M. Ramanatha Pillai vs The State Of Kerala & Anr.(With ... on 27 August, 1973

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Bench: Kuttyil Kurien Mathew, M. Hameedullah Beg, S.N. Dwivedi, Y.V. Chandrachud

PETITIONER:
M. RAMANATHA PILLAI

Vs.

RESPONDENT:
THE STATE OF KERALA & ANR.(With connected appeals)

DATE OF JUDGMENT27/08/1973

BENCH:
SIKRI, S.M. (CJ)
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MATHEW, KUTTYIL KURIEN
BEG, M. HAMEEDULLAH
DWIVEDI, S.N.
CHANDRACHUD, Y.V.

CITATION:
1973 AIR 2641 1974 SCR (1) 515
1973 SCC (2) 650
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RF	1976 SC2233	(9)
RF	1976 SC2437	(20)
RF	1979 SC 621	(27)
R	1980 SC1255	(18)
F	1980 SC1285	(12,27)
R	1982 SC1107	(30,33)
RF	1989 SC 662	(7)

ACT:
Constitution of India, 1950, Arts.510 and 311-Abolition of post-Effect of.

HEADNOTE:

On the questions, (i) whether the Government could abolish a post ill 'the service, and (ii) whats the effect of such abolition on the rights of the holder of the post at the time of abolition.

HELD : (1) Every sovereign government has a right to abolish a post ill government service in the interest and necessity of internal Administration. The creation and abolition of a post is dictated by policy, exigencies and administrative necessity in the interest of general public, and the power is not related to the doctrine of pleasure. [520D-E]

(2) The protection afforded by Art. 311 of the Constitution is limited to the imposition of the three major penalties, namely, dismissal, removal and reduction in rank. These words are technical words. Every termination of service cannot amount to dismissal or removal. It is only in cases where there is a stigma or a loss of benefit that the removal or dismissal would come under the Article. The expression "rank" in the Article has reference to a person's classification and not to his particular place in the same cadre in the hierarchy of the service to which he belongs. A reduction in rank would be a punishment if it carried penal consequences with it. [521G-522B]

Parshotam Lai Dhingra v. Union of India, [1958] S.C.R. 828; Satish Chandra Anand v. The Union of India [1953] S.C.R. 655 and Shyam Lal v. State of U.P. and the Union of India, [1955] 1 S.C.R. 26, referred to.

(3) Where a person has a substantive appointment to a permanent post he has a right to hold the post until, under the rules, he attains the age of superannuation or is compulsorily retired after having put in the prescribed number of years' service or the post is abolished; and his service cannot be terminated except by way of punishment for misconduct, negligence, inefficiency or any other dis-qualification found against him on enquiry after due notice to him. An appointment to a temporary post for a certain specified period gives the servant a right to hold the post for the entire period of his tenure, and his tenure cannot be put an end to during that period unless he is, by way of punishment, dismissed or removed from the service. [522E-G]

Parshotam Lai Dhingra v. Union of India, [1958] S.C.R. 828 and Mori Ram Deka etc. v. General Manager, N.E.F. Railways, Maligaon, Pandu, etc. [1964] 5 S.C.R. 683, referred to.

(4) But a post may be abolished in good faith. The abolition of the post may have the consequence of termination of service of a government servant. Such termination however is not dismissal or removal within the meaning of Art. 311 of the Constitution. The opportunity of showing cause against the proposed penalty of dismissal or removal does not therefore arise in the case of the aboli-tion of a post. The abolition is not a personal penalty against the government servant. It is an executive policy decision. Whether after abolition of the post the

government servant, who was holding the post would or could be offered any employment under the State. would therefore be a matter of policy decision of the. Government, because. the abolition of a post does not confer on the person holding the abolished post any right to hold the post. The order abolishing the post may however lose its effective character if it is established to have been made arbitrarily, mala fide or as a mask of some penal action within the meaning of Article 311(2). [522H; 526D-F]

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(5) The observations in Moti Ram Dek 'a case ([1964] 5 S.C.R. 683), that a person who substantively holds a permanent post has a right to continue in service, subject to the rules of superannuation and compulsory retirement and that 'if for any other reason that right is invaded and he is asked to leave his service, the termination of his service must inevitably mean the defeat of his right to continue in service and as such it, is in the nature of a penalty and amounts to removal' are not authority for the, proposition that abolition of a post in good faith amounts to removal. The earlier observation in the judgment that a permanent servant would normally acquire a right to hold the post until under the rules he attained the age of superannuation or was compulsorily retired or the post was abolished shows that the exception of termination as a result of the abolition of a post was not being considered when the observation was made. [523A-D]

Champaklal Chimanlal Shah v. The Union of. India [1964] 5 S.C.R. 190, followed.

(6) The Moti Ram Deka case has not abolished the doctrine of pleasure as embodied in Article 310. That article has been made subject to Art. 311 where termination is by way of punishment, and in cases where a fixed term contract is made. Article 310(2) authorises 'a provision in such-contract for the payment of compensation to the government servant if before expiry of that period the post is abolished or he is required to vacate the post for reasons not connected with any misconduct. The article furnishes intrinsic evidence that the right to abolish the post is a category of the power exercisable by the Slate. The power to abolish the post is however inherent in every sovereign Government and is necessary for the proper functioning and internal administration of the State and is unaffected by these limitations on the doctrine of pleasure embodied in Art. 310. [525G-526D]

(7) No estoppel could arise against the State in regard to abolition of a post. The courts exclude the operation of the doctrine of estoppel, when it is found that the authority against whom estoppel is pleaded has owed a duty to the public. [526H]

(8) When the exigencies of administration required alterations in the establishment and creation of a new department, it is a governmental function' and a policy

decision, and no question of mala fides arises. [527C-D]
(9) The right to hold a post comes to an end on the abolition of the post which a government servant holds, and therefore, he cannot complain of a violation of Arts. 19(1)(f) and 31 of the Constitution when the post is abolished. [527D-E]
(10) Article 14 also is not attracted when the government servant cannot complain of any discrimination on the ground that other government servants, similarly situated had been allowed to remain in service. [527E. F-G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 275 of 1971. Appeal by certificate from the judgment and order dated 6th August, 1970 of the Kerala High Court in C.P. No. 931 of 1970.

Appeal by certificate from the judgment and order dated 29-1-70 of the High Court of Punjab and Haryana at Chandigarh in CIVIL Writ No. 3086 of 1968.

Appeal by certificate from the Judgment and Order dated 30-9-70 of the High Court of Punjab and Haryana at Chandigarh in Letters Patent Appeal No. 260 of 1969. M. K. Ramamurthy, P.K. Pillai and J. Ramamurthi, for the appellant (In C. A. No. 275/71) A. R. Somanatha Iyer and A.G. Pudissery, for the respondent CA. No. 275/71).

Gobind Days, M. N. Shroff and B. D. Sharma, for Attorney General .of India.

R.K. Garg and S.C. Agarwala, for the intervener. R. K. Garg and S. C. Agarwala, for the appellants (In C. A. 2231/70 and 248/71).

Harbans Singh and R. N. Sachthey, for the respondent (In C. As. No. 2231/70 and 248/71).

The Judgment of the Court was delivered by RAY. C. J. Civil Appeal No. 275 of 1971 is by certificate from the judgment dated 6 August, 1970 of the High Court of Kerala. The appellant is M. Ramanatha Pillai. Civil Appeal No. 2231 of 1970 is by certificate from the judgment dated 29 September, 1970 of the High Court of Punjab and Haryana. The appellants are S. Ajit Singh and Jamna Dass Akhtar.

Civil Appeal No. 248 of 1971 is by certificate from the judgment 30 September, 1970 of the High Court of Punjab and Harvana. The appellants are seven in number. They are Kulbhushan Lal, Krishna Lal, Jagdev Singh, Shanti Sarup, Dilawar Singh, Ram Asra mid Inder Lal.

The facts in Civil Appeal No. 275 of 1970 are these. A Vigilance Commission was constituted for the State of Kerala by an order dated 29 May, 1965. The Government of Kerala on 26 October, 1965 sanctioned the creation of a temporary post of Vigilance Commissioner for a period of three Years from 3 June, 1965. P. D. Nandana Menon assumed charge as Vigilance Commissioner in that

temporary post. By an order dated 16 April, 1966 the Government of Kerala defined the constitution, jurisdiction, powers and functions of the Commission. The Order stated that the Commission would be beaded by a full time officer designated as Vigilance Commissioner. The Vigilance Commissioner under the order was to be appointed by the Governor of the State and was not to be removed or suspended from office except in the manner provided for the removal or suspension of the Chairman of the Kerala Public Service Commission. On 24 January, 1968 the continuance of the temporary post was sanctioned for a period of one year with effect from 3 june, 1968. Meanwhile P. D. Nandana Menon retired from the post.

By an order dated 24 September, 1968 the appellant Ramanatha Pillai was appointed as Vigilance Commissioner on a consolidated pay of Rs. 2500 per month for a term of three years from the date of his assuming charge vice P. D. Nandana Menon retired. By an order dated 2 November. 1968 the Government of Kerala ordered that the Vigilance Commissioner would hold office for a period of five years or. till he attained the age of 60 years whichever was earlier. By an order dated 15 November, 1968 sanction was accorded to the continuance of the temporary post of the Vigilance Commissioner till 28 February , 1970.

There was an agreement dated 20 December, 1968 between tile appellant Ramanatha Pillai and the Government of Kerala. The agreement provided that the term of appointment was to be for a period of five years from 3 October, 1968 or till the appellant attained the age of 60 years whichever is earlier. Ile agreement further stated that the appellant is not to be removed or suspended from office except in the manner provided for removal or suspension of the Chairman or Members of the State Public Service Commission. By an order dated 24 February 1970 the Government of Kerala stated that the post of Vigilance Commissioner sanctioned was temporary and the ... Present sanction for the post of Vigilance Commissioner will expire on 28 February, 1970 and that for the staff of the Commission will expire on 28 February, 1971". The order further stated that the Government having considered all aspects of the matter came to the conclusion that there was no need to have a Vigilance Commissioner. The Government, therefore, ordered that the post of Vigilance Commissioner would be abolished with effect from 28 February, 1970. The continuance of the staff of the Commission upto 15 March, 1970 was sanctioned to enable the office of the Commission to wind up its work. It may be stated her-- that ill the Government Order dated 3 December, 1969 sanction for the continuance of the staff in temporary posts from 1 March, 1970 to 28 February, 1971 was accorded. The affidavit evidence of the Government of Kerala about the continuance of the temporary posts in the staff of the Vigilance Commission till 28 February, 1971 is that the budget for 1970-71 was prepared in advance of the presentation of the'-proposal in the Legislature. At the time when the proposals were forwarded by the Administrative Departments concerned with the establishment of the Vigilance Commissioner no decision had been taken regarding the abolition of the post of the Vigilance Commissioner. After taking the decision to abolish the Vigilance Commission the Government considered the feasibility of omitting the provisions in the budget, but it was found to be too late to make any changes. The post of Vigilance Commissioner was sanctioned upto 28 February, 1970.. The appellant Ramanatha Pillai raised three principal contentions in the High Court. First, that the abolition of the post of Vigilance Commissioner amounted to removal of the appellant from service within the meaning of Article 311 of the Constitution. Second, that the abolition of the post was made mala fide. Third, the appellant entered into an agreement with the

Government and by accepting the offer changed his position and the State was precluded from altering the terms of agreement on the principle of estoppel. The High Court did not accept any of the contentions. The High Court held that the termination of service resulting from the abolition of the post would not attract the provisions of Article 311 of the Constitution. The High Court however added that this would be so when the abolition of the post was not a colourable exercise of power with a view to removing.the incumbent holding the post from service. The High Court in the facts and circumstances came to the conclusion that it was. impossible to draw any inference that the abolition of the post was. with a motive of doing away with the services of the petitioner. The High Court held that no estoppel could arise or operate to fetter the powers and discretion of the Government if in the interest of adminis- tration and in public interest certain alterations in the establishment were made and new posts or departments were created. The reason given by the High Court was that this would be a governmental function and the court would not sit in judgment on such action and decide whether the course was proper or not. The High Court, therefore, held that there could not be any estoppel against the Government in the discharge of duty owed to the public. The ratio of the High Court judgment is that there cannot be an estoppel in respect of statutory provisions of the governance of the State Which are made for the benefit of some one other than the person against whom the estoppel is asserted. In Civil Appeal No. 2231 of 1970 the questions raised in the High Court were whether the abolition of the Subordinate Services Selection Board and the consequential termination of the services of the Chairman and the Member of the Board attracted application of Article 311 of the Constitution. The High Court found that the State Government decided in public interest to abolish the Board. There were bickerings among the Members of the Board. The Administrative Reforms Commission recommended the abolition of the Board. The appointment of the Members was of a temporary character. Consequent upon the abolition of the Board there existed no post on which the appellants could claim appointment. Civil Appeal No. 248 of 1971 concerns posts held by the appellants in the Industrial Training Institute in Haryana. The appellants were permanent employees- Their posts were abolished with effect from 26 March 1969. The Government terminated their services upon the abolition of the posts. The appellants raised the similar question as to whether the abolition of posts would attract article 311 of the Constitution. The High Court relied on its decision in Civil Appeal No. 2231 of 1970 and held that the abolition of posts did not attract Article 311 of the Constitution. The contentions on behalf of the appellant Ramanatha Pillai were these. First, the order abolishing the post is vitiated by mala fides of respondent No. 2. Second, the abolition of the post does not terminate the agreement, dated 20 December, 1968. Third, the abolition of the post has the effect of terminating the services of the appellant, and, therefore, it is invalid by reason of non-compliance with the provisions of Article 311 of the Constitution. Fourth, the order of the Government was made without giving an opportunity to the appellant and thereby violated the principles of natural justice. It was said that the order of Government entailing the civil consequences of loss of service could be made only after observing the principles of natural justice. Fifth, the principle of estoppel applies to the case that it was not lawful for the Government to terminate the services of the appellant.

On behalf of the other appellants the contentions are these. The right to permanent tenure is created by rules or Acts. The executive decision cannot put an end to these rights. Service Rules create statutory rights to receive salary and pension till the- age of superannuation. These statutory rights constitute property within the meaning of Article 19(1)(f), 31(1) and (2) of the Constitution. The

abolition of a, post is a mere executive decision and it cannot terminate the statutory tenure of service nor can it affect fundamental rights without the support of a valid law. The tenure cannot be taken away by rule or an Act which is inconsistent with Article 311 (1) and (2) of the 'Constitution, both before and after the amendment of that Article. After amendment of Article 311(1) a permanent Government servant holds office during good behaviour and the doctrine of pleasure stands negatived except to the extent saved expressly by Article 310. A premature termination on abolition of post violates Articles 311(2), 19(1) (f) and 31 (1) and also Articles 14 and 16. If termination of employment after notice is bad a termination without notice without a valid rule is worse. The first question which falls for determination is whether the Government has a right to abolish a post in the service. The power to create or abolish a post is not related to the doctrine of pleasure. It is a matter of governmental policy. Every sovereign Government has this power in the interest and necessity of internal administration. The creation or abolition of post is dictated by policy decision, exigencies of circumstances and administrative necessity. The creation, the continuance and the abolition of post are all decided by the Government in the interest of administration and general public.

The next question is whether abolition of post is dismissal or removal within The meaning of Article 311. This question has directly not come up for decision in this Court. There are however observations on this aspect in three decisions of this Court. These are Parshotam Lal Dhingra v. Union of India [1958] S.C.R. 828: Champaklal Chimanlal Shah v. The Union of India [1964] 5 S.C.R. 190 and Moti Ram Deka etc. v. General Manager, N.E.F. Railways, Maligaon, Pandu, etc. [1964] 5 S.C.R. 683.

Article 311 as it stood prior to the Constitution Fifteenth Amendment Act., 1963 enacted that no person as mentioned in Article 31 1 (1) shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. After the Constitution Fifteenth Amendment Act, 1963 Article 311 states that no person mentioned in Article 311 (1) shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of all the charges against him and giving a reasonable opportunity of being heard in respect of those charges. Further, where it is Proposed, after such enquiry, to impose on him any such penalty of dismissal, removal or reduction in rank he has to be riven an opportunity of making repre- sentation to the penalty proposed.

Article 309 provides that subject to the provisions of the Constitution, Acts of the appropriate Legislature may regulate the recruitment and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State. Therefore, Acts in respect of terms and conditions of service of persons are contemplated. Such Acts of Legislature must however be subject to the provisions of the Constitution. This attracts Article 310(1). The proviso to Article 309 makes it competent to the President or such person as he may direct-in the case of services and posts in connection with the affairs of the Union and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment and the conditions of service of persons appointed, to such services and posts under the Union and the State. These Rules and the exercise of power conferred on the delegate must be subject to Article 310. The result is that Article 309 cannot impair or affect the pleasure of the President or the Governor therein specified. Article 309 is, therefore, to

be read subject to Article 310.

Article 310 deals with the tenure of office of persons serving the Union or the State. Article 310 provides that such office is held during the pleasure of the President if the post is under the Union or during the pleasure of the Governor if the post is under the State. The' doctrine of pleasure is thus embodied in Article 310(1). Article 310(2) deals with cases of persons appointed under contract. This Article provides that if the President or the Governor deems it necessary to secure the services of a person having special qualification, he may appoint him under a special contract. Such a contract may provide for the payment to him of compensation if before the expiration of an agreed period that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate that post. It is noticeable that Article 310 (1) begins with a clause "except as expressly provided by this Constitution". Therefore, the other provisions in the Constitution which impinge on Article 310 have the effect of making Article 310 to be subject to those Articles. The exceptions thus contemplated occur in Articles 124, 148, 218 and 324. Another important exception is Article 311. Article 311 is however not subject to any other provision of the Constitution.

When Article 311 states that no person shall be dismissed, removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him it affords a protection and security of Government service. Article 311 applies to all Government servants holding permanent, temporary or officiating post. The protection afforded by Article 311 is however limited to the imposition of three major penalties. These are dismissal, removal or reduction in rank. The words ,'dismissed", "removed" and "reduced in rank" are technical words. Both in the case of removal or dismissal there is a stigma. It also involves loss of benefit. There may also be an element of personal blame- worthiness. of the Government servant. Reduction in rank is also a punishment. The expression "rank" in Article 311(7) has I reference to a person's classification and not to his particular place in the same cadre in the hierarchy of the service to which he belongs. Merely sending back a servant to his substantive post has been held not to be a reduction in rank as a punishment since he had no legal right to continue in officiating post. The striking cut of a name from the panel has been held to affect future rights of promotion and to be a reduction in rank.

A reduction in rank is a punishment if it carries pen consequences ,With it. In Dhingra case (supra) it has been said that whether a servant is punished by way of reduction in rank is to be, found by applying one of the two following tests : whether the servant has a right to the post or the rank or whether evil consequences'such as forfeiture of pay or allowances loss of seniority in his substantive rank, stoppage ,or postponement of future chances of promotion follow as a result of the order.

Any and every termination of service cannot amount to dismissal or removal. A termination of service brought about by the exercise of ,contractual right is not by itself dismissal or removal. (See Satish Chandra Anand v. The Union of India (1953 S.C.R. 665). Again, termination of service by compulsory retirement in terms of a specific rule regulating the conditions of service is not tantamount to infliction of a punishment and does not attract Article 311(2). (See Shyam Lal v. State of U.P. and the Union of India (1955 1 S.C.R. 26). Similarly the retirement of a permanent servant on his attaining the age of superannuation does not amount to his removal within the meaning of

Article 311(2). In these cases the termination of service does not ,carry with it ,he penal consequences of loss of pay or allowances.

The ruling in Dhingra case (supra) is that the protection of Article 311 is afforded to permanent as well as temporary posts or officiating in any of them. Where a person has a substantive appointment to a permanent post he has a right to hold the post until, under the ,rules, he attains the age of superannuation or is compulsorily retired after having put in the prescribed number of years' service or the post is abolished and his service cannot be terminated except by way of punishment for misconduct, negligence, inefficiency or any other disqualification found against him on enquiry after due notice to him. This is the statement of law in Dhingra case as well as Moti Ram Deka case (supra). An appointment to a temporary post for a certain specified period gives the servant a right to hold the post for the entire period of his tenure, and his tenure cannot be put an end to during that period unless he is, by way of punishment, dismissed or removed from the service. Except in these two cases the appointment to a post, permanent or temporary, on probation or on an officiating basis or a substantive appointment to a temporary post gives to the servant so appointed no right to the post and his service may be terminated unless his service had ripened into what is, in the service rules, called a quasi-permanent service. (See Dhingra case (supra)). A post may be abolished in good faith. The order abolishing the post may lose its effective character if it is established to have been made arbitrarily, malafide or as a mask of some penal action within the meaning of Article 311(2).

Counsel for the appellants relied on the observations at pp. 706-707 of the Report in Moti-Ram Deka case (supra). The observations are these. "A person who substantively holds a permanent post has a right to continue in service, subject, of course, to the rule of superannuation and the rule as to compulsory retirement. if for any other reason that right is invaded and he is asked. to leave his service, the termination of his service must inevitably mean the defeat of his right to continue in service and as such, it is in the nature of a penalty and amounts to removal". These observations were extracted in support of the contention that Moti Ram Deka case (supra) is an authority for the proposition that abolition of post amounts to removal. That is totally misreading the decision in Moti Ram Deka case (supra).

The phrase "if for any other reason that right is invaded"

> is in juxtaposition to the two exceptions of the rule of superannuation and the rule of compulsory retirement as exceptions to the applicability of Article 311. The third exception of termination as a result of the abolition of a post was not being considered in that portion of the judgment in Moti Ram Deka case (supra). Earlier in the judgment in Moti Ram Deka case (supra) it is said that a permanent servant would normally acquire a right to hold the post until under the rules he attained the age of superannuation or was compulsorily retired or the post was abolished. The same view is taken in Champaklal case (supra).

In Moti Ram Deka case (supra) it was said that the statement of law in Dhingra case (supra) "in the absence of a contract, express or implied, or service rule the permanent servant cannot be turned

out" would permit the authority to terminate the service of a permanent servant under terms of contract or service rules without taking the case under Article 311 though such termination might amount to removal or compulsory retirement. Ibis Court in Moti Rant Deka case (supra) did not agree with this statement of law in Dhingra case (supra) and laid down the law to be that where a rule is alleged to violate the constitutional guarantee afforded by Article 311 (2) the argument of contract between the parties and its binding character is wholly inappropriate. The introduction of the two clauses "in the absence of a contract, expressed or implied, or service rule" in Dhingra. case (supra) was by reason of consideration of Rule 49 in that case. Rule 49 spoke of termination of employment of a prohibationer or a temporary servant or a servant under a contract not to amount to removal or dismissal within the meaning of that Rule. That is why these two clauses, it was pointed out in Moti Ram Deka case, would have no relevance or application to permanent servants.

In other words, it was said that the two tests laid down in Dhingra case (supra) first whether the servant had a right to hold the post and whether he had been visited with evil consequences of the kind referred to therein were not cumulative but were alternative. Therefore, if the first test was satisfied termination of the permanent servant's services would amount to removal because his right to the post is prematurely invaded. This ruling in Moti Ram Deka (supra) is on the relevant issue as to whether the order of termination with notice as contemplated in Rule 149 (3) was valid. Such a rule was found to be a clear infraction of Article 31 1. The statement of law in Dhingra case (supra) that in the absence of a contract, express or implied, or a service rule, a permanent servant cannot be turned out of his post unless the post is abolished or unless he is guilty of misconduct was examined In Moti Ram Deka case. In Moti Ram Deka case (supra) it has been said that in regard to temporary servants or servants on probation the terms of contract or service rules may provide for the termination of the service on notice of a specified period or on payment of salary for the said period, and if in exercise of the power thus conferred the services of a temporary or probationary servant are terminated,' it may not necessarily amount to removal. , If it is shown that the termination of services is no more than discharge simpliciter effected by virtue of the contract, or the relevant rules, Article 311 (2) may not be applicable to such a case, If, however, the, termination of a temporary servant's service in substance represents a penalty imposed on him or punitive action is taken against him then such termination would amount to removal and Article 311(2) would be attracted. The position would be the same in regard to reduction in rank of an officiating servant. The termination of the service of a permanent servant on the terms of a contract or under a service rule will attract Article 311 if such termination is in the nature of penalty and amounts to removal. This statement of law in Moti Ram Deka case (supra) is on the consideration of Rules 148(3) and 149(3) of the Indian Railway establishment Code, Rule 148(3) deals with non-pensionable railway servants. Rule 149(3) deals with other railway servants. Both the rules provided that the service of railway servant "shall be liable to termination on notice on either side of the periods shown below." Such notice is 'not however required under those' Rules 148(3)149(3).in cases of dismissal or removal as a disciplinary measure after compliance with the provisions of clause (2)of Article 311 of the Constitution, retirement on attaining the age of superannuation. and termination of service due to mental or physical incapacity. In Moti Ram. Deka case (supra) it was held that neither of the two rules contemplated an enquiry and in none of the actual cases there the procedure' prescribed by Article 311 (2) was followed. In Moti Ram Deka case (supra) Rule 149(3) which permitted termination for service with notice in cases of misconduct, to which the second part of the Rule

applied was found to, be unconstitutional. Rules 148 and 149 in Moti Ram Deka case (supra) referred to; retirement on superannuation and termination due to physical or mental incapacity. These considerations were not fixed on any ad hoc basis and did not involve exercise of any discretion. these Rules would apply uniformity servants under those categories.

is in this background that the two clauses "in the absence of a contract expressed or implied, or service rule" in Dhingar case (supra) were read to support the reasoning that in regard to a permanent civil servant the termination of his services otherwise than under the rule of superannuation or compulsory retirement would amount to removal. Rules 148 and 149 authorised Administration to terminate the services of all the permanent servants on giving notice. That clearly amounted to the removal of the servant in question. Argument was advanced in Moti Ram Deka case (supra) that Article 310(1) and Article 311 are to be construed in such manner that the pleasure contemplated by Article 310 (1) does not become illusory. The contention was that Article 311 (2) was in the nature of proviso and an exception to Article 310 and in all cases falling outside the scope of Article 311 the pleasure of the President or the Governor must be allowed to rule. This Court in Moti Ram Deka case (supra) said that the pleasure of the President has to be exercised in accordance with the requirements of Article

311. Once it is shown that a permanent civil servant is removed from service Article 311 (2) would apply and Article 310 (1) cannot be invoked independently with the object of justifying the contravention of the provisions of Article 311(2) Where it was said in Moti Ram Deka (Supra) that the order of termination could be effective after complying with Article 311 it was presumed that the provisions of Article 311, viz., issue of the charge-sheet, enquiry would be applicable to such cases of termination. With regard to abolition of post and consequential termination no charges could normally be framed and no enquiry could be held. Therefore, apart from the consideration that abolition of post is not infliction of a penalty like dismissal or removal or reduction in rank, the framing of charge, the enquiry and opportunity of showing cause against the imposition of penalty cannot normally apply to the case of abolition of post. The discharge of the civil servant on account of abolition of the post held by him is not an action which is proposed to be taken as a personal Penalty but it is an action concerning the policy of the State whether a permanent post should continue or not.

Counsel on behalf of the appellants contended that the power to abolish the post is derived from the doctrine of pleasure as embodied in Article 310 and since Moti Ram Deka case (supra) has abolished the doctrine of pleasure there would not exist any power to abolish the post. This contention is unsound. The power to abolish any civil post is inherent in every sovereign Government. This power is a policy decision exercised by the executive. This power is necessary for the proper functioning and internal administration of the State. The doctrine of pleasure as embodied in Article 310 has not been abolished in Moti Ram Deka case (supra). It has been made subject to Article 311. The doctrine of pleasure cannot be invoked to terminate the services in contravention of Article 31 1. Article 310(2) throws a decisive light on the nature of tenure of office provided by Article 310(1). Article 310(2) recognises the consequences of service at pleasure and expressly overrides them in a very limited class of cases. These cases are where a fixed term con-

tract is made. Article 310(2), authorises payment of compensation to a government servant if before the expiration of that period the post is abolished or he, for reasons not connected with any misconduct, is required to vacate, the post. The termination under Art. 310(2) is in cases of contract having specific provisions for compensation. Moti Ram Deka case (supra) has not abolished the doctrine of pleasure as embodied in Article 310. Article 310 has been made subject to Article 311 where termination is by way of punishment.

Counsel for the appellants contended that since Article 310(2) refers to the event of abolition of post such right is limited by provision for compensation and the necessity of securing the services of the person having special qualification. It is, therefore, argued on behalf of the appellants that there was no unconditional right in the Executive or the legislature to abolish the post. The concept of contract of payment of compensation is an exception to the doctrine of pleasure as embodied in Article 310(1). The reference to abolition of post in Article 310 (2) is in relation to payment of compensation as a provision in the contract. The provisions of Article 310(2) furnish intrinsic evidence that the right to abolish the post is a category of power exercisable by the State. Article 310 is prefaced by the words "expressly provided by this Constitution."

The abolition of post may have the consequence of termination of service of a government servant. Such termination is not dismissal or removal within the meaning of Article 311 of the Constitution. The opportunity of showing cause against the proposed penalty of dismissal or removal does not therefore arise in the case of abolition of post. The abolition of post is not a personal penalty against the government servant. The abolition of post is an executive policy decision. Whether after abolition of the post. the Government servant who was holding the post would or could be offered any employment under the State would therefore be a matter of policy decision of the Government because the abolition of post does not confer on the person holding the abolished post any right to hold the post. The High Court was correct in holding that no estoppel could arise against the State in regard to abolition of post. The appellant Ramanathan Pillai Knew that the post was temporary. In American Jurisprudence 2d at page 783 paragraph 123 it is stated "Generally, a state is not subject to an estoppel to the same extent as in an individual or a private corporation. Otherwise it might be rendered helpless to assert its powers in government. Therefore as a general rule the doctrine of estoppel will not be applied against the state in its governmental, public or sovereign capacity. An exception how-, ever arises in the application of estoppel to the State where it is necessary to prevent fraud or manifest injustice". The estoppel alleged by the appellant Ramanathan Pillai was on the ground that he entered into an agreement and thereby changed his position to his detriment. The High Court rightly held that the, courts exclude the operation of the doctrine of estoppel, when it is found that the authority against whom estoppel is pleaded has owed a duty to the public against whom the estoppel cannot fairly operate.

Counsel for the appellant Ramanathan Pillai repeated in this Court the allegations of mala fide in regard to the abolition of post. Broadly the allegations were two fold. First, that the second respondent made a speech in the Assembly and made references to the appellant-which would show that the second respondent was biased and prejudiced against the appellant. Second, after the abolition of the Vigilance Commission a new department was created. The functions of the new department were the same as those of the Vigilance Commission. Therefore. the object was not to

abolish the Vigilance Commission and only to terminate the services of the. appellant. The High Court held that the State entertained doubts as to the advisability of establishing Vigilance Commission even before it was constituted in 1965. After the retirement of the first Vigilance Commissioner P. D. Nandana Menon the question was again considered. Views were expressed that the Commission had not worked satisfactorily. The State, therefore, de- cided to abolish the Vigilance Commission. The High Court rightly held that the exigencies of administration required alterations in the establishment and creation of a new department. This is a governmental function and a policy decision. The High Court was correct that there was no reason to hold that there was colourable exercise of power by the State.

The right to hold a post comes to an end on the abolition of the post which a Government servant holds. Therefore. a Government servant cannot complain of a violation of Article 19(1) (f) and Article 31 of the Constitution when the post is abolished.

Article 14 is not attracted on the facts of the present cases. The appellant in C.A. No. 275 of 1971 was appointed to the ad hoc post of the Vigilance Commissioner. In C.A. No. 2231 of 1970 the Chairman and the Members of the Subordinate Services Selection Board were discharged on the abolition of that Board. Their cases are similar to the case of the appellant in C.A. No. 275 of 1971. In C.A. No. 248 of 1971 the appellants were permanent teachers of the Training Institute. Their duty was to coach the trainees in certain subjects. As the trainees did not offer the subjects in which the appellants were specialists, they became surplus. Their cases also resemble the case of the appellant in C.A. No. 275 of 1971. On the facts of these cases the appellants cannot complain of discrimination because it could not be and has not been shown that the Government servants similarly situated had been allowed to remain in service.

The High Court was correct in all the three appeals in coming to a conclusion that the abolition of post does not attract Article 31 1.

For the aforesaid reasons the appeals fail and are dismissed. In view of the fact that the High Court did not make any order as to costs in these appeals each party will pay and bear his own costs in the three appeals. V.P.S. Appeals dismissed.