



IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Case No. LPA 50/2024 in
SWP No. 1077/2007

Reserved on : 26.02.2026
Pronounced on :06.06.2026
Uploaded on : 06.06.2026
Whether the operative part or full
judgment is pronounced

Manzoor Ahmad Bhat
S/O Ghulam Rasool Bhat
R/O Khrew Pampore District Pulwama

....Petitioner/Appellant

Through:- Mr. Danish Yousuf, Advocate

V/s

1. **Union of India Th. Ministry of Defence New Delhi.**
2. **Brigadier Station Commander HQ 31 Sub Area**
C/O 56 APO
3. **Lt.Col. OIC ECHS For Station Cadre C/O 56 APO**
4. **Colonel Adm. Commandant CL-Y Station HQ Ceil 31**
Sub Area C/O 56 APO
5. **Avinash Varma Lt. Col. SSO For Stn Cdr C/O 56 APO.**

.....Respondent(s)

Through:- Ms. Rehana Qayoom, Advocate vice
Mr. T. M. Shamsi, DSGI

CORAM: HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE
HON'BLE MR. JUSTICE SHAHZAD AZEEM, JUDGE

JUDGMENT

PER SINDHU SHARMA-J

1. This Letters Patent Appeal (hereinafter referred to as "LPA") has been preferred by the appellant against the



judgment dated 02.08.2023, passed by the learned Single Judge in SWP No. 1077/2007, titled “*Manzoor Ahmad Bhat vs. Union of India & Ors.*”, whereby the writ petition filed by the appellant came to be dismissed.

2. The case set up by the appellant before the learned Single Judge was that he was appointed as a Laboratory Assistant under the Ex-Servicemen Contributory Health Scheme (ECHS) in terms of appointment order dated 04.10.2004. The term of his engagement was extended vide agreement dated 30.10.2005 for a period of 11 months, and thereafter again extended in the year 2006 through another agreement. Subsequently, he was served with a termination notice dated 21.05.2007 by respondent No. 3. The appellant submitted his reply, however, the same was not accepted, and respondent No. 2 issued the impugned order of termination dated 19.06.2007 without conducting any enquiry and allegedly in violation of the principles of natural justice.

3. The appellant challenged the action of the respondents on the grounds that respondent No. 3 was not competent to issue the termination notice and that his services could not have been terminated without holding an enquiry, particularly when the order of termination was stigmatic in nature.

4. The respondents, on the other hand, contended before the learned Single Judge that the appellant was a contractual



employee whose engagement was governed strictly by the terms of contract, initially for 11 months and subsequently, extended from time to time, the last agreement being executed on 06.09.2006. It was further contended that the termination notice was issued by respondent No. 3 on behalf of respondent No. 2 and that the final order of termination was passed by the competent authority. The respondents also submitted that the appellant was repeatedly warned for his unprofessional conduct and unsatisfactory performance through communications dated 07.04.2007, 27.04.2007, and 08.05.2007.

5. The learned Single Judge, upon perusal of the record, noted that an inspection conducted on 27.04.2007 revealed deficiencies in the functioning of the laboratory. It was further observed that the appellant had been issued multiple warnings regarding his conduct, attitude towards colleagues, and lack of diligence in discharging his duties. The reply submitted by the appellant to the show cause notice was also considered, wherein he, to an extent, admitted deficiencies but attributed them to other staff members.

6. On this basis, the learned Single Judge held that the appellant's engagement was governed by contractual terms and, in terms of Clause (11) of the agreement, the respondents were empowered to terminate his services upon issuance of a



show cause notice. Since such notice was issued and duly replied to, and considering the appellant's continued unsatisfactory conduct despite repeated warnings, the termination was held to be justified and within the competence of the respondents.

7. The appellant has assailed the impugned judgment primarily on the ground that the learned Single Judge failed to appreciate the settled legal position that even a contractual employee cannot be terminated in a manner that is stigmatic or founded on allegations of misconduct without holding a proper enquiry and affording a reasonable opportunity of hearing.

8. In support of his contention, learned counsel for the appellant has relied upon a judgment of Hon'ble Supreme Court in case titled **Anoop Jaiswal vs. Government of India & Anr**, AIR 1984 SC 636.

9. Heard learned counsel for the parties and perused the material on record.

10. In the present case, the appellant had executed a contract of employment with the respondents, and his services were terminated by invoking Clause (11) of the agreement. Clause (11) specifically provides that the respondents shall have the right to terminate the agreement by giving one month's notice to the engaged person or one month's salary as



compensation in lieu thereof, without prejudice to the general right of termination on the grounds mentioned therein, which include “professional incompetence or misconduct or an act of moral turpitude” as well as “unsatisfactory performance of duty.”

11. The Hon’ble Supreme Court in case titled ***Parshotam Lal Dhingra vs Union Of India***, AIR 1958 Supreme Court 36, observed that where the Government has an express or implied contractual or statutory right to terminate employment, termination in exercise of such power is prima facie not a punishment and Article 311 is not attracted. The Hon’ble Supreme Court further observed as under:-

“35.....Shortly put, the principle is that when a servant has right to a post or to a rank either under the terms of the contract of employment, express or implied, or under the rules governing the conditions of his service, the termination of the service of such a servant or his reduction to a lower post is by itself and prima facie a punishment, for it operates as a forfeiture of his right to hold that post or that rank and to get the emoluments and other benefits attached thereto. But if the servant has no right to the post, as where he is appointed to a post, permanent or temporary either on probation or on an officiating basis and whose temporary service has not ripened into a quasi-permanent service as defined in the Temporary Service Rules, the termination of his employment does not deprive him of any right and cannot, therefore, by itself be a punishment. One test for determining whether the termination of the service of a Government servant is by way of punishment is to ascertain whether the servant, but for such termination, had the right to hold the post. If he had a right to the post as in the three cases hereinbefore mentioned, the termination of his service will by itself be a punishment and he will be entitled to the protection of Art. 311. In other words and broadly speaking, Art. 311(2), will apply to those cases where the Government servant, had he been employed by a private employer, will be entitled to maintain an action for wrongful dismissal, removal or reduction in rank. To put it in another way, if the Government has, by contract, express or implied, or, under the rules, the right to terminate the employment at any time,



then such termination in the manner provided by the contract or the rules is, prima facie and per se, not a punishment and does not attract the provisions of Art. 311..."

12. In case titled ***State Of U.P vs Ram Chandra Trivedi***, AIR 1976 Supreme Court 2547, the Hon'ble Supreme Court observed as under:-

"Keeping in view the principles extracted above, the respondent's suit could not be decreed in his favour. He was a temporary hand and had no right to the post. It is also not denied that both under the contract of service and the service rules governing the respondent, the State had a right to terminate his services by giving him one month's notice. The order to which exception is taken is ex facie an order of termination of service simpliciter. It does not cast any stigma on the respondent nor does it visit him with evil consequences, nor is it founded on misconduct. In the circumstances, the respondent could not invite the Court to go into the motive behind the order and claim the protection of Article 311 (2) of the Constitution."

13. Again the Hon'ble Supreme Court in case titled ***Oil and Natural Gas Commission & Ors vs Dr. Mohd. S. Iskender Ali***, 1980 (3) SCC 428, reiterated that in the case of a probationer or temporary employee, termination on the ground of unsuitability does not amount to punishment and does not require a formal enquiry. The Hon'ble Supreme Court further observed as under:-

"In these circumstances, therefore, it is obvious that as the respondent was merely a probationer, the appointing authority did not consider it necessary to continue the enquiry but decided to terminate the services of the respondent as he was not found suitable for the job. It is well settled by a long course of decisions of this Court that in the case of a probationer or a temporary employee, who has no right to the post, such a termination of his services is valid and does not attract the provisions of Art. 311 of the Constitution."



14. The appellant was not working on a civil post but was engaged on contractual basis. The terms of his engagement were renewed from time to time and were governed by the terms of the agreement of service, therefore, the safeguard available to the employee appointed against the civil post as contained in Article 311 was not available to him.

15. In “**Neena Shad v. MCD**”, **2012 (1) SLR 110**, the Hon’ble High Court of Delhi has observed as under: -

67. In order to determine whether an order terminating the service of a government servant amounts to punishment following two tests needs to be applied namely, (1) whether the servant had a right to the post, or (2) whether he has been visited with penal consequences of the kind hereinbefore referred to? If the case satisfies either of the two tests then it must be held that the servant has been punished and the termination of his service must be taken as a punishment.

68. Sometimes due to rush of work or other exigencies of service the government makes contractual appointments. Such appointments are made in respect of non-sanctioned posts and de-hors the recruitment rules. A person appointed on contractual basis does not enjoy the protection of Article 311(2) for the simple reason he is not member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State. (See the decision of Supreme Court reported as Union Public Service Commission v. Girish Jayanti Lal Vaghela MANU/SC/8003/2006 : (2006) 2 SCC 482)

16. The reliance placed by the learned counsel for the appellant on Anoop Jaiswal’s case (Supra) is misplaced and distinguishable on facts. In the said case, even though the termination order looked harmless and didn’t clearly mention any wrongdoing, the Hon’ble Supreme Court observed that it was actually based on specific allegations of misconduct. Because of that, the Supreme Court was of the opinion that the termination was really a punishment and held that the Union of India should have conducted a proper formal enquiry



before terminating the appellant. Whereas, in the present case, however, the termination of the appellant is not founded on any specific charge of misconduct, but is based on overall unsatisfactory performance and lack of professional competence, as reflected from the record and the communications issued to him from time to time.

17. Further, the material placed on record indicates that the termination was based on overall unsatisfactory performance and failure to adhere to expected standards, rather than any specific charge of misconduct requiring a formal enquiry.

18. In the present case, no stigma can be said to have been attached to the termination order, so as to attract the requirement of a departmental enquiry.

19. The learned Single Judge has, therefore, rightly appreciated the facts and the law applicable to the case and has correctly dismissed the writ petition. No ground for interference is made out in the present appeal.

20. The LPA is, accordingly, dismissed.

**(Shahzad Azeem)
Judge**

**(Sindhu Sharma)
Judge**

**JAMMU
06.06.2026
Bir**

Whether the judgment is speaking: Yes/No

Whether the judgment is reportable: Yes/No