversely, where the employer is a non-statutory body, but the employment is governed by a statute or statutory rules, a declaration that the termination is null and void and that the employee should be reinstated can be granted by courts. (Vide : **Dr. S. Dutt v. University of Delhi**[AIR 1958 SC 1050]; **Executive Committee of UP State Warehousing Corporation Ltd. v. Chandra Kiran Tyagi** [1970 (2) SCR 250]; **Sirsi Municipality v. Cecelia Kom Francies Tellis** [1973 (3) SCR 348]; **Executive Committee of Vaish Degree College v. Lakshmi Narain** [1976 (2) SCR 1006]; **Smt. J. Tiwari v. Smt. Jawala Devi Vidya Mandir** [AIR 1981 SC 122]; and **Dipak Kumar Biswas v. Director of Public Instruction** [JT 1987 (1) SC 631; AIR 1987 SC 1422])."

11. In *Secretary, State of Karnataka and Ors.* (supra) the Supreme Court observed:

"**13.** During the course of the arguments, various orders of courts either interim or final were brought to our notice. The purport of those orders more or less was the issue of directions for continuation or absorption without referring to the legal position obtaining. Learned counsel for the State of Karnataka submitted that chaos has been created by such orders without reference to legal principles and it is time that this Court settled the law once for all so that in case the court finds that such orders should not be made, the courts, especially, the High Courts would be precluded from issuing such directions or passing such orders. The submission of learned Counsel for the respondents based on the various orders passed by the High Court or by the Government pursuant to the directions of Court also highlights the need for settling the law by this Court. The bypassing of the constitutional scheme cannot be perpetuated by the passing of orders without dealing with and deciding the

validity of such orders on the touchstone of constitutionality. While approaching the questions falling for our decision, it is necessary to bear this in mind and to bring about certainty in the matter of public employment. The argument on behalf of some of the respondents is that this Court having once directed regularization in the **Dharwad** case (supra), all those appointed temporarily at any point of time would be entitled to be regularized since otherwise it would be discrimination between those similarly situated and in that view, all appointments made on daily wages, temporarily or contractually, must be directed to be regularized. Acceptance of this argument would mean that appointments made otherwise than by a regular process of selection would become the order of the day completely jettisoning the constitutional scheme of appointment. This argument also highlights the need for this Court to formally lay down the law on the question and ensure certainty in dealings relating to public employment. The very divergence in approach in this Court, the so-called equitable approach made in some, as against those decisions which have insisted on the rules being followed, also justifies a firm decision by this Court one way or the other. It is necessary to put an end to uncertainty and clarify the legal position emerging from the constitutional scheme, leaving the High Courts to follow necessarily, the law thus laid down.

.....

38. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post."

12. In *India Literacy Board and Ors.* (supra) the Supreme Court observed that:

"16. Leave to appeal was sought for by the appellant on the above grounds, among others. It has been consistently held by this Court in various cases that in a case of contractual appointment for a fixed term, no mandamus can be issued for continuing them in service but in the present case as an interim measure a direction has been given by the High Court to issue appointment orders which was not even the main relief claimed in the writ petition."

13. In *Surendra Prasad Tewari* (supra) the Supreme Court observed:

"16. Admittedly, the appellant has not been appointed in terms of the relevant rules or in adherence to Articles 14 and 16 of the Constitution.

17. In *Umadevi's case* (supra), this Court has also dealt with another aspect of the matter and observed as under:

"47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission...."

18. The ratio of the aforementioned judgment is that the courts cannot encourage appointments which are made outside the constitutional scheme and it is improper for the courts to give any direction for regularization of the person who has not been appointed by following the procedure laid down under Articles 14, 16 and 309 of the Constitution.

.....

27. In view of the clear and unambiguous constitutional scheme, the courts cannot countenance appointments to public office which have been made against the constitutional scheme. In the backdrop of constitutional philosophy, it would be improper for the courts to give directions for regularization of services of the person who is working either as daily-wager, ad hoc employee, probationer, temporary or contractual employee, not appointed following the procedure laid

down under Articles 14, 16 and 309 of the Constitution. In our constitutional scheme, there is no room for back door entry in the matter of public employment.”

14. In *Rajasthan State Road Transport Corporation* (supra) the Supreme Court observed that:

“Where the relationship between the parties as employer and employee is contractual, right to enforce the contract of service depending on personal volition of an employer, is prohibited in terms of Section 14(1)(b) of the Specific Relief Act, 1963. It has, however, four exceptions, namely, (1) when an employee enjoys a status, i.e., his conditions of service are governed by the rules framed under the proviso appended to Article 309 of the Constitution of India or a statute and would otherwise be governed by Article 311(2) of the Constitution of India; (2) where the conditions of service are governed by statute or statutory Regulation and in the event mandatory provisions thereof have been breached; (3) when the service of the employee is otherwise protected by a statute; and (4) where a right is claimed under the Industrial Disputes Act or sister laws, termination of service having been effected in breach of the provisions there of.”

15. In order to comprehend the issue that arises in the present petition it would be imperative to extract the impugned order dated 4th June, 2004 around which the entire case revolves:

No.07-NRDC(361)/2004

June 4, 2004.

OFFICE ORDER

Sh. Mangal Singh, Data Entry Operator Gr. III (on contract basis) is hereby informed that it has been decided by the Management not to extend the period of his service beyond 5.6.2004 on the following grounds :-

1. Submission of fake and forged documents

Sh. Mangal Singh at the time of his interview for the post of Data Entry Operator Gr.III on contractual basis informed the Committee members that he is continuing Bachelor of Arts from Delhi University in English, Hindi, Pol. Science and History subjects. He has filled up a proforma to this effect and submitted the same to the Corporation. Later on in the year 2002, he submitted the photocopies of the Certificate and Marksheet purported to be issued by Magadh University and informed that he has acquired the BA (English Hons.) Degree from Magadh University through Rama Krishna Dwarka College at Patna.

On verification from the concerned College as well as from the Magadh University, it has been reported that the Degree and Marksheet are totally fake and forged documents. He was, therefore, vide this Office Memorandum of even number dated 22.4.2004 called upon to explain why disciplinary action should not be taken against him for submission of fake and forged documents. He was directed to furnish his written explanation within 3 days from the receipt of the OM failing which it will be presumed that he has nothing to say in this regard and disciplinary action shall be taken against him in accordance with Sl. No.6 of Terms and Conditions of his appointment printed on the back of his Appointment Letter dated 6th June, 2000. Sh. Mangal Singh did not give his written explanation till 31st May, 2004. However, he vide his letter dated 3rd June, 2004 gave written explanation in response to OM of even number dated 22.4.2004 only. The explanation given by him is vague, unspecific in nature and is not satisfactory. He has failed to give his written explanation in response to earlier OM No.NRDC-RO/Pers/04 dated 15th April, 2004 issued by Manager (Regional Office), Bangalore as well as OM of even number dated 26.5.2004 for disobedience of orders of his Reporting Officer as well as regarding his visit to Patna during his illness.

2. **Disobedience of orders of his Controlling Officer/with whom he was attached**

Sh. Mangal Singh did not comply with the orders of his Controlling Officer at Regional Office, Bangalore and left the place of his duty without prior permission/handing over the proper charge. He was time and again asked to concentrate on his work rather than indulging in other activities but he did not care to do so. He was also asked to improve his performance which he did not do.

3. **Misbehaviour/non-cooperation with his colleagues**

It has been reported that Sh. Mangal Singh has been mis-behaving and not cooperating with his colleagues thus creating unhealthy atmosphere.

This issues with the approval of competent Authority.

For and on behalf of
National Research
Development Corporation

(S.P. Nangia)
Administrative Officer

Sh. Mangal Singh
S/o Sh. Sumer Singh
Ward No.11, Shastri Nagar
Behind Church
Bahadur Garh -124507.

16. It is also necessary to extract the relevant portion of the Service Regulations of the Respondent-Corporation in order to appreciate the contentions made on behalf of the Petitioner. Regulation 3(g) defines

“temporary employee” thus:

- (i) An employee whose services have been engaged for specified period, which may be extended from time to time....

Regulation 10(i) states that:

Subject to the above the services of an employee may be terminated by the Corporation as follows:

- (a)
- (b) Temporary Employee: With a month’s notice or pay in lieu thereof.
- (c)

Provided that both in the case of (b) and (c) no such notice or pay in lieu thereof shall be necessary if the services of an employee are terminated as a result of disciplinary proceedings under Rule 13 below.

17. Reverting back to the facts of the present case, it is observed that the Petitioner was appointed for a fixed term on a contract. Therefore, under the provisions of the Service Regulations of the Respondent-Corporation, as an employee whose services had been engaged for a specific period, extended from time to time, the Petitioner was a temporary employee. It is also observed that before the services of the Petitioner were terminated an enquiry was held calling upon the Petitioner to explain in writing about the submission of a fake and forged mark sheet and certificate in respect of his graduation degree from Magadha University, Patna, and a Show Cause why disciplinary action be not taken against him, under the rules of the Corporation governing his service conditions, was issued. Further it is seen that the Petitioner’s contention is that the order of termination itself clearly shows that it was not a discharge on the

ground of coming to an end of fixed period of contract, but a dismissal from service on the ground of misconduct. A plain reading of the impugned order dated 4th June, 2004 itself demonstrates that the period of the Petitioner's service was not being extended beyond the 5th of June 2004 on the following grounds:- "*1. Submission of fake and forged documents.....*" "*2. Disobedience of orders of his Controlling Officer/with whom he was attached.....*" and "*3. Misbehaviour/non-cooperation with his colleagues*".

18. The impugned order further stated that the explanation given by the Petitioner in his reply letter dated 3rd June 2004 i.e. a day before his termination, was found to be vague, unspecific in nature and not satisfactory. Furthermore, in reply to ground A of the Petition, the Respondent-Corporation in their counter affidavit filed before this Court categorically stated that "the order was passed only after a full scale departmental enquiry about the conduct of the Petitioner and also because the Petitioner had intentionally violated the Terms and Conditions of his contractual employment with *mala fide* intentions." If that be so, then it is axiomatic that the said enquiry was conducted behind the Petitioner's back, and without affording him a reasonable opportunity of representing his case before an enquiry officer, duly appointed by the Respondent-Corporation.

19. No doubt, it has been urged by the Respondent-Corporation that the order of termination was owing to the coming to an end of the Petitioner's fixed period of service under the contract, but it seems to me that when the Petitioner was terminated, the impugned order

dated 4th June, 2004 clearly finds him guilty of misconduct, thereby casting a stigma on the Petitioner, and in that sense must be held to be an order of dismissal and not a mere order of discharge. It further seems that anyone who reads the order in a reasonable way, would naturally conclude that the Petitioner was found guilty of misconduct, and that must necessarily import an element of punishment which is the basis of the order and is its integral part.

20. It is trite to say, that when an authority wants to terminate the services of a temporary employee, it can pass a simple order of discharge without casting any aspersion against the temporary servant or attaching any stigma to his character. As soon as it is shown that the order purports to cast an aspersion on the temporary servant, it becomes idle to suggest that the order is a simple order of discharge. The test in such cases must be: does the order cast aspersion or attach stigma to the officer when it purports to discharge him? If the answer to this question is in the affirmative, then notwithstanding the form of the order, the termination of service must be held, in substance, to amount to dismissal.

21. I have gone through the decisions relied upon by the Respondents and none of them relate to the proposition of law discussed above. The ***State Bank of India's case*** (supra) deals with the issue whether a direction by the Civil Court to reinstate any employee amounts to granting specific performance of a contract of personal service. It was held that when an employee of a statutory body whose service is terminated, pleads that such termination is in

violation of statutory rules governing his employment, an action for declaration that the termination is invalid and that he is deemed to continue in service is maintainable and will not be barred by Section 14 of the Specific Relief Act.

The ***Secretary, State of Karnataka and Ors.*** (supra) was a case that pertained to the regularization of employees appointed by State Government on ad hoc basis, and the Supreme Court held that due to long service, an ad hoc employee did not acquire any right to permanent appointment.

In ***India Literacy Board and Ors.*** (supra) the Supreme Court was hearing an appeal against an interim order passed by the Allahabad High Court and issued an order to the Single Judge before whom the writ petition was posted to take up the matter on a priority basis and dispose of the same in accordance with law. It was not a matter that related to termination of services of a temporary employee, but rather to the issue whether in the case of contractual employment for a fixed term, mandamus can be issued continuing the employees in service.

Surendra Prasad Tewari's case (supra) was again a case relating to regularization of services in public employment and the Supreme Court followed the ratio of the earlier Constitution Bench decision in ***Secretary of State Karnataka and Ors.*** (supra) and held that it would be improper for the courts to give directions for regularization of services of persons working as daily-wager, ad hoc employee, probationers, temporary or contract employee, appointed without

following the procedure laid down under Articles 14, 16 and 309 of the Constitution.

The ***Rajasthan State Road Transport Corporation and Anr.*** (supra) was a case of employees governed by the State Road Transport Corporation Act and the standing orders, and it was held that disputes between the employees and employers need not necessarily be industrial disputes and that the Civil Court, where the employees instituted a suit challenging disciplinary proceedings, had plenary power and its ouster cannot be readily inferred.

22. On the other hand, the decision of the Constitution Bench of the Supreme Court in ***Jagdish Mitter's case*** (supra) is apposite to the issue at hand. In that case the Supreme Court held that the order of discharge of temporary servant, stating therein that the employee was found undesirable to be retained in Government service, amounted to an order of dismissal, thereby necessarily requiring compliance of Article 311(2) of the Constitution of India.

23. In the light of the discussion above, in my opinion, the Petitioner was dismissed without affording him the opportunity of presenting his case before the disciplinary authority, thereby violating the protection guaranteed to temporary servants under Article 311(2) of the Constitution of India. Further, the order of termination was not a discharge simplicitor but a dismissal, and was stigmatic and punitive in character. Also, the misconduct of the Petitioner was the foundation of the order of termination and not merely the motive. Resultantly, the impugned order of termination is held to be stigmatic

and punitive and not sustainable. I, therefore, allow this petition and set aside the impugned orders dated 4th of June 2004 and the consequent order in appeal dated the 1st of December, 2006 passed by the Respondent-Corporation. The Respondents are directed to reinstate the Petitioner, with all consequential benefits. This, however, will not prevent the Respondents from taking action in accordance with law.

24. The writ petition is disposed of with no order as to costs.

SIDDHARTH MRIDUL, J.

August 10, 2009

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