CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI.

(10)

REGN. NO. OA-839/86.

Shri Sanjiv Kumar Aggarwal and 3 others .... Applicants.

Versus

Union of India and others .... Respondents.

REGN. NO. OA-840/86.

Shri Ravi Kumar and 9 others .... Applicants.

Versus

Union of India and others .... Respondents.

REGN. NO. OA-1036/86

Smt. Usha (Sehgal)Bawa & another .... Applicants

Versus

Union of India and others .... Respondents.

CORAM:

The Hon'ble Mr. Justice K.Madhava Reddy,Chairman.

The Hon'ble Mr. Kaushal Kumar, Member.

For the applicants ... Shri R.K.Anand, Senior Counsel with Shri Ashok Bhasin, Ms. Kadambini Sharma, Shri S.P. Sharma and Shri Amit Khamka.

For the respondents ... Shri G.Ramaswamy, Addl. Solicitor General of India with Shri P.H.Ramchandani, Sr.Counsel and Shri M.L.Verma, counsel.

(Judgment of the Bench delivered by Hon'ble Mr. Justice K.Madhava Reddy, Chairman).

These three Applications under Section 19 of the Administrative Tribunals Act raise common questions of law and may be conveniently disposed

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of by a common judgment.

For appreciating the rival contentions, the relevant facts may be briefly stated:

Upon receiving a letter purportedly issued by the Staff Selection Commission, sponsoring the applicants, they were appointed as Lower Division Clerks between April and June,1985. Even as stated by the applicants, the case of Shri Sanjiv Kumar Aggarwal, Applicant No.1 in OA-839/86 is a typical one and we may particularly refer to the facts of his case. He was issued an appointment letter vide Office Memorandum dated 22nd April,1985 and was appointed in the Office of the Superintending Surveyor of Works-II, (DA), P.W.D. in the pay scale of Rs.260-400 with usual allowances. His appointment was initially on probation for two years. He joined duty on 7.6.1985.

In exercise of the powers conferred under proviso to sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, his services were terminated by Order No.9(4)/86-Coord Circle I. dated 23rd September,1986 issued by Shri A.S. Jain, Superintending Engineer. That order reads as under:

> "In pursuance of the Proviso to sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules,1965, I, A.S. Jain, Superintending Engineer, Coordination Circle I, C.P.W.D., New Delhi hereby terminate

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forthwith the services of Shri Sanjeev Kumar Aggarwal, LDC and direct that he shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of notice at the same rates at which he was drawing them immediately before the termination of his service ".

The applicant claims that he was serving to the total satisfaction of the respondents. During his fifteen months' period of service, he was never served with any charge-sheet or memo or even with any adverse remarks. As per the terms of his appointment, he was on probation for two years and was governed by the provisions of the Central Civil Services (Classification, Control & Appeal) Rules,1965. He also completed 10 weeks' accounts training as provided under Clause 10 of the appointment letter. When he was expecting to be appointed on regular basis on completion of the probation period, he received the order of termination without assigning any reason. It is his case that several temporary employees in the same grade as the applicant, selected on the basis of the same examination and placed junior to him are still kept on the rolls, while his services are terminated. The order of termination is challenged as punitive, arbitrary, unjust and violative of Articles 14, 16 and 311 of the Constitution. He requested the respondents to furnish him the reasons for terminating his services, but there was no response. He alleges that having terminated his services, the respondents are proposing to fill in these posts of LDCs and have called for a list of 100 candidates.

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He pleads that there is no justification for terminating the services of the applicant and making fresh appointments. Some of the applicants would be crossing the age of 25 years and would become ineligible for appointment to government service.

The case of the respondents as set out in the reply affidavit of Shri A.S. Jain, Superintending Engineer, CPWD is that respondent No.3 had reported several vacancies of LDCs to the Staff Selection Commission and requested it to nominate suitable candidates on the basis of the results of the competitive examination. Respondent No.3 received two separate lists dated 19.1.1985 and 15.3.1985 purported to have been issued by the Staff Selection Commission nominating 43 persons. As the names of the applicants were included in these lists, separate offers of appointments were issued to the applicants.

However, respondent No.3 received a letter dated 17.9.1986 from the Staff Selection Commission, inter alia stating that the nominations purported to have been made by the Staff Selection Commission in their letters dated 19.1.1985 and 15.3.1985 were not true and were fake nominations. The applicants had neither qualified at the examination nor were they nominated by the Staff Selection Commission.

Apparently, some persons have manipulated the issue of these fake nominations. The names of candidates, some of whom had not qualified at the examination and

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some who had not even appeared in the examination were fraudulently circulated. The roll numbers under which the applicants purportedly appeared in the examination and were nominated by the Staff Selection Commission actually pertained to some other candidates. The applicants have fraudulently obtained appointments on the basis of these fake nominations. The respondents plead that the applicants in these cases would fall under one of the following three classes:

(a) He/she did not apply for and did not appear in the examination of 1983 conducted by the S.S.C.; or

(b) He/She appeared in the written examination but was not successful and, therefore, did not appear in the typewriting test; or

(c) He/she appeared in the written examination, passed the same and appeared in the typewriting test, but was unsuccessful.

None of the applicants was entitled to be nominated for appointment as LDCs. The respondents challenged the applicants to establish that they had in fact taken the examination and passed the written test and typewriting test and were qualified and were duly nominated by the Staff Selection Commission. For this purpose they called

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upon the applicants to give the following particulars:-

(a) The roll number, assigned to him/her.

(b) The date and place at which he/she took the written examination;

(c) Whether he/she succeeded in the written examination;

(d) The date and place at which he/she took the typewriting test;

(e) Whether he/she succeeded in the typewriting test; and

(f) The rank obtained by him/her.

The respondents further plead that the applicants are either a party to the fraud or seek to reap the fruits and advantages of a fraudulent act. Their appointments were void ab-initio and are no appointments at all in the eye of law. In any case, such appointments are voidable at the instance of the Government for they were neither qualified to be appointed nor qualified to be continued in service.

The Department xxx terminated their services by separate orders in terms of the conditions of their appointment and under CCS (Temporary Service)Rules,1965. They also plead that Staff Selection Commission should have been impleaded as a party to the application.

The principal submission of the Respondents is that the termination is simpliciter as per the terms and

conditions of the offer of appointment and their services are regulated by the CCS(Temporary Service) Rules, 1965, their services could be terminated under Rule 5(1) thereof. No exception can, therefore, be taken to the order of termination. The applicants were never confirmed in their posts and their confirmation is not a matter of course. The appointment is either under a mistake or is one secured by fraud. Hence, the applicants can neither claim any benefit under such appointments nor can they seek any relief from the Tribunal. All such persons who have obtained appointments form a class by themselves, quite distinct from other LDCs who, being duly qualified and duly nominated were appointed. Hence, even if some juniors to the applicants are continued while the services of the applicants are terminated, no question of violation of Arts. 14 and 16 arises. In any event, the applicants, not having come with clean hands, are disentitled to any relief.

After hearing the parties for some time, the Tribunal found it necessary to ascertain certain facts from the applicants themselves, most of whom were present in the Court on 12.12.1986. The Tribunal

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recorded the statements of Shri Ravi Kumar son of Shri Madan Gopal Applicant No.1 in OA-840/1986 and Shri Alok Kumar son of Shri Inder Sardana, Applicant No.9 in OA-840/86. The Tribunal recorded these statements as also that of Shri B.Kumar, Regional Director, Staff Selection Commission to bring certain facts stated at the bar during the course of the arguments on record. In the course of examination of the two applicants named above, they admitted that they have no proof that they had appeared in any of the tests. Shri Ravi Kumar further admitted that he did not appear for the typewriting test. We directed Shri B.Kumar, an official of the Staff Selection Commission to file an affidavit after verifying the official records as to whether the names of all or any of the applicants figure or do not figure against the Roll Numbers purported to have been allotted to them. Shri B.Kumar filed a statement accordingly along with the affidavit of Shri R.C. Sethi, Under Secretary in the Staff Selection Commission. The applicants were also permitted to file a rejoinder, if any. On 16.1.1987 when the case came up for hearing, we further directed as under:

> "Before we proceed further with the matter, we deem it advisable to direct each of the applicants to file an affidavit before this Tribunal answering the following

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points:-

(i) Whether they had applied for appointment to the post of L.D.C. in the year 1985;

(ii) Whether they had appeared for the examination conducted by the Staff Selection Commission;

(iii) The place where they had taken this examination;

(iv) Whether they had received the offer of appointment, if so, to produce the same;

(v) Whether they had been allotted any Roll No. or given admission certificate; if so, produce the same along with the affidavit;

(vi) What was their residential address at that time and what was the address given by them in the applications.

(vii) What is their actual date of birth and the date of birth given by them in the applications for the Staff Selection Commission Examination,1983.

We also direct that the respondents to produce the applications which may be referable to any of the applicants in the original applications filed before the Tribunal.

As a large number of persons with the same name as that of the applicants have appeared for the examination, the identity of the applicants has to be established before they could be granted or refused the relief prayed for. The applicants are, therefore, required to appear on the next date of hearing in person. We deem it necessary to go into this aspect before proceedings with the hearing of the applications further ".

All the applicants in OA 839/86 and OA 840/86 have filed affidavits stating (a) that they have

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appeared for the Staff Selection Commission examination, written test as well as typing test; (b) that they do not remember where they took the examination; and (c) that they do not have any document to show what Roll Nos. were allotted to them. They also gave their respective dates of birth and the residential addresses. The applicants, however, did not file any document whatsoever.

The applicants plead that the termination of their services was by way of punishment and not termination simpliciter. The applicants were not guilty of any fraud. They bonafide joined service by accepting the offer of appointment. If it was based on any mistake on the part of the respondents, that cannot affect the validity of their appointment. If the termination is ordered on the ground that the appointment was secured by playing fraud, it cannot be termed as termination simpliciter; such termination would be by way of penalty. The applicants deny that they are guilty of any fraud. If there was any fraud in the Department, that cannot furnish a valid ground for the respondents to terminate the services of the applicants. It is further pleaded that even so the appointments of the applicants would not be void but would only be voidable and as the applicants are not party to the fraud, the respondents

cannot validly terminate the applicants' services. The contract of appointment is not void ab-initio. The contract having fructified into an appointment under the Rules, the respondents cannot be permitted to treat it as a subsisting contract. The applicants having acquired a status were entitled to be retained in service so long as their juniors are continued in service. Anything that may have occurred earlier to the date of appointment, cannot be made the basis for terminating their services under Rule 5(1) of the CCS(Temporary Service) Rules,1965.

The learned Additional Solicitor General, Shri G.Ramaswamy strongly pleaded that the respondents have acted bonafide. Upon being notified by the Staff Selection Commission that the applicants had not qualified and were not nominated by them and that the letters dated 19.1.1985 and 15.3.1985 containing nominations were fake, they have issued orders of termination simpliciter. The facts now stated in the counter are only intended to show that they acted bonafide and their action is not discriminatory or arbitrary. These facts are not the foundation of the order. It is innocuous order of termination and the applicants are not entitled to any relief. The respondents point out that if the termination

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orders are set aside, they would restore the appointments made contrary to the Rules which would never have been made if only correct facts were known. In the circumstances, the Tribunal should refuse to grant any relief to the applicants who were not at all eligible for appointment.

The first question that arises for consideration is whether the applicants were appointed on purely temporary basis and whether their services could be terminated under the Central Civil Services (Temporary Service) Rules,1965. The Office Memorandum No.9/4/D.C.C.-I (Coord)/84 dated 22.4.1985 issued by the C.P.W.D., Delhi Central Circle-I (Coordination) specifically states that the appointment of the applicant as LDC was "purely on temporary basis till further orders" subject to the conditions mentioned therein. Condition No.6 specifically stipulates:

> "His services can be terminated at any time without assigning any reason but one month's notice will be given generally. If he wants to leave the service he will have to tender resignation by giving one month's notice and wait for its acceptance. In case he leaves the services without waiting for acceptance of his resignation he shall be deemed as disqualified and dismissed for future appointment in Government of India".

Condition No.18 further stipulates:

> "He will have to furnish a declaration of temporary service on joining his duties".

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Condition No.23 of the said Memorandum expressly stipulates:

> "His appointment will be governed by orders and rules issued by Govt. from time to time".

It is also notified under Condition No.28 that:

> "This offer of appointment has been issued by the Superintending Surveyor of Works-II(D.A.) New Delhi. Formal appointment letter will be issued on its receipt in his department and on completion of proposed conditions".

The applicants have not filed their appointment letters.

The order dated 23.9.1986 is purported to have been made in terms of the Proviso to sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules,1965, terminating the services forthwith and informing the applicant that he will be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of notice at the same rates at which he was drawing them immediately before the termination of his service. As the appointment of the applicant is purely on temporary basis- both under the terms and conditions of his appointment as well as under the C.C.S.(T.S.) Rules,1965, the termination order which is prima facie innocuous is unexceptionable.

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The applicant, however, contends that under Condition No.14, it was stipulated that "his services will be temporary till he is declared medically fit" and under Condition No.26 he was informed that "he will remain on probation for two years. After successful completion of probation period, his regular appointment for the post of Lower Division Clerk shall be considered by the competent authority who will issue necessary orders in this respect". It is argued that in view of these conditions, he should be deemed to have been appointed to a permanent post and he should be allowed to complete his probation and that his services cannot be terminated under the C.C.S.(T.S.) Rules,1965.

The conditions subject to which the offer of appointment was made cannot be read in isolation. All the conditions have to be read together. In the face of the specific condition that both the parties could terminate the services by giving one month's notice as stipulated under Condition No.6 of the offer of appointment, the fact that he is also placed on probation does not alter the nature of his appointment and turn the temporary appointment into a permanent one. The order of appointment is categorical and Condition No.6 expressly authorises termination of service. Condition No.26 in the

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circumstances can only mean that if at the end of two years, the competent authority declares that he has satisfactorily completed his probation and order his regular appointment against a substantive vacancy, this two years' period also would count as service. Condition No.14 also in this context can only mean that if he is not found medically fit, his services can be terminated at that stage itself under the offer of appointment. Condition No.18 puts a seal on the status of the applicant's appointment which declares that "he will have to furnish a declaration of temporary service on joining his duties". We are, therefore, clearly of the view that the appointments of all the applicants were temporary appointments. Their services could, therefore, be terminated by an order simpliciter both under the terms and conditions of offer of appointment as well as under CCS(T.S.)Rules,1965.

It is, however, argued that though the orders on their face appear to be termination simpliciter, they are in fact by way of penalty and the same having been imposed without any enquiry and without giving an opportunity to the applicants to Show Cause, are illegal and unsustainable. It is argued that the allegation made in the reply that the applicants had obtained the appointments by fradulent means establishes that it is an order of removal by/punishment way of

Whether the termination of services would be violative of Art. 311 and violative of the Central Civil Services (Classification, Control and Appeal) Rules or not is one aspect of the matter which we will deal with hereinafter. We may at this stage take note of the fact that one of the terms and conditions, No. 10 of the appointment specifically warns the applicant that:

> "If it is proved after acceptance of this offer and appointment that he has been a disqualified/ dismissed servant by any commission, union or state under the offices of Government of India or he has fraudulently obtained the appointment, his services will be terminated (emphasis supplied) without payment of any remuneration".

Condition No. 24 also stipulates that:

> "In case the candidate's declaration is proved to be false or he suppressed any material information, his services can be terminated and other action taken as deemed fit by Govt."

Hence, if the applicants have obtained their appointments by fraud or mis-representation or by suppression of any material facts or if they have failed to disclose material facts or were accessories to it or the declarations filed by them are false, their services are liable to be terminated under the offer of appointment and terms of employment. It is clear from the offer of appointment made on 22.4.85 to Shri Sanjiv Kumar Aggarwal that it was made on the footing that the applicant's Roll No. was 12-42737 and that he had secured Rank No. 1567 at the examination held by the Staff Selection Commission and that the Staff Selection Commission had nominated

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him for appointment as Lower Division Clerk. If these material facts which form the basis of his appointment are found to be false or if the applicant had suppressed any material information, or the appointment was fraudulently obtained, it is liable to be terminated."

From the records produced before us, it is clearly established that the applicant, Shri Sanjiv Kumar Aggarwal did not qualify at the said test conducted by the Staff Selection Commission. Shri Sanjiv Kumar Aggarwal states that he appeared for the test conducted by the Staff Selection Commission - the written test as well as the typing test-but that he does not remember at which place and in which year he had taken this test. He is not even in a position to state what his Roll No. was. Nor has he produced any document to show that he took both the tests and was successful. He asserts that it was not necessary for him to preserve that record after joining the service. The applicant has thus failed to place any evidence on record, except his own assertion to show that he had in fact appeared for the tests, passed the tests and had qualified for appointment. He, however, makes an admission that is true and totally falsifies his entire claim that he had taken the test and passed and was nominated for appointment by the

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Staff Selection Commission. He admits that his date of birth was 2.8. 1963. On a verification of the records produced by the respondents along with the affidavit of Shri R.C. Sethi, Under Secretary, Staff Selection Commission, New Delhi, it is clear that most of the assertions made by the applicants are not correct. From the Master list of candidates maintained in the alphabetical order produced by the Respondents, it would appear that as many as 37 candidates by name Sanjiv Kumar Aggarwal appeared at the examination. But none of them were allotted this Roll No. 12-42737 and the date of birth of none of them is 2.8.1963. From the record , it is further established that this Roll No. was allotted to one Shri S. Sharma and he secured rank No. 1567 and not to Shri Sanjiv Kumar Aggarwal. This clearly establishes that Shri Sanjiv Kumar Aggarwal born on 2.8.1963, applicant No. 1 in this case was not one of the candidates who appeared for and passed the two tests. He could not be awarded any rank whatsoever. The position of all the 9 applicants in OA 839/86 is similar.

Sl. No.	Name	Date of Birth	As given in the Appointment letter	
			Rank No.	Roll No.
1.	Ravi Kumar	18.7.58	3355	1224655
2.	Vasudev Singh	28.8.58	3152	1232473
3.	Syed Rafi Ahmed	1.6.59	1552	1252752
4.	Sunil Ohri	12.8.62	1360	1228931
5.	Alok Kumar	9.3.63	1426	1272537
6.	Saroj Kumari	3.9.64	1319	1230141
7.	Sanjiv Kumar Aggarwal	2.8.63	1567	1242737
8.	Mohan Kumar	15.1.64	1574	1242742
9.	Raj Kumar Gupta	1.8.63	1564	1242748

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They claim to have qualified at the written test. From the record, it is proved that they did not appear for the test held by the SSC and qualify and letters of appointment were issued to them mentioning the Roll Nos. allotted to some other candidates. Same is the position with regard to the 5 applicants in the other two Original applications.

Sl. No.	Name	Date of Birth	As given in the Appointment letter	
			Rank No.	Roll No.
1.	Jagmohan Singh Chaudhary	22.12.60	3936	1282674
2.	Kalu Ram Gola	17.1.59	3945	1260560
3.	Durgesh Bhatt	22.3.64	1322	1252828
4.	Naresh Kumar	2.1.63	3373	1230235
5.	Mukesh Kumar Gupta	30.11.62	1387	1252796

These letters of appointment were actually intended for some other candidates and erroneously it was thought that the applicants herein were those candidates. We hold that none of the applicants were qualified to be appointed.

It is unecessary in this case to go into the question as to who is responsible for this fraud or mistake. Suffice to note that these candidates had not qualified for appointment and were offered appointment either as a result of mistake or fraud. Those who qualified for appointment were not offered appointment. Their roll numbers were utilised by the applicants either in collusion with some other officers and of the Staff Selection Commission to secure their nominations for appointments or the offer was made by mistake of someone. It is on the basis of such nominations that the appointment letters were issued. If the applicants had not taken the tests at all and yet on receiving the offer of appointment which clearly stated

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that the Staff Selection Commission had nominated them to join this post accepted the offer, they must be taken to be party to the fraud or at least to be labouring under the mistake for if they had not appeard for the test, they could not have been selected by the Staff Selection Commission and nominated for appointment. That they did not appear for the test was known to the applicants and yet they did not disclose that fact and joined the post. The Staff Selection Commission and the appointing authority must, therefore, be held to have acted under a mistake or were induced to make the offer of appointment by fraudulent means though it could not be said with certainty as to who was guilty of fraud. In any event, the appointments would be vitiated. Such appointments would be of candidates who were not eligible to be appointed under the Rules. When such appointments are terminated, it would be allowing the applicants to abuse the process of the Court if they are granted any relief as a result of which such illegal appointments are restored. Quashing such orders of termination, would revive appointments which should never have been made. In VENKATESWARA RAO Vs. GOVERNMENT OF ANDHRA PRADESH (1) dealing with the question whether an order made by the Government by way of review was valid, the Supreme Court found that the order under review was one made under Section 62 of Andhra Pradesh Panchayat Samithis & Zilla Parishads Act (Act 35 of 1959) and could not

(1) A.I.R. 1966 S.C. 828.

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be reviewed under Section 72, for Section 72(3) enables the Government only to review an order made under sub-section (1) of Section 72 and the Court also found that the order made in derogation of the proviso to sub-section (1) of Section 72 of the Act is also bad.

On facts, the Court came to the conclusion:

> " The Primary Health Centre was not permanently located at Dharmajigudem. The representatives of the said village did not comply with the necessary conditions for such location. The Panchayat Samithi finally cancelled its earlier resolutions which they were entitled to do and passed a resolution for locating the Primary Health Centre permanently at Lingapalem. Both the orders of the Government, namely, the order dated March 7,1962,and that dated April 18,1963, were not legally passed; the former, because it was made without giving notice to the Panchayat Samithi, and the latter, because the Government had no power under S.72 of the Act to review an order made under S.62 of the Act and also because it did not give notice to the representatives of Dharmajigudem village".

Their Lordships, therefore, posed the question whether the courts should quash an order which would result in reviving an illegal order and emphatically answered thus:

> "In those circumstances, was it a case for the High Court to interfere in its discretion and quash the order of the Government dated April 18,1963? If the High Court had quashed the said order, it would have restored an illegal order-

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it would have given the Health Centre to a village contrary to the valid resolutions passed by the Panchayat Samithi. The High Court, therefore, in our view, rightly refused to exercise its extraordinary discretionary power in the circumstances of the case". (Emphasis supplied).

While the applicants may have a right to move this Tribunal questioning the orders of termination, the Tribunal which is a substitute for the High Court, has the discretion to refuse relief having regard to the circumstances of the case. Even if the relief were claimed in a suit under the Specific Relief Act, the applicants are not entitled to a decree for reinstatement in service merely because the order of termination is bad. Unless the Tribunal is satisfied that the Plaintiffs were eligible for appointment and that they had come to the Court with clean hands, even the Civil Court was not bound to grant them specific relief of reinstatement in service. So too, the Tribunal is not obliged to grant any such relief. The process of the Court cannot be allowed to be used for a purpose which would perpetuate an illegality and defeat the ends of justice. The ends of justice would certainly be defeated if while eligible candidates are denied appointments, the applicants who are not eligible are restored to service. The Tribunal should therefore refuse to grant any relief to the applicants.

Mr. Anand, learned counsel for applicants, however, contends that the applicants

have ~~xx~~ bonafide joined the service on receiving the offer of appointment. If at all there was any mistake or fraud, it was on the part of the Staff Selection Commission or the appointing authority and not on the part of the applicants. May be, someone in the Office of the Staff Selection Commission or in the office of the appointing authority or in collusion with the staff of these offices got the letters of appointments issued. But in our view the applicants cannot feign total ignorance for they knew for certain that they had not applied for and appeared at all in the tests conducted by the Staff Selection Commission. They should have known what their Roll Nos were and whether they had passed the test or not. If they had appeared and passed the written or typing test, they should have been in possession of at least some documents to establish the same. In the absence of any documentary evidence in this behalf, we have no reason to doubt the documentary evidence adduced by the Department. The applicants themselves may not have practised fraud but xxxxxx they had joined the service full-well knowing that they had not qualified at the tests and were not eligible for appointment. In any event, when they were given an opportunity to show that they had qualified themselves for appointment and were duly appointed, they miserably failed to produce any record to establish the same. In this state of affairs the conclusion of the respondents that the applicants had not qualified themselves and were, therefore, not eligible for appointment, cannot be held

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to be erroneous calling for interference by this Tribunal. That is the position with respect to all other applicants. None of them have produced the record to support their plea that they have qualified at the examination held by the Staff Selection Commission. The same conclusion must, therefore, follow in regard to each one of them.

Several cases which lay down that master is bound by the acts of his servant were relied upon by Mr. Anand, learned counsel for the applicants to contend that if the respondents' own officers or their subordinates have misled them, the applicants cannot be blamed. While it is true that the acts of the servant done in the course of his employment and falling within the bounds of his authority bind the master, it cannot render an appointment to a post under the State, which has to be made in accordance with statutory rules, valid if it is in violation of such Rules. A public servant who acts contrary to Rules cannot be said to be acting within the bounds of his authority. The Staff Selection Commission had no authority to nominate candidates who had not passed the test. Assuming that the applicants were nominated by the Staff Selection Commission and appointed by the respondents solely due to mistake or fraud committed in the office of the respondents or of the Staff Selection Commission and the applicants had no hand in it, even then, in our opinion, the applicants do not acquire a right to continue in service when it is discovered that under the

Rules they were not eligible for appointment at all. None of these decisions lays down that upon the discovery of true facts, the contract cannot be put an end to. Moreover, all the cases relied upon by the applicants are cases of tortuous liability. In none of these cases was it held that such appointments would be valid and cannot be terminated when the correct position comes to light. We, therefore, deem it unnecessary to discuss these cases in detail.

Mr. Anand, learned counsel for the applicants placed strong reliance on the judgment of the GUJARAT HIGH COURT in S.R. PATEL Vs. STATE OF GUJARAT (2) in which it was contended that the respondents having once offered the post to applicants were estopped from disputing the qualifications and eligibility of the applicants to be appointed and the validity of their appointments, after they had accepted the offer and joined the service. They cannot be permitted to allege that the applicants misled them or that they were themselves misled by someone else. According to the applicants, in either case the original appointment orders cannot be called in question by the Respondents themselves. We are unable to agree with this broad contention. Firstly, where the offer of appointment and the terms and conditions subject to which the applicants were appointed itself gives the right to terminate the appointment if the basic assumptions under which the

(2) 1984 SLR 238 (Gujarat)

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appointments were made are found to be incorrect, this proposition cannot apply. Secondly, where the appointments are governed by statutory rules, merely because the appointee has joined the service, the Appointing Authority is not precluded from terminating the services when it finds later on that such appointment could not have been validly made under the Rules; more so when such appointment is temporary and the temporary employee had not acquired any right as such to the post. The orders of termination are not invalid on any principle of estoppel.

Mr. Anand, learned counsel for the applicants emphasised that the Rules governing appointment to the post of Lower Division Clerk do not lay down that only those who have passed Staff Selection Commission examination and were nominated by them are qualified to be appointed. He contends that even assuming thst the applicants did not appear for the test held by the Staff Selection Commission and had not qualified at the test, when it is

shown that all the applicants possess the qualifications prescribed by the Recruitment Rules, their appointments could not be held to be illegal and their appoinements terminated on the footing that they were not qualified. This contention is devoid of merit. Even according to the applicants, they appeard for the test and became qualified for appointment as a result of passing the test. The offer of appointment shows that the appointing authority intended to appoint them only because the Staff Selection Commission nominated them for appointment. The Staff Selection Commission nominated them on the assumption that they had passed the test and secured a particular rank. All these assumptions now turn out to be not true. Even if the Rules did not enjoin upon the Appointing Authority to appoint only those who pssed the test held by the Staff Selection Commission, when there are large number of applicants for limited number of posts to be filled up by selection, asking the Staff Selection Commission to hold a test and nominate qualified candidates for appointment in the order of merit seems to be a

perfectly valid method of appointment. We do not find anything in the Rules prohibiting the Appointing Authority adopting from such a course. That apart, when the Appointing Authority had appointed the applicants only on these assumptions and on no other basis, once these assumptions are found to be not true, then the appointment itself must fail.

In INGRAM AND OTHERS Vs. LITTLE (3) the Court observed:

> "the test by which to determine whether there is a contract despite the deception is to answer a question of fact, viz., - whether, contrary to a prima facie presumption that an offer is made to the person to whom it is addressed, the offeror is not contracting with the physical person to whom he utters the offer but with another individual whom he believes the person physically present to be"

and the majority held:

> "the offer to sell on payment by cheque was made only to the person (Mr. P.G.M.Hutchinson) whom the swindler had represented himself to be, and, as the swindler knew this, the offer was not one which was capable of being accepted by him; therefore there had been no contract for the sale of the car by the plaintiffs and they were entitled to recover the car or damages from the defendant".

There can be little doubt that the respondents intended to offer appointment only to the particular candidates who had appeared for the Staff Selection Commission examination with the particular roll numbers

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(3) (1960) 2 All E.R. 332.

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and who had passed the examination and were nominated by the Staff Selection Commission and not to the applicants. The respondents were led to believe that the applicants were allotted those roll numbers and had passed the examination, while in fact, some others were the allottees of those roll numbers and had passed the examination and were entitled to be offered those posts. The respondents thus never intended to offer the post to the applicants. These are cases xx of mutual mistake rendering the offer as well as acceptance of the offer invalid and the appointment void ab-initio. The acceptance of such an offer cannot result in a valid contract. The appointment based on such offer and acceptance can be validly terminated and ought not be resurrected. If the applicant had secured the appointment by fraud or was a party to the fraud either by actively aiding in securing the nomination or conniving at the fraud or mistake, and the respondents became the victims of fraud in making the offer, while the applicants may not be guilty of any misconduct, the appointments would be illegal and the contract itself would be void ab-initio and the appointment would be invalid. Even if the appointment was the result of fraud played by the members of the respondents staff, that could not have been possible without the active connivance of the applicants. In fact, it could have been and must have been only at the instance of the applicants. The roll numbers of some other candidates

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could not have been entered on the applications filed by them and on the offers of appointment now given to them. The photographs of the applicants could not find a place in the record unless the applicants themselves had furnished them. No one else would have been interested in introducing the names of the applicants in showing them as qualified for appointment and in nominating them for appointment to the departments concerned when they were not qualified. Though we do deem it unnecessary to give a categorical finding in this behalf, and we may add, Shri R.K. Anand, learned counsel for the applicants strongly pleaded that we should not, to our mind, the inference seems to be inescapable that the applicants were party to the fraud which vitiates their appointment right from its inception. That not only justifies the termination of their services but also enjoins this Tribunal not to make any order which would revive an untenable appointment.

We may now turn to the contention of Mr. Anand, learned counsel for the applicants that once the applicants had received the offer of appointment and accepted it and joined the service, they have acquired a status. They are governed by the GCS(TS) Rules, 1965 and, therefore, unless a charge is framed in this behalf, an inquiry is held in accordance with the Rules giving a reasonable opportunity to the applicants to defend themselves and the charges are held proved, their services could not be validly terminated.

Mr. G. Ramaswamy, learned Additional Solicitor General contended that it is not necessary to hold a regular disciplinary inquiry in every case of termination. Where termination of service is authorised by the terms of appointment or the Rules, if any, governing the service, the appointment may be validly terminated by an order simpliciter. Only if the respondents intended to terminate the services for misconduct, they need make an inquiry in accordance with the Rules governing disciplinary proceedings. The Respondents herein having found that the offers of appointment made to the applicants were either the result of a fraud played on them or the result of a mistake committed by them and they never intended to appoint applicants who were not qualified, are treating these appointments as void ab-initio and putting an end to such appointments under the impugned orders. In other words, there was never a valid contract. It was void ab-initio. Appointments based on such an offer and such an acceptance were not valid in the eye of law. It is not the conduct of the applicants which they have exhibited subsequent to joining service that is the basis of the termination order but something which occurred anterior to it. Their services are terminated in terms of the offer of appointment. No inquiry under the C.C.S. (CCA) Rules is called for to sustain such a termination order.

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It cannot be disputed that a temporary public servant has no right to the post. However, the services of even a temporary public servant cannot be terminated by way of punishment without making an inquiry into the alleged misconduct.

In the celebrated case of PARSHOTTAM LAL DHINGRA (4), the Supreme Court ruled that not only a permanent but even a temporary public servant is entitled to the protection of Art. 311 and if the services are sought to be terminated by way of penalty, the order of termination cannot be made without making an inquiry into the alleged misconduct.

This position was reiterated in JAGDISH MITTER Vs. U.O.I. (5) thus:

> "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 provision 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)."

But the services of a temporary employee can undoubtedly be terminated by an order simpliciter.

(4) AIR 1958 S.C. 36
(5) AIR 1964 S.C. 449 p.9

In JAGDISH MITTER Vs. U.O. I. (5) even while holding that a temporary public servant is entitled to protection of Art. 311, if his services are sought to be terminated by way of punishment, the Supreme Court upheld the power of the Appointing Authority to terminate their services by an order simpliciter in the following words:

> "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 con ract 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 a 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."

The Supreme Court also recognised this power in RAM GOPAL Vs. STATE OF M.P. (6) when it said:

> "the appellant was a temporary government servant and had no right to hold the office. The State Government had the right to terminate his service under Rule 12 without issuing any notice to the appellant to show cause against the proposed action."

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(6) AIR 1970 SC 158

The termination orders under challenge are, however, wholly innocuous and do not attach any stigma whatsoever. These orders do not state that the services of the applicants are terminated because they had secured their appointments by practising fraud. However, there may ~~xxx~~ be cases where the termination order on the face of it is innocuous and may be termed as termination simpliciter, yet in reality it may be by way of punishment. Where such an allegation is made, the Court can certainly tear the veil to find out the true foundation of the order. If it finds from the record that the termination is really based on misconduct or is in fact by way of punishment, it can strike it down. But that does not take away the right of the employer to terminate the services of a temporary public servant by an order simpliciter without going into the alleged misconduct.

Mr. Anand, learned counsel for the applicants, however, contends that the respondents themselves have stated in their counter affidavit the reasons for the termination. The averments in the counter clearly attach a stigma to the applicants. He argues that in view of this admission, it is wholly unnecessary for the Tribunal to tear the veil or examine any other record to see if it is really by way of punishment. On the admission of the respondents themselves, the termination orders must be held to be by way of penalty.

In JAGDISH MITTER Vs. UNION OF INDIA(5) reviewing the case law on the subject, the Supreme Court while holding that in determing whether the termination of a temporary temployee's services constitutes

(5) AIR 1964 SC 449.

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termination simpliciter or it amounts to a dismissal, even while observing that "the form of the order is inconclusive; it is the substance of the matter which determines the character of the termination of services" laid down:

> "in dealing with this aspect of the matter, we must bear in mind that the real character of the termination of services must be determined by reference to the material facts that existed prior to the order. Take a case where a temporary servant attacks the validity of his discharge on the ground of mala fides on the part of the authority. If in resisting the plea of mala fides, the authority refers to certain facts justifying the order of discharge and these facts relate to the misconduct, negligence or inefficiency of the said servant, it cannot logically be said that in view of the plea thus made by the authority long after the order of discharge, it should be held that the order of discharge was the result of the considerations set out in the said plea. What the Court will have to examine in each case would be, having regard to the material facts existing upto the time of discharge, is the order of discharge in substance one of dismissal? If the answer is that notwithstanding the form which the order took, the appointing authority, in substance, really dismissed the temporary public servant, Art.311 would be attracted." (Emphasis supplied).

The Supreme Court while concluding that the services of the Appellant in that case were terminated because he

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was found undesirable to be retained in Government service emphasised:

> "When an authority wants to terminate the services of a temporary servant, 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 would be 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. (Emphasis supplied).

No Appointing Authority having appointed a person albeit temporarily would terminate the services of any public servant unless there is some reason. If the termination were to be without any reason, whatsoever it would be arbitrary and would be liable to be quashed as violative of Art.16. So every termination to be valid must be supported by some reason but the reason for every termination need not be misconduct of the public servant. It may be a valid reason not impinging upon the conduct of the public servant. Termination of service for a valid reason other than misconduct would not be by way of punishment. Every termination need not be by way of punishment. Only if the termination is for

misconduct or the termination casts a stigma, that would amount to dismissal attracting Art. 311 of the Constitution. It would not be a termination simpliciter. But where the termination order is, on the face of it, innocuous but the public servant challenges the order alleging malafides or improper motive and contends that it is by way of punishment and in the reply filed before the Tribunal the respondents disclose facts which do not impinge upon the conduct of the employee exhibited during the course of his service but relate to events which occurred prior to his appointment or which establish that he was not qualified for rendering his appointment itself invalid, that would not amount to dismissal from service. Such an order of termination is not one based on any ground of miscounduct but on the ground that under the Rules, the employee was not eligible to be appointed and could not have been appointed. Where such an appointment is terminated by an order simpliciter, it cannot be termed as punitive so as to attract Art. 311 of the Constitution. In so terminating, the Appointing Authority need not, and in fact in this case did not, allege fraud or mistake on the part of the applicants; it merely terminated those appointments by an order simpliciter. No stigma or aspersion is cast on the applicants as a result of such termination. Whatever is stated in the counter affidavit was only in answer to the allegation that the termination was arbitrary. That was not the foundation of the order.

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Merely because in answer to the allegation made in the petition, the Respondents in their reply also stated that they "suspect" and do not categorically assert that the employee was guilty of fraud or misconduct, such termination does not become punitive. The respondents primarily support the impugned orders of termination on the ground that the applicants did not pass the tests and were not eligible to be nominated by the Staff Selection Commission. The respondents have no doubt stated in their counter that the applicants were either guilty of fraud or victims of fraud. But thereby the order of termination does not become vitiated, for that was not the foundation of the order of termination; the termination was ordered because it is now discovered that the applicants were not qualified to be appointed even initially. That was a disability attaching to the applicants on the date of appointment; that disability continues to stick to them. That was an event which occurred anterior to the date of appointment and prior to their entry into service. It is not an act of misconduct or anything done by them during the course of their service or any event which occurred subsequent to their appointment that forms the basis of the impugned termination orders. The subsequent averments in the counter do not render the termination orders punitive.

In our view, if an appointment itself is invalid on account of something preceding the appointment or if the public servant was not qualified for the appointment itself, he would also be deemed to be unsuitable for continuance in service. In such circumstances, the foundation of the termination order is not misconduct. Such a termination would not be by way of penalty especially when the order itself is innocuous. On tearing the veil and going behind the order, when all that is found is that the public servant is not qualified to be appointed under the rules, the termination of such appointment can neither be deemed

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to be arbitrary nor to be by way of penalty. Such a termination does not cast a stigma; nor does it call for an enquiry in conformity with Art. 311 and CCS(CCA) Rules.

The applicants contend that no sooner than they were appointed, the contract of service fructified into status; hence thereafter the question of termination of contract does not arise and the status could be terminated only in accordance with the Service Rules. If anything anterior to the acquisition of status had happened, rendering the contract invalid, their services cannot be terminated. Reliance for this contention is placed on the decision of learned Single Judge in ABDUL AZIZ KHAN Vs. THE UNION OF INDIA (7). But even in that judgment dealing with the argument addressed on behalf of the Railway Administration that they "having removed the plaintiff from service and he being no longer in the service, the contract would be deemed to have been avoided and the plaintiff is not entitled to any declaration or decree since he was guilty of fraud and for the same reason he cannot plead estoppel against the Railway Administration as his conduct was fraudulent and on that conduct no estoppel would arise", the learned Judge held:

"the arguments so raised by the learned standing counsel will appear to be tenable if, of course, it were found that the

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(7) 1974 (1) SLR 67.

plaintiff's conduct in obtaining his appointment as Loco Cleaner was deceitful and fraudulent but there is no such finding".

From this it would appear that the learned Judge also was of the view that where an appointment is terminated because it was obtained by deceit or fraudulent means, no question of estoppel would arise and it can be validly terminated by an order simpliciter. In our opinion, the same should follow where it is discovered that persons who were not qualified to be appointed and were never intended to be appointed got the appointment. That would be a case where neither the offer nor its acceptance is valid. There is neither a valid agreement nor an enforcible contract between the parties. Such an agreement can be put an end to. An agreement which never fructified into a valid contract cannot given rise to a status which a Court or Tribunal is obliged to protect.

It was lastly urged that the orders of termination violate Arts.14 and 16 of the Constitution inasmuch as several juniors to the applicants are retained in service while terminating their services. It is true that it is not enough to show that the termination orders are innocuous and are simpliciter; it should also be shown that they are not violative of Arts.14 and 16 of the Constitution. But only because the appointing authority has terminated the services of a temporary public servant without assigning any reason, cannot by itself make the order arbitrary. Conferment of such a power was held to be

valid by the Supreme Court in RAM GOPAL Vs. STATE OF M.P(6). Dealing with the contention that Rule 12 of M.P.Government servants (Temporary and Quasi Permanent Service)Rules,1960 was violative of Articles 14 and 16 of the Constitution, the Supreme Court held:

> "The argument that Rule 12 confers an arbitrary and unguided discretion devoid of any merit. The services of a temporary government servant may be terminated on one month's notice whenever the government thinks it necessary or expedient to do so for administrative reasons. It is impossible to define before-hand all the circumstances in which the discretion can be exercised. The discretion was necessarily left to the government".

However, if juniors are retained and seniors' services in the same class are terminated for no reason, it would undoubtedly be arbitrary and discriminatory and consequently violative of the Fundamental Rights guaranteed under Arts. 14 and 16. But in all such cases, the primary question would be whether they all form a single class so as to attract Arts.14 and 16. As already observed, no Appointing Authority would terminate the services of even a tempoary public servant without any reason. If the reason for the termination sets them as a class apart from their juniors, no question of violation of Arts. 14 and 16 arises.

In GOVT. BRANCH PRESS Vs.D.B.BELLIAPPA (8) the Supreme Court held:

"If the services of a temporary Government

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(6) AIR 1970 SC 158.

(8) AIR 1979 SC 429.

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"servant are terminated in accordance with the conditions of his service on the ground of unsatisfactory conduct or his unsuitability for the job and/or for his work being unsatisfactory, or for a like reason which marks him off a class apart from other temporary servants who have been retained in service, there is no question of the applicability of Art.16. Conversely, if the services of a temporary Government servant are terminated arbitrarily, and not on the ground of his unsuitability, unsatisfactory conduct or the like which would put him in a class apart from his juniors in the same service, a question of unfair discrimination may arise, notwithstanding the fact that in terminating his service, the appointing authority was purporting to act in accordance with the terms of the employment. Where a charge of unfair discrimination is levelled with specificity, or improper motives are imputed to the authority making the impugned order of termination of the service, it is the duty of the authority to dispel that charge by disclosing to the Court the reason or motive which impelled it to take the impugned action". (Emphasis supplied).

In that case, since the appellants, as observed by the Court itself, stuck to the position that the respondent's service had been terminated without any reason, which comes perilously near to admitting that the power reserved to the employer under the conditions of the employment, has been exercised arbitrarily held that "the order of termination suffers from the vice of unfair discrimination and is violative of Arts.14 and 16(1) of the Constitution".

The applicants herein have not named their juniors who are retained in service; nor have they stated that they are similarly placed. Among the temporary public servants appointed along with the applicants or later, some may be duly qualified and some others may not be. Those who are not duly qualified form a separate class distinct from those whose appointment is unimpeachable. Retention of duly qualified temporary public servants, though junior to the applicants, would not attract Arts. 14 and 16 when it is established that the applicants are not qualified. Even if some juniors not qualified are retained, that may call for the termination of their employment also by similar orders, that by itself would not justify quashing the impugned orders of termination.

To sum up: The applicants were temporary public servants and they had not acquired any right to the post. Their services could, therefore, be terminated by an order simpliciter both under the terms and conditions of offer of appointment as well as under CCS (TS) Rules, 1965. The services of the applicants were terminated by an order simpliciter. The respondents intended to appoint only those candidates who had qualified at the Staff Selection Commission examination and were nominated by them. The Staff Selection Commission is alleged to have nominated the

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either
applicants under erroneous impression that they had
or as a result of fraud or mistake
qualified at the examination. When it was discovered that the applicants were not qualified to be nominated and the Staff Selection Commission never intended to nominate persons who did not qualify at the examination, or not
irrespective of whether the applicants or someone else committed any fraud or mistake ~~xxxxx~~, their services could be validly terminated. These termination orders are not based upon any allegation of fraud or mistake on the part of the applicants. The orders of termination simpliciter are made because the applicants were not qualified for appointment. Such a termination is neither arbitrary nor by way of punishment. Though the termination order on the face of it may be innocuous and may be termed as termination simpliciter yet in reality it may be by way of punishment. Where such an allegation is made, the Tribunal can certainly tear the veil and find out what the true foundation of the order is. If the Tribunal finds from the record that the termination made without any inquiry is based on misconduct or is, in fact, by way of punishment, it can strike it down. Where the public servant challenges the order as malafide or that it is by way of punishment and in reply to that the respondents state before the Tribunal facts which do not impinge upon the conduct of

the employee during the course of his service but relate to events which occurred prior to the appointment ~~or which lead to his appointment rendering his~~ which renders his appointment invalid, the order of termination could not thereby be treated to be by way of punishment. On tearing the veil and going behind the order, it is found that the temporary public servant was not qualified to be appointed under the Rules and that the termination order is not based on any ground of misconduct or fraud. Termination of such an appointment can neither be deemed to be arbitrary nor to be by way of penalty. Offer made on assumption of facts which are not true, is not a valid offer of appointment. There can be no valid acceptance of such an offer, especially by a person who accepts the offer knowing that material statements in the offer are not true. Consequently, there was no valid contract. Any agreement which never fructified into a valid contract cannot give rise to a status which the Tribunal is obliged to protect. Assuming that such termination orders should have been preceded by an inquiry in accordance with the CCS(CCA) Rules (which, in our opinion, is not required) and such an inquiry not having been held, the orders of termination are bad, even then if the Tribunal finds that quashing these

orders would result in reviving appointments which should never have been made, would not issue any writ, direction or order. Granting any relief to the applicants would amount to allowing them to abuse the process of court. The Tribunal, therefore, declines to grant any relief to the applicants. For the aforesaid reasons, the impugned orders do not call for interference. These applications, therefore, fail and are accordingly dismissed, but in the circumstances, without costs.

Sd/-
(Kaushal Kumar)
Member

Sd/-
(K.Madhava Reddy)
Chairman

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