District Judge was not correct but his conclusion was correct. I, therefore, affirm the price fixed by him.

(12) For the reasons recorded above, the appeals fail and the same are dismissed with no order as to costs.

H.S.B.

FULL BENCH

Before S. S. Sandhawalia, P. C. Jain and S. C. Mital, JJ.

S. K. VERMA and OTHERS—*Petitioners*

versus

STATE OF PUNJAB, ETC.—*Respondents.*

Civil Writ Petition No. 1050 of 1978.

May 19, 1978.

Constitution of India 1950—*Articles* 16 *and* 311—*Services of an* ad hoc *public servant—Whether can be terminated to employ another* ad hoc *employee when post not abolished—Such termination—Whether violates Articles* 16 *or* 311—*Considerations as to who replaces the* ad hoc *employee and the nature of his tenure—Whether relevant—* Ad hoc *and temporary employee—Distinction.*

Held, that the term '*ad hoc* employee' is conveniently used for a wholly temporary employee engaged either for a particular period or for a particular purpose and one whose services can be terminated with the maximum of ease. Having regard to the ordinary meaning of the term, no distinction can reasonably be drawn betwixt a temporary employee whose services are terminable without notice or otherwise and an employee characterised as *ad hoc* and employed on similar terms. Indeed, in the gamut of service law an *ad hoc* employee virtually stands at the lowest rung. As against the permanent, quasi-permanent, and temporary employee, the *ad hoc* one appears at the lowest level implying that he has been engaged casually, or for a stop-gap arrangement for a short duration or fleeting purposes. (Paras 8 and 9).

Held, that the issue of termination of the services of an *ad hoc* employee is strictly confined betwixt him and the State. The list is confined to these two parties. The consideration whether consequent upon such a termination the State would choose to employ any one at all in the same post, and if so, whether such an employment would

be of a regular or transitory nature, appears to be wholly extraneous for the determination of the rights and liabilities of the employer. If the employer has the power to terminate the services of his employee in accordance with the terms of contract or otherwise, the academic qualifications of the existing employee or of the one who, on an off-chance is likely to succeed him, would be equally irrelevant to the question. Similarly the nature of the tenure whether permanent or temporary that might later on be offered to the new incumbent cannot in any way enlarge or constrict the power of termination of services if otherwise vested in the employer. Neither the academic qualifications of a proposed incumbent to fill the vacancy nor the nature of the tenure offered to him, therefore, have any legal consequences on the power or otherwise of the employer State to dispense or not with the services of an *ad hoc* employee.

(Paras 11 to 14).

Held, that the right of the State, and for that matter of any employer to terminate the services of an employee in accordance with the terms of his appointment is inherent and well recognised by law. Of course such a right may be cut into or constricted by statutory provisions. So far as the State is concerned, the pleasure doctrine has been expressly noticed and incorporated in the Constitution of India 1950 by Article 310 itself. It is now well settled that the pleasure doctrine inherited from the concepts of British jurisprudence has been subjected to sizeable fetters by virtue of Article 311, as also Article 16. An examination of these provisions together, however, makes it plain that the elementary right of the employer to appoint and terminate the services of the employee can be cut down only by specific legal provisions. Admittedly in the context of a simple termination of service in accordance with the contract of employment clearly specifying that these may be dispensed with any time without giving any notice, no question of Article 311 being attracted arises.

(Para 15).

Held, that it is elementary that Articles 14 or 16 are attracted only when equals are treated unequally or to put it in reverse unequals are treated equally. An *ad hoc* public servant cannot claim any hostile discrimination qua some unspecified persons, who are not even parties to the petition and who in some eventualities may later come to hold the posts which they are being asked to vacate. The equality clause can interpose only in the context of specific persons or a specific class. Even otherwise, Article 16 would not be attracted. An *ad hoc* employee with an existing service record cannot be deemed in the eye of law as identically equivalent to an aspirant for the post which he is likely to vacate. The two do not form the same class. One of them being employed with his service record, whilst the other is as yet unemployed and his work and conduct is yet to be assessed in future.

The two, therefore, stand on entirely different footing, far from being in an identical class. Consequently, Article 16 can have no application.

(Paras 17 and 18).

Krishna Devi v. *Punjab State*, C.W.P. No. 2268 of 1977 decided on 9th December, 1977 overruled.

Case referred by Hon'ble Mr. Justice D. S. Tewatia and Hon'ble Mr. Justice D. B. Lal on 31st March, 1978 to a Full Bench for decision of an important question of law involved in the case. The Full Bench consisting of Hon'ble Mr. Justice S. S. Sandhawalia, Hon'ble Mr. Justice P. C. Jain, and Hon'ble Mr. Justice S. C. Mital finally decided the case on 19th May, 1978.

Petition under Articles 226 and 227 of the Constitution of India praying that this Hon'ble Court may be pleased to:—

(i) *send for the records of the case and after a perusal of the same;*

(ii) *command the respondents to regularise the services of the petitioners keeping in view the services rendered by them so that they may not suffer in the matter of employment;*

(iii) *by issuing writ of mandamus the respondents be directed not to terminate the services of the petitioners for making appointment of other employees on* ad hoc *basis.*

(iv) *by issuing a writ of prohibition the respondents be restrained from terminating the services of the petitioners till the decision of this case;*

(v) *the requirement of rule* 20(2) *of the writ jurisdiction rules may kindly be dispensed with;*

(vi) *this court may also issue any suitable writ, direction or order which it may deem fit in the circumstances of this case.*

It is further prayed that during the pendency of the writ petition the respondents be restrained from terminating the services of the petitioners by issuing an injunction against the respondents as prayed.

Cost of this petition may also be awarded to the petitioners.

R. K. Chopra, advocate, *for the appellants.*

I. S. Tiwana, Additional A. G., Punjab, *for respondents.*

JUDGMENT

S. S. Sandhawalia, J.

(1) Whether the services of an *ad-hoc* public servant can be terminated and another *ad hoc* employee appointed in his place is the somewhat interesting question, which falls for determination by this Full Bench. This reference has been necessitated in the wake of doubts raised about the correctness of the observations made by the Division Bench at the motion stage in *Krishna Devi* v. *Punjab State* (C.W.P. 2268 *of* 1977) decided on 9th December, 1977.

(2) Though the issue is pristinely legal, yet a passing reference to the facts becomes inevitable. The three petitioners were recruited as Junior Auditors in the office of the District Food and Supplies Controller,—*vide* identical letters of appointment (Annexure P. 1). The relevant portion thereof deserves quotation:—

> "The appointment is against a temporary post, the sanction of which is granted from time to time. If the post is abolished then your appointment is liable to be terminated as you are being appointed on temporary basis. *It is, therefore, made clear that your services can be terminated at any time without giving any notice.*"

(3) It is the petitioners' case that though the temporary posts against which they were appointed are yet continuing, nevertheless their services are sought to be terminated and the respondents have sent requisitions to the Employment Exchanges for appointment of fresh candidates in place of the petitioners on *ad-hoc* basis. It is not in dispute that the respondent-State has issued an order (Annexure P. 2) *inter-alia* providing for the regularisation of certain categories of its *ad hoc* employees, who had completed at least a minimum period of one year's continuous service on 31st March, 1977 and further satisfied the requisite conditions specified in the said order. Admittedly none of the petitioners satisfied the basic conditions spelled out in Annexure P. 2. in order to attract its application. Nevertheless, a challenge is laid to the apprehended termination of the petitioners' services primarily on the ground that their employment cannot be dispensed with as long as the posts against which they were appointed continue and in order to make room for other *ad hoc* employees.

(4) In the return filed on behalf of the State, it is highlighted that the appointment of the petitioners, *ab initio* were on *ad-hoc* basis and their services were liable to be terminated without notice In accordance with letters of their appointment. It has been categorically averred that the petitioners' case is not covered by the Government instructions (Annexure P. 2) and consequently the stand is that the petitioners have no legal right either for regularisation of the services or to challenge the termination thereof in accordance with the terms of their appointment.

(5) The consideration as to who replaces them thereafter has been characterised as wholly irrelevant and extraneous to the issue.

(6) To clear the ground for the consideration of the main question, it may be noticed at the very outset that a half-hearted attempt was made by Mr. Chopra to take some advantage of Annexure P. 2 for the regularisation of the petitioners' services. It was contended that the fixation of the date of 31st March, 1977 for purposes of rebularisation of *ad hoc* employees was arbitrary and discriminatory, and consequently despite the fact that the petitioners did not satisfy the conditions spelled out in that order, they were nevertheless entitled to claim the benefits thereof. On this point, however, the matter stands concluded against the petitioners by the Division Bench Judgment in *Gian Chand and others* v. *The Director, Hydel Designs, Punjab* (1). It has been authoritatively held that neither the fixing of a date for purposes of regularisation of *ad hoc* employees can be termed as arbitrary, nor would any question of discrimination arise betwixt persons who satisfied the conditions laid down for regularisation as against others who do not. Faced with the aforesaid unsurmountable hurdle, the learned counsel for the petitioners did not press this aspect of the case at all.

(7) The anchor sheet of the petitioners' case, as already noticed, are the observations of the Division Bench in *Krishna Devi's case* made at the motion stage to the following effect:—

> "The order Annexure P. 2, dated February 19, 1977, passed by the Headmaster Government High School, Ghumiara, shows that the services of the petitioner are being terminated on the appointment of another employee by the

(1) 1976 (1) S.L.R. 570.

District Education Officer, Faridkot. The order does not say that the other employee has been recruited as a regular teacher. We are highly doubtful whether it would be open to the District Education Officer to terminate the services of an *ad hoc* employee who is better qualified for making the appointment of another employee with lessor qualifications on *ad hoc* basis. In the circumstances, we hold that the petitioner on the basis of her qualifications is entitled to hold the post of a Hindi teacher and she will not be removed from service merely because another employee is available for appointment on *ad hoc* basis. It shall, however, be open to the department to terminate her services if a regularly selected Hindi teacher is available for appointment. With these observations, this petition stands disposed of with no order as to costs."

(8) Relying on the above, the learned counsel for the petitioners has raised two contentions. Firstly, that the services of even an *ad-hoc* employee can be terminated only if a permanent and regular employee is to take his place if the post against which he was appointed is continuing. Secondly, on a lower plane it is contended that this convenient appellation for a wholly temporary employee nated in order to replace him by another *ad-hoc* employee of equivalent or inferior academic qualification. It was, however, fairly conceded that the services of an *ad-hoc* employee may be terminated if the post against which he was appointed is abolished.

(8-A) We do not propose to get enmeshed in any abstruse discussion about the precise legal connotation of the term '*ad-hoc* employee' or to attempt a precise definition thereof. Indeed, it appears to us that this convenient appellation for a wholly temporary employee cannot be raised to the pedestal of a term of art. Mr Chopra had without much success attempted to draw a sharp line of distinction between a temporary employee and an *ad-hoc* employee. According to him, an *ad hoc* employee is one who is appointed for a specified period of time as against a temporary one, who may be appointed without specifying the period of his appointment at all. However, Mr Chopra could neither cite any principle nor precedent for this supposed distinction. We are wholly unable to find any merit therein and indeed, it would be vain to attempt a legal definition of a lose and convenient word of common parlance. To our mind, the

term *'ad hoc* employee' is conveniently used for a wholly temporary employee engaged either for a particular period or for a particular purpose and one whose services can be terminated with the maximum of ease. The dictionary meaning of *ad hoc* in Webster's New International Dictionary has been given as 'pertaining to or for the sake of this case alone.' In the Random House Dictionary its meaning has been given as "for this special purpose; with respect to this subject or thing."

(9) Therefore, having regard to the ordinary meaning of the term, no distinction can reasonably be drawn betwixt a temporary employee whose services are terminable without notice or otherwise and an employee characterised as *ad-hoc* and employed on similar terms. Indeed, it appears to us that in the gamut of service law an *ad hoc* employee virtually stands at the lowest rung. As against the permanent, quasi-permanent, and temporary employee, the *ad-hoc* one appears at the lowest level implying that he has been engaged casually, or for a stop-gap arrangement for a short duration or fleeting purposes.

(10) Now going back to the observations of the Division Bench in *Krishna Devi's case* on which primary reliance has been placed, it appears manifest that these are obviously of first impression. As noticed earlier they were made in passing at the motion stage and perhaps in the context of a more or less agreed order, and in any case without serious opposition by the respondent—State therein It is more than evident from its two paragraphs that the issue was never seriously canvassed before their Lordships of the Division Bench. Neither principle nor precedent seems to have been cited nor adverted to. It is, therefore, with great respect and regret that ve find ourselves wholly unable to agree with the line of reasoning indicated in those observations.

(11) As we look at the matter, the issue of the termination of the services of an *ad hoc* employee is strictly confined betwixt him and the State. The Primary and indeed what appears to us as the sole consideration here is whether the employer State has a legal right to terminate the services of an *ad-hoc* employee or not. Vieved from the opposite angle, it is whether the latter has a legal right to continue in his post. The *lis*, if one may say so, is hence confined to these two parties. The consideration whether consequent upon such a termination the respondent State would choose to employ

any one at all in the same post, and if so, whether such an employment would be of regular or transitory nature, appears to us as wholly extraneous for the determination of the rights and liabilities of the employer and employee. Similarly the question of academic qualifications and the suitability, etc., of the proposed incumbent of the post, who may later come to occupy the same, appears to us on an identical footing.

(12) Now, if the employer has the power to terminate the services of his employee in accordance with the terms of contract or otherwise, we are unable to see how the academic qualifications of the existing employee or of the one who, on an off-chance, is likely to succeed him, would become relevant to the question. Similarly the nature of the tenure whether permanent or temporary that might later on be offered to the new incumbent cannot in our view in any way enlarge or constrict the power of termination of services if otherwise vested in the employer. With great respect it appears to us that these matters are not only extraneous to the issue, but are an unnecessary extension into a field which must necessarily remain conjectural.

(13) Undoubtedly academic qualifications of an employee are relevant and even important, but by themselves they do not and should not necessarily ensure either permanency of tenure or invariably implying a superiority to hold a particular post. To take a homely example, for a menial or ministerial job higher academic qualifications might well prove to be a handicap. Experience has shown that in such like situations, persons of superior academic qualifications may remain wholly dissatisfied and disgruntled in a post of this nature, while others of lesser and lowly academic standing may value and cherish such a job.

(14) We are firmly of the view that neither the academic qualifications of a proposed incumbent to fill the vacancy nor the nature of the tenure offered to him should have any legal consequences on the power or otherwise of the employer State to dispense or not with the services of an *ad hoc* employee.

(15) Once the aforesaid considerations are out of the way, it appears to us that the right of the respondent State, and for that matter of any employer, to terminate the services of an employee

in accordance with the terms of his appointment is inherent and well recognised by law. Of course such a right may be cut into or constricted by statutory provisions. In the present context, the only provisions brought to our notice and on which some semblance of reliance was placed by the petitioners are Articles 16 and 311 of the Constitutions, or in the given circumstances the statutory law or service rules governing the parties. Indeed it deserves recalling that so far as the State is concerned, the pleasure doctrine has been expressly noticed and incorporated in the Constitution by Article 310 itself, the relevant part whereof is as follows:—

"310. *Tenure of office of persons serving the Union or a State*

It is by now well settled however, that the pleasure doctrine inherit-

> person who is a member of a defence service or of a civil service of the Union or of an all-India holds any post connected with defence or any civil post under the Union, holds office during the pleasure of the President, *and every person who is a member of a civil service of a State or holds any civil post under a state holds office during the pleasure of the Governor of the State* .....
>
> (2) * * * *".

It is by now well settled however, that the pleasure doctrine inherited from the concepts of British jurisprudence has been subjected to sizeable fetters by virtue of Article 311, as also Article 16. An examination of these provisions together, however, makes it plain that the elementary right of the employer to appoint and terminate the services of the employee, or to use the picturesque and powerful terminology of American jurisprudence, labelled as the right to "hire and fire", an employee, can be cut down only by specific legal provisions. Admittedly in the present context of a simple termination of services in accordance with the contract of employment clearly specifying that these may be dispensed with any time without giving any notice, no question of Article 311 being attracted arises. Indeed Mr. Chopra, learned counsel for the petitioners, fairly conceded that this Article had no application to the present case. Similarly it is plain that the services of the petitioners not being governed by any statute or service rules, none of these inter-posed to bar the right of termination of the petitioners' services in accordance with their letters of appointment.

(16) In view of the non-applicability of both Article 311 and any other statutory provision, the learned counsel for the petitioners was forced to clutch at a straw by arguing that Article 16 was attracted in their case and there was hostile discrimination involved in dispensing with their services and employing other *ad hoc* employees instead.

(17) We are unable to agree. It is elementary that Articles 14 or 16 are attracted only when equals are treated unequally or to put it in reverse unequals are treated equally. We are unable to see how the petitioners can claim any hostile discrimination *qua* some unspecified persons, who are not even parties to this petition and who in some eventuality may later come to hold the posts, which they are being asked to vacate. The equality clause can interpose only in the context of specific persons or a specific class. It is thus patent that in the present context Article 16 could not even remotely be invoked.

(18) Assuming entirely for the sake of argument that the proposed incumbents were specified and determined, even then we are unable to see that Article 16 would be attracted. An *ad-hoc* employee with an existing service record cannot be deemed in the eye of law as identically equivalent to an aspirant for the post which he is likely to vacate. The two do not form the same class. One of them being employed with his service record, whilst the other is as yet unemployed and his work and conduct is yet to be assessed in future. The two, therefore, stand on entirely different footing, far from being in an indentical class. There is thus a clear differentia existing betwixt them. Consequently, Article 16 can have no application even on this assumption either.

(19) For the detailed reasons aforesaid we hold that the observations made in *Krishna Devi* v. *Punjab State* (2), do not lay down the law correctly and would accordingly over-rule the same.

(20) Having been repelled on all the legal fronts, Mr. R. K. Chopra, learned counsel on behalf on the petitioners has, however, chosen to beat a tactical retreat. He stated that in view of the creation of some additional posts in the department the case of the

(2) C.W.P. 2268/77, decided on 9th December, 1977.

petitioners were under the favourable consideration of the respondent—State and it was likely that the orders of termination passed against them may not be implemented or might, in fact, be withdrawn. On these premises at the last stage the learned counsel for the petitioners sought permission to withdraw the writ petition. In the peculiar situation and in order not to prejudice the case of the petitioners for reconsideration by the respondent—State, we, as a spcial case, are inclined to agree with this prayer.

(21) Civil Miscellaneous No. 1000 of 1978 is accordingly allowed and the petitioners are permitted to withdraw the case. There will be no order as to costs.

Prem Chand Jain, J.—I agree.

S. C. Mital, J.—I agree.

N. K. S.

FULL BENCH

Before S. S. Sandhawalia, C.J., S. C. Mital and R. N. Mittal, JJ.

CHAND KAUR—*Plaintiff-Appellant.*

versus

JANG SINGH AND OTHERS—*Defendants-Respondents.*

Civil Misc. No. 458-C of 1978 in Regular Second Appeal No. 565 of 1973.

August 21, 1978.

Code of Civil Procedure (V of 1908)—Section 122 and Order 22 Rules 2-A, 2-B and 4(3) as substituted by the Punjab and Haryana High Court—Code of Civil Procedure (Amendment) Act (104 of 1976)—Section 97—Sub-rule (3) of rule 4 of Order 22 as substituted by the High Court—Whether inconsistent with the provisions of the Amending Act and therefore, stands repealed.

Held, that the main purpose for addition of rules 2-A and 2-B and sub-rules (4), (5) and (6) to rule 4 of Order 22 of the Code of Civil Procedure, 1908 and substitution of sub-rule (3) to rule 4, was not that the legal representatives of the deceased defendant should