

Jarnail Singh & Ors. Etc vs State Of Punjab & Ors on 7 May, 1986

Equivalent citations: 1986 AIR 1626, 1986 SCR (2)1022, AIR 1986 SUPREME COURT 1626, 1986 LAB. I. C. 1086, (1986) 2 APLJ 13.1, 1986 2 UJ (SC) 235, 1986 SCC (L&S) 524, (1986) 2 LAB LJ 268, (1986) 2 LAB LN 364, (1986) 2 CURLR 192, (1986) 53 FACLR 266, 1986 (3) SCC 277, (1986) 2 SERVLR 278, (1986) 2 SUPREME 371, (1986) 2 SERVLJ 157

Author: B.C. Ray

Bench: B.C. Ray, A.P. Sen

PETITIONER:
JARNAIL SINGH & ORS. ETC.

Vs.

RESPONDENT:
STATE OF PUNJAB & ORS.

DATE OF JUDGMENT07/05/1986

BENCH:
RAY, B.C. (J)
BENCH:
RAY, B.C. (J)
SEN, A.P. (J)

CITATION:
1986 AIR 1626 1986 SCR (2)1022
1986 SCC (3) 277 1986 SCALE (1)1009
CITATOR INFO :
F 1991 SC1490 (6)

ACT:

Constitution of India, Art. 311(2) - Persons appointed on ad hoc basis - Order of termination challenged as casting stigma on service career - Whether court entitled to lift the veil to find out real basis of termination order.

Articles 14 and 16 - Protection under - Whether available to temporary government servants if arbitrarily discriminated against.

HEADNOTE:

The appellants were appointed as Surveyors on various dates between December 1976 to 1977 through employment exchange on purely temporary and ad hoc basis "up to a certain date or upto the date till the regular candidates were recommended by the Board, whichever was later". One of the terms of employment stipulated that their services could be dispensed with any time without any notice or reason.

The Government of Punjab, issued a Circular in September 1980 to the effect that the services of the ad hoc employees shall be regularised on certain conditions mentioned therein. Accordingly, the appellants submitted their requisite documents to the authorities concerned for regularisation of their services. However, their services were terminated with effect from 31.1.81 by respondent No.2. The termination order stated that "services of the employees are terminated because these posts are no longer required."

The appellants challenged the aforesaid orders of termination before the High Court in the Writ Petitions. The High Court dismissed the writ petitions summarily on the ground that the orders terminating services of the appellants petitioners did not attach any stigma to the service career of any of the appellants-petitioners, but they are made in terms of employment.

1023

In appeal to the Supreme Court, it was contended on behalf of the appellants : (i) that the impugned orders of termination were based by way of punishment and cast stigma on the appellants; and (ii) that persons who were recruited later than the appellants were allowed to continue and to remain in service to the detriment of the constitutional rights of the appellants and therefore, the impugned orders of termination were discriminatory infringing Articles 14 and 16 of the Constitution. On the other hand Counsel for the respondent argued : (i) that the orders of termination have been made in accordance with the terms of the ad hoc appointment of the appellants which provided that their services can be terminated at any time without assigning any reason and as such the impugned orders could not be assailed on the ground of attaching any stigma to the service career of the appellants; and (ii) that where the impugned order is per se innocuous and it is made in accordance with the terms of the appointment, the court should not delve into the circumstances which were taken into consideration by the authorities concerned in making the order.

Allowing the appeals,

^

HELD: 1. The impugned orders of termination of the services of the appellants are liable to be quashed, cancelled and set aside. Let appropriate writs of mandamus be issued directing the respondents, not to give effect to the impugned orders of termination of the services of the appellants. A writ of certiorari be also issued quashing and cancelling the impugned orders of termination of services of

the appellants and the appellants be deemed to be in service. [1043 C-D] F

2.1 The mere form of the order is not sufficient to hold that the order of termination was innocuous and the order of termination of the services of a probationer or of an ad hoc appointee is a termination simpliciter in accordance with the terms of the appointment without attaching any stigma to the employee concerned. It is the substance of the order i.e. the attending circumstances as well as the basis of the order that have to be taken into consideration. [1041 E-F]

2.2 When an allegation is made by the employee assailing the order of termination as one based on misconduct though

1024

couched in innocuous terms, it is incumbent on the court to lift the veil and to see the real circumstances as well as the basis and foundation of the order complained of. In other words, the Court, in such a case, will lift the veil and will see whether the order was made on the ground of misconduct, inefficiency or not. [1041 F-G]

Parshotam Lal Dhingra v. Union of India, [1958] S.C.R. 828; State of Punjab and Anr. v. Shri Sukh Raj Bahadur, [1968] 3 S.C.R. 234; State of Bihar & Ors. v. Shiva Bhikshuk Misra, [1971] 2 S.C.R. 191; State of Uttar Pradesh & Ors. v. Sughar Singh, [1974] 2 S.C.R. 335; Shamsher Singh & Anr. v. State of Punjab, [1975] 1 S.C.R. 814; Anoop Jaiswal v. Government of India & Anr., [1984] 2 S.C.R. 369; and Nepal Singh v. State of U.P. & Ors., A.I.R. [1985] S.C. 84 relied upon.

In the instant cases, though the impugned orders were made under the camouflage or cloak of orders of termination simpliciter according to the terms of the employment, yet considering the attendant circumstances which are basis of the said orders of termination, there is no iota of doubt in inferring that the orders of termination had been made by way of punishment on the ground of misconduct and adverse entry in service record without affording any reasonable opportunity of hearing to the appellants whose services are terminated and without complying with the mandatory procedure laid down in Art. 311(2) of the Constitution of India. Thus, the impugned orders terminating the services of the appellants on the ground that "the posts are no longer required" are made by way of punishment. [1041 B-D; 1042 B]

3. The protection of Articles 14 and 16 of the Constitution is available even to a temporary government servant if he has been arbitrarily discriminated against and singled out for harsh treatment in preference to his juniors similarly circumstanced. [1042 G]

In the instant case, ad hoc services of the appellants have been arbitrarily terminated as no longer required while the respondents have retained other Surveyors who are juniors to the appellants. Therefore, on this ground also,

the impugned order of termination of the services of the appellants are illegal and bad being in contravention of the 1025

fundamental rights guaranteed under Articles 14 and 16 of the Constitution of India. [1043 B-C]

State of Uttar Pradesh & Ors. v. Sughar Singh, [1974] 2 S.C.R. 335; and Manager Govt. Branch Press & Anr. v. D.B. Belliappa, [1979] 2 S.C.R. 458 relied upon.

JUDGMENT :

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 230 & 231 of 1982.

From the Judgment and Order dated 20.2.1981 of the Punjab & Haryana High Court in Civil Writ Petition No. 476 of 1981.

P.P. Rao and C.M. Nayar for the Appellants. Harbans Lal and R.S. Sodhi for the Respondents. The Judgment of the Court was delivered by n RAY, J. These appeals on Special Leave are against the judgment and orders passed by a Division Bench of the High Court of Punjab & Haryana dismissing summarily the Writ Applications being Civil Writ Nos. 476 and 484 of 1981 filed by the appellants on the ground that the orders terminating services of the petitioners did not attach any stigma to the service career of any of the appellants-petitioners, but they are made in terms of employment.

The appellants were appointed on ad-hoc basis as Surveyors on various dates between December 1976 to November 1977 through Employment Exchange. The terms of the order of appointment are quoted hereinbelow :-

"The following officials are hereby appointed as Surveyors in the grade of Rs. 140-6-170/8-210/10 300 upto 28.2.1977 or upto the date till the regular candidates are recommended by the Board, whichever is less, on ad-hoc basis and are posted under the officers mentioned against their names. Their services can be dispensed with any time without any notice or reason. These candidates will have to produce their concerned certificates to the concerned officers before the submission of the joining report."

The Government of Punjab in order to regularise the services of all the ad-hoc employees who had completed the minimum period of one year's service on September, 1980 issued a Circular (Annexure 'B') to the effect that the services of the ad-hoc employees shall be regularised on certain conditions mentioned therein. On being directed by Respondents Nos. 3 and 4 the petitioners submitted the requisite documents to the authorities concerned for regularisation of their services. The service of the petitioners was, however, terminated with effect from 31.1.81 by the order of the Chief Conservator of Soils, Punjab, Chandigarh, Respondent No.2.

The crucial question requires to be decided in the instant appeals is whether the impugned order of termination of services of the petitioners can be deemed to be an innocuous order of termination simpliciter according to the terms and conditions of the services without attaching any stigma to any of the petitioners or it is one in substance and in fact an order of termination by way of punishment based on misconduct and made in violation of the procedure prescribed by Article 311(2) of the Constitution of India. In other words when the order of termination is challenged as casting stigma on the service career, the Court can lift the veil in order to find out the real basis of the impugned order even though on the face of it the order in question appears to be innocuous.

In order to decide this issue, it is necessary to consider firstly the terms and conditions of appointment. The appointments of the petitioners are purely temporary and they have been appointed on ad-hoc basis "upto a certain date or upto date till the regular candidates are recommended by the Board, whichever is later." It was also provided therein that their services can be dispensed with any time without any notice or reason. The petitioners undoubtedly worked as Surveyors since the date of their appointment which in some cases in December 1976 and in some cases on different dates between November, 1977 till 31st of January, 1981 when their services were terminated. In the order of termination it has been stated and "services of the employees are terminated with effect from 31.1.81 because these posts are no longer required". This order was made by the Chief Conservator of Soils, Punjab, Respondent No.2.

An affidavit has been sworn by Ashok Kumar, the petitioner No.2, on 18th March 1981 along with an application for stay. In paragraph 3 of the said affidavit it has been specifically stated :-

"(a) That the petitioner No.1 was accused of the shortage of Rs. 7317.50, vide communication No. 1965 dated 12.11.1979 received from Assistant Soil Conservation Officer, Budlada, District Bhatinda.

(b) That the deponent who is petitioner No.2 was also accused of shortfall and a First Information Report dated 20.8.1980 (No.2715) has been lodged against him with Police Station Nahiwala (District Bhatinda) in respect of the same.

(c) That Darshan Singh, the petitioner No.6, was accused of shortages, vide communication No. 10351 dated 3.10.1980 received from the Conservator of Soils, Ferozepur.

(d) That Satnam Raj, petitioner No.8 was also accused of misappropriation vide communication No. 10360 dt. 3.10.1980.

(e) That Ramesh Singh, petitioner No.12 was accused of shortages to the tune of Rs.14,000 and was informed accordingly by the respondents.

(f) That similar allegations were made against the remaining petitioners and they were branded as incompetent and unfit for Government service.

Adverse entries were also made in the Annual Reports.

In paragraph 4 of the said affidavit it has been further averred that the above facts are true and correct to the knowledge of the deponent. It has also been stated that the petitioners had prayed in the High Court to summon and scrutinize the official records which would have clearly indicated that the impugned orders of termination were based by way of punishment and casts stigma on the petitioners.

In the Counter Affidavit sworn by C.M. Sethi, Chief Conservator of Soils, Punjab, Chandigarh on behalf of Respondents Nos. 1 to 7 on April 4, 1981 the statements in paragraphs 3, 4 and 5 of the said affidavit have not at all been controverted. In paragraph 4 of the said affidavit it has been stated that annual/half yearly confidential reports were written on the work and conduct of all ad-hoc employees including the petitioners in the department. Therefore, it is not correct to say that they learnt of their adverse reports from the return filed in the High Court for the first time.

An additional affidavit verified by C.M. Sethi, Chief Conservator of Soils, Respondent No.2 on January 15, 1982 was filed. It has been stated in paragraphs 3, 4 and 5 of the said affidavit :

"The claim of the petitioners that their record is satisfactory and they have been performing their duties efficiently was denied in connection with their claim for regular appointment only and it was stated strictly in connection with their claim for regular appointment that some of them have adverse record and there are shortages/embezzlements and that the Departmental selection Committee constituted by the Government did not recommend them as fit for regular appointment, in view of which they cannot be made regular. me petitioners are quoting that information as a ground for termination of their services, out of context, which is not correct and is denied.

The services of the petitioners were terminated on the expiry of existing term of ad-hoc appointment and not for the reason due to which they were found to be not fit for regular appointment by the Departmental Selection Committee. According to the reports of the Field Officers the petitioners Sarvshri Natha Singh, Balbir Singh, Ram Chand, Darshan Singh, Dalbir Singh, Sat Pal, Nirmal Singh and Satnam Raj who had earned adverse reports during the years 1979-80 and upto 9/80 were duly conveyed the adverse entries. It is, therefore, denied that the adverse entries were not conveyed to them."

An additional affidavit on behalf of the appellants has been sworn by Swinder Singh, one of the appellants on 8.8.84. In paragraph 4 of the said affidavit it had been averred that the following appellants were not communicated any adverse report :- C

i) Jarnail Singh, Appellant No. 1 in Civil Appeal No. 230/82.

ii) Ashok Kumar, Appellant No. 2 in Civil Appeal No. 230/82. D

- iii) Tajender Singh, Appellant No. 2 in Civil Appeal No. 231/82.
- iv) Nachhattar Singh, Appellant No. 4 in Civil Appeal No. 231/82. E
- v) Bagga Singh, Appellant No. 7 in Civil Appeal No. 230/82.
- vi) Ramesh Singh, Appellant No. 12 in Civil Appeal No. 230/82.
- vii) Bura Singh, Appellant No. 5 in Civil Appeal No. 231/82.
- viii) Joginder Singh, Appellant No. 7 in Civil Appeal No. 231/82.

It has been stated in paragraph 5 :-

"That the above names of the Appellants who were not communicated any adverse reports are given in view of the fact that the Respondent State has maintained that Appellants were communicated adverse reports in accordance with the Rules and they were not confirmed in view of these adverse entries in the Confidential Rolls of the Appellants ."

It has been stated in paragraph 6 of the said affidavit :-

"That, it is however admitted, that the following appellants were actually communicated adverse reports, as late and closer to their date of termination of their services, as is indicated in the table below :-

Name of the Date of Date of Appellant Report Communication of the report

1. Roop Chand 29.1.81 29/30.1.81
2. Nathha Singh 6.10.80 December 1980
3. Dalbir Singh not known 24.1.1981
4. Darshan Singh 30.10.80 December 1980
5. Satnam Raj 25.10.80 December 1980
6. Nirmal Singh not known December 1980
7. Balbir Singh not known December 1980
8. Ram Chand Siv not known December 1980

9. Savinder Singh 28.10.80 End of January '81

10. Saktar Singh 25.10.80 December 1980 (issued on 3.11.80)

11. Partap Singh 27.10.80 December 1980 (issued on 3.11.80)

12. Sat Pal 25.10.80 2.1.1981 (issued on 2.1.81)

13. Tarsem Lal 24.12.80 End of January '81."

It has been stated in paragraph 7 of the said affidavit:-

"That the following persons who were recruited around the same time and were taken in service also earned adverse reports and faced charges of embezzlement, but have been retained and regularised in service in preference to the Appellants :-

(1) Gurbux Singh s/o Sohan Singh (2) Mithoo Ram s/o Muleand Lal (3) Gurcharan Singh s/o Hazara Singh (4) Tulsa Singh s/o Surjeet Singh (5) Vinay kumar Sawhney (6) Kabul Singh s/o Tara Singh (7) Daulat Ram s/o Gala Ram (8) Chander Prakash s/o Sunder Lal (9) Nirmal Singh s/o Sohan Singh (10) Gurbux Singh s/o Geja Singh (11) Jaswant Singh s/o Chanchal Singh (12) Ganda Singh s/o Hardit Singh (13) Boota Singh s/o Anokh Singh (14) Manmohan Sood s/o Arjun Singh."

It has been stated in paragraph 8 of the said affidavit:- D "That there were other persons who were recruited later than the Appellants but continue to remain in service to the detriment of the Constitutional rights of the Appellants."

It has been stated in paragraph 10 of the said affidavit :

"That the respondent State framed false cases of embezzlement against some of the appellants and till todate no proceedings have been taken, nor any inquiries instituted against, in regard to those cases".

It has been stated in paragraph 13 of the said affidavit :-

"That the Screening Committee was presided over by the Chief Conservator of Soils, Punjab, Chandigarh Shri C.M. Sethi, under whose administrative control the Appellants' Confidential Record was written, and who has filed the Counter Affidavit on behalf of the Respondents before this Hon'ble Court."

In the affidavit verified by Pritam Singh, Chief Conservator of Soils, Punjab, Chandigarh on 22nd November 1984, it has been stated in paragraph 4 that :-

"It is wrong that there were adverse remarks against Sarvshri Jarnail Singh, Ramesh Singh and Bura Singh which were required to be communicated to them. In respect of others there were adverse remarks which were communicated through letters mentioned below

1) Sh. Ashok Kumar According to the record available adverse remarks were conveyed by the Conservator of Soils, Ferozepur to the Divisional Soil Conservation Officer, Bhatinda vide letter No. 11427 dated 28.10.80 for its further communication to the official concerned.

(2) Tejinder Singh Adverse remarks were conveyed by the Conservator of Soils, Ferozepur to the Divisional Soil Conservation Officer, Bhatinda vide No. 11429 dated 27.10.80 for further communication to the official concerned.

3) Nachhatar Singh Adverse remarks were conveyed by the Conservator of Soils, Ferozepur to the Divisional Soils Conservation Officer, Bhatinda vide No. 10355 dated 3.10.80 for further communication to the official concerned.

4) Joginder Singh Adverse remarks were conveyed by the Conservator of soils, Ferozepur to the Divisional Soil Conservation Officer, Bhatinda vide No. 11813 dated 4.11.80 for further communication to the official concerned

5) Bagga Singh Communication reference is not available on record.

The services of the petitioners were terminated on the expiry of existing term of ad-hoc appointment and not for the reason due to which they were found to be not fit for regular appointment by the Departmental Selection Committee."

It has further been stated in paragraph 6 and 7 of the said affidavit.

"That the adverse entries of the period varying from 10/80 to 1/81 have been communicated to them in December, 1980, January, 1981. As this period is nearer to their date of termination of services so they were to be communicated these remarks at that time only.

It is incorrect to the extent that the persons named below earned adverse remarks and had charges of shortages/embezzlement.

i) Mithu Ram s/o Mukan Lal

ii) Gurcharan Singh s/o Hazara Singh

iii) Kabul Singh s/o Tara Singh

iv) Daulat Ram s/o Gala Ram

v) Chander Prakash s/o Sunder Lal

vi) Gurbux Singh s/o Geja Singh

vii) Jaswant Singh s/o Chanchal Singh

viii) Ganda Singh s/o Hardit Singh

ix) Boota Singh s/o Anokh Singh

x) Manmohan Sood s/o Arjun Singh However, in the case of remaining persons namely Sarvshri (i) Gurbux Singh, s/o Sohan Singh, (ii) Tulsa Singh s/o Surjit Singh (iii) Nirmal Singh s/o Sohan Singh (iv) Vinay Kumar s/o Shri Ram, there were adverse remarks against these persons and the Departmental Selection Committee examined their record of service and found them fit for regular appointment. me Departmental Selection Committee was fully competent to select or reject any of the candidates for regular appointment in accordance with the Government instructions on the subject."

It has also been stated in paragraph 8 of the said affidavit that the Departmental Selection Committee in accordance with the Government instructions as contained in Government Notification dated 28.10.1980 considered the cases of all eligible persons including the appellants and the persons cited in the list for appointment on regular basis and the appellants were not found fit for appointment on regular basis by the Committee. Thus the appellants were afforded full opportunity to compete and as such no constitutional right of the appellants was infringed.

It thus appears on a consideration of the averments made in the affidavit verified on behalf of the petitioners as well as on behalf of the respondents that the impugned order of termination of service of the petitioners had been made on the ground that there were adverse remarks in the service records of the petitioners as well as there were serious allegations of embezzlement of funds against some of the petitioners. It is quite clear that on consideration of all these adverse entries in the service record as well as serious allegations relating to misconduct, the petitioners were not considered fit by the Departmental Selection Committee to recommend the petitioners for regularisation of their services as Surveyors. The impugned orders of termination of services of the petitioners are really made by way of punishment and they are not termination simpliciter according to terms of the appointment without any stigma as wrongly stated. It is indisputed that the Respondents Nos. 2 and 3 did not follow the mandatory procedure prescribed by Article 311(2) of the Constitution in making the purported orders of termination of services of the petitioners on the ground of misconduct and thus there has been a patent violation of the rights of the petitioners as provided in Article 311(2) of the Constitution. There is no room for any doubt that the impugned orders of termination of services of the petitioners had been made by way of punishment as the allegations of embezzlement of funds as well as adverse remarks in the service records of these

petitioners were the basis and the foundation for not considering the petitioners to be fit for being regularised in their services in accordance with the Government Circular dated October 28, 1980. Therefore, it is clear and evident in the context of these facts and circumstances of the case that the impugned order of termination though couched in the innocuous terms as being made in accordance with the terms and conditions of the appointment, yet the impugned order of termination of services of the petitioners were in fact made by way of punishment being based on the misconduct. There is also no denial of the specific averments made in the paragraph 8 of the Additional Affidavit sworn by one of the appellants Swinder Singh on August 8, 1984 that persons who were recruited later than the appellants were allowed to continue and to remain in service to the detriment of the Constitutional rights of the appellants. The impugned order of termination was, therefore, also assailed on the ground of discrimination, infringing Articles 14 and 16 of the Constitution of India.

It is vehemently urged on behalf of the respondents that the orders of termination have been made in accordance with the terms of the ad-hoc appointment of the petitioners which provided that their services can be terminated at any time without assigning any reason and as such the impugned orders could not be assailed on the ground of attaching any stigma to the service career of the petitioners. It has also been urged that where the impugned order is per se innocuous and it is made in accordance with the terms of the appointment, the court should not delve into the circumstances which were taken into consideration by the authorities concerned in making the order. In other words it has been urged that In such cases it is not for the Court to enquire into the basis of the order and to see if the same was in fact made by way of punishment having evil consequences or not.

The petitioners are undoubtedly temporary ad-hoc employees having no right to the posts they hold. In the case of *Parshotam Lal Dhiogra v. Union of India*, [1958] S.C.R. 828 it has been observed by this court as follows :-

"In short, if the termination of service is founded on the right flowing from contract or the service rules then, prima facie, the termination is not a punishment and carried with it no evil consequences and so Article 311 is not attracted; But even if the Government has, by contract or under the rules, the right to terminate the employment without going through the procedure prescribed for inflicting the punishment of dismissal or removal or reduction in rank, the Government may, nevertheless, choose to punish the servant and if the termination of service is sought to be founded on misconduct, negligence, in-efficiency or other disqualification, then it is a punishment and the requirements of Article 311 must be complied with..... "

In the case of *State of Punjab & Anr. v. Shri Sukh Raj Bahadur*, [1968] 3 S.C.R. 234 the following propositions were laid down by this Court while considering the question whether in case of termination of service of a temporary servant or a probationer, Article 311(2) of the Constitution would be affected or not. The propositions are as follows :-

"1. The services of a temporary servant or a probationer can be terminated under the rules of his employment and such termination without anything more would not

attract the operation of Article 311 of the Constitution.

2. The circumstances preceding or attendant on the order of termination have to be examined in each case the motive behind it being immaterial.
3. If the order visits the public servant with any evil consequences or casts an aspersion against his character or integrity, it must be considered to be one by way of punishment, no matter whether he was a mere probationer or a temporary servant.
4. An order of termination of service in unexceptionable form preceded by an enquiry launched by the superior authorities only to ascertain whether the public servant should be retained in service does not attract the operation of Article 311 of the Constitution.
5. If there be a full-scale departmental enquiry envisaged by Article 311 i.e. an Enquiry Officer is appointed, a charge sheet submitted, explanation called for and considered, any order of termination of service made thereafter will attract the operation of the said article."

This decision was considered by this Court in the case of *State of Bihar & Ors. v. Shiva Bhikshuk Misra*, [1971] 2 S.C.R. 191 in connection with the reversion of an officiating Subedar Major to his substantive post of Sergeant. In that case the respondent held the substantive post of Sergeant in the Bihar Police Force till July 31, 1946. On August 1, 1946 he was promoted to the higher post of Subedar. In January 1948 he was further promoted to officiate temporarily as Subedar Major. In October 1950, the Commandant of the Bihar Military Police, Muzaffarpur wrote to the Deputy Inspector of Police, Armed Forces suggesting that he should be censured for having assaulted an orderly. Thereafter, the Inspector General of Police reverted the respondent to the post of Sergeant. The said order of reversion was challenged and it was held by this Court that :-

"So far as we are aware no such rigid principle has ever been laid down by this Court that one has only to look to the order and if it does not contain any imputation of misconduct of words attaching a stigma to the character or reputation of a Government Officer it must be held to have been made in the ordinary course of administrative routine and the court is debarred from looking at all the attendant circumstances to discover whether the order had been made by way of punishment. The form of the order is not conclusive of its true nature and it might merely be a cloak or camouflage for an order founded on misconduct. It may be that an order which is innocuous on the face and does not contain any imputation of misconduct is a circumstance or a piece of evidence for finding whether it was made by way of punishment or administrative routine. But the entirety of circumstances preceding or attendant on the impugned order must be examined and the overriding test will always be whether the misconduct is a mere motive or is the very foundation of the order.

The order of reversion was held to be by way of punishment and as such it was set aside.

In the case of State of Uttar Pradesh & Ors. v. Sughar Singh, [1974] 2 S.C.R. 335 a permanent Head Constable in the U.P. Police Force was appointed as officiating Platoon Commander in the combined cadre of Sub Inspector, Armed Police and Platoon commander. He was subsequently reverted to the substantive post of Head Constable in 1968. At the time of reversion he was one among a group of about 200 officers most of whom were junior to him. Two questions arose, namely whether the order of reversion is attendant with any stigma and secondly whether there has been any discrimination violating Article 14 and 16 of the Constitution. It was held that so far as reversion is concerned, the order of reversion did not cast any stigma, not it has any evil consequences as the respondent neither lost his seniority in the substantive rank, nor there has been any forfeiture of his pay or allowances. It was also held that the order was liable to be quashed on the ground of contravention of Article 14 and 16 of the Constitution inasmuch as while the respondent had been reverted, his juniors were allowed to retain their present status as Sub Inspector and they have not been reverted to the substantive post of Head Constable. It was further held that there was no administrative reason for this reversion, so the order was held bad.

The question whether the order terminating the service of a probationer made according to the terms of appointment can never amount to punishment in the facts and circumstances of the case was considered by a Bench of 7 Judges of this Court in the case of Shamsher Singh & Anr. v. State of Punjab, [1975] 1 S.C.R. 814. In that case the services of two Judicial Officers who were on probation were terminated by the Government of Punjab on the recommendation of the High Court under Rule 7(3) in Part of the Punjab Civil Services (Judicial Branch) Rules 1951 as amended. The services of the A probationers were terminated without saying anything more in the order of termination. This was challenged on the ground that though the order on the face of it did not attach any stigma, yet the attendant circumstances which led to passing of the order if considered then the orders would amount to have been made by way of punishment violating Article 311 of the Constitution. It has been observed relying on the observations of this Court in Parshotam Lal Dhingra v. Union of India, by A.N. Ray, C.J. as follows :-

"No abstract proposition can be laid down that where the services of a probationer are terminated without saying anything more in the order of termination that the services are terminated it can never amount to a punishment in the facts and circumstances of the case. If a probationer is discharged on the ground of misconduct, or inefficiency or for similar reason without a proper enquiry and without his getting a reasonable opportunity of showing cause against his discharge it may in a given case amount to removal from service within the meaning of Article 311(2) of the Constitution."

This decision was followed and relied upon in the case of *Anoop Jaiswal v. Government of India & Anr.*, [1984] 2 S.C.R. 369. In that case the appellant being selected for appointment in the I.P.S. were undergoing training as a probationer. On a particular day all the trainees arrived late at the place where P.T./unarmed combat practice was to be conducted, although prior intimation was sent to them in this regard. This delay was considered as an incident which called for an enquiry. The appellant was considered to be one of the ring leaders who was responsible for the delay. Explanation was called for from all the probationers. The appellant in his explanation sincerely regretted the lapse while denying the charge of instigating others in reporting late. After receiving the explanations, all the probationers including the appellant were individually interviewed in order to ascertain the facts. On the basis of the explanation and interview, but without holding any proper enquiry the Director recommended to the Government of India that the appellant should be discharged from the service. The Government accordingly passed an order of discharge of the appellant on the ground of unsuitability for being a member of the I.P.S. This order was challenged in the Writ Petition. It has been held as follows:-

"Where the form of the order is merely a camouflage for an order of dismissal for misconduct it is always open to the court before which the order is challenged to go behind the form and ascertain the true character of the order. If the court holds that the order though in the form is merely a determination of employment is in reality a cloak for an order of punishment the court would not be debarred, merely because of the form of the order, in giving effect to the rights conferred by law upon the employee."

The order was held to be bad as it was made on the ground of misconduct without affording reasonable opportunity to the appellant to defend himself as provided under Article 311(2) of the Constitution.

In the case of *Nepal Singh v. State of U.P. & Ors.*, A.I.R. 1985 S.C. 84 the service of the appellant Nepal Singh, who was employed in temporary capacity as Sub Inspector of Police, was terminated by an order of Deputy Inspector General of Police, Bareilly Range and the order merely stated that the appellant's services were not required any more and were terminated with one month's pay in lieu of notice. This order was challenged on the ground that it amounted to punishment and since no opportunity of hearing, as provided in the Article 311(2) of the Constitution, was afforded, the impugned order was liable to be quashed and set aside. It transpired at the time of hearing that a disciplinary proceeding was initiated against the appellant on the ground that he contracted the second marriage during the life time of his first wife and this act was done without obtaining prior permission of the Government. This disciplinary proceeding, however, was not proceeded with. Thereafter the Superintendent of Police, Shahjahanpur drew up a list to the effect that he was a corrupt officer and he was not straight-forward. The impugned order was made thereafter. It was held that where allegations of misconduct were levelled against a Government servant and it was a case where provisions of Article 311(2) of the Constitution should apply, it was not open to the competent authority to take the view that holding the enquiry contemplated by that clause would be a bother or a nuisance and that, therefore, it was entitled to avoid the mandate of that provision and resort to the guise of an *ex facie* innocuous termination order.

In the instant case as we have stated already hereinbefore that though the impugned order was made under the camouflage or cloak of an order of termination simpliciter according to the terms of the employment, yet considering the attendant circumstances which are the basis of the said order of termination, there is no iota of doubt in inferring that the order of termination had been made by way of punishment on the ground of misconduct and adverse entry in service record without affording any reasonable opportunity of hearing to the petitioners whose services are terminated and without complying with the mandatory procedure laid down in Article 311(2) of the Constitution of India.

The position is now well settled on a conspectuous of the decisions referred to hereinbefore that the mere form of the order is not sufficient to hold that the order of termination was innocuous and the order of termination of the services of a probationer or of an ad-hoc appointee is a termination simpliciter in accordance with the terms of the appointment without attaching any stigma to the employee concerned. It is the substance of the order i.e. the attending circumstances as well as the basis of the order that have to be taken into consideration. In other words, when an allegation is made by the employee assailing the order of termination as one based on misconduct, though couched in innocuous terms, it is incumbent on the court to lift the veil and to see the real circumstances as well as the basis and foundation of the order complained of. In other words, the Court, in such case, will lift the veil and will see whether the order was made on the ground of misconduct inefficiency or not. In the instant case we have already referred to as well as quoted the relevant portions of the averments made on behalf of the State respondent in their several affidavits alleging serious misconduct against the petitioners and also the adverse entries in the service records of these petitioners, which were taken into consideration by the Departmental Selection Committee without giving them any opportunity of hearing and without following the procedure provided in Article 311(2) of the Constitution of India, while considering the fitness and suitability of the appellants for the purpose of regularising their services in accordance with the Government Circular made in October, 1980. Thus the impugned orders terminating the services of the appellants on the ground that "the posts are no longer required" are made by way of punishment.

It also appears on a consideration of the averments made in paragraphs 7 and 8 of the Additional Affidavit sworn by one of the appellants Swinder Singh on August 8, 1984, which has not been controverted at all by the respondent, that the respondents though terminated the services of the petitioners on the ground that "these posts are no longer required" have retained and regularised the service of ad-hoc employees mentioned in paragraph 7 as well as ad-hoc Surveyors who were recruited later in the said post of Surveyors to the prejudice of the rights of the appellants, thereby violating the salutary principle of equality and non-arbitrariness and want of discrimination and as enshrined in Articles 14 and 16 of the Constitution of India. It is pertinent to refer here to the decision rendered by this Court in Sughar Singh's case where it had been held that the order of reversion reverting the respondent from his officiating appointment to the post of Platoon Commander to the post of permanent Head Constable while retaining 200 other Head Constables who were junior to him in the officiating higher posts of Platoon Commanders was discriminatory and arbitrary being in contravention of the Articles 14 and 16 of the Constitution.

Similar observations have been made in the case of *Manager Govt. Branch Press & Anr. v. D.B. & Belliappa* [1979] 2 S.C.R. 458. It has been held that the protection of Articles 14 and 16 of the Constitution will be available even to a temporary Government servant if he has been arbitrarily discriminated against and singled out for harsh treatment in preference to his juniors similarly circumstanced. In that case the service of Belliappa, a temporary Class IV employee was terminated without assigning any reason although in accordance with the conditions of his service, three other employees similarly situated, junior to Belliappa in the said temporary cadre, were retained. The order of termination was held to be bad as it offended the equity clause in Article 14 and 16 of the Constitution.

In the instant case, ad-hoc services of the appellants have been arbitrarily terminated as no longer required while the respondents have retained other Surveyors who are juniors to the appellants. Therefore, on this ground also, the impugned order of termination of the services of the appellants are illegal and bad being in contravention of the Fundamental rights guaranteed under Articles 14 and 16 of the Constitution of India.

In the premises aforesaid, the impugned orders of termination of the services of the appellants are liable to be quashed, cancelled and set aside. Let appropriate writs of mandamus be issued directing the respondents, not to give effect to the impugned orders of termination of the services of the appellants. Let a writ of certiorari be issued quashing and cancelling the impugned orders of termination of services of the appellants and the appellants be deemed to be in service.

In the facts and circumstances of the case, the appeals are allowed with costs assessed at Rs. 2,000.

M.L.A.

Appeals allowed.