Raja Ram Vs. State

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SooperKanoon Citation : sooperkanoon.com/451459

Court : Allahabad

Decided On : Dec-21-1956

Reported in : AIR1958All141

Judge : Mehrotra, J.

Acts : Constitution of India - Articles 14, 226, 309 and 311; Civil Services (Classification, Control and Appeal) Rules - Rule 55 and 55(3)

Appeal No. : Civil Misc. Writ No. 1677 of 1956

Appellant : Raja Ram

Respondent : State

Advocate for Def. : Adv. General and ;Standing Counsel

Advocate for Pet/Ap. : J.N. Chaterji and ;S.C. Khare, Advs.

Disposition : Petition allowed

Judgement :
ORDER

Mehrotra, J.

1. The present petition and a number of other petitions have been filed by the petitioners under Article 226 of the Constitution challenging the order terminating

their services as Lekhpals in various circles of different Districts. As many common questions arise in all these petitions, I propose to dispose of all these petitions by one common judgment. There may be certain distinguishing features in each of these cases which will be referred to when dealing with specific cases, if it is necessary to do so.

2. Briefly the facts, which have been set out in the affidavit filed in support of the present petition and which are also common to most of the petitions with slight variations with regard to the dates of appointment and the examinations which were held in each case, arethat the petitioners were appointed on or about 3-4-53 as Lekhpals on the permanent cadre. In some of the cases there is a dispute whether the appointment is a permanent one or temporary one, but in most of the cases they were appointed on the permanent cadre on the basic pay of Rs. 35/- per month and on combining dear-ness allowance and other allowances their monthly pay came to Rs. 51/8/-. The petitioners carried on their duties. They wore given some practical training in December, 1954. They were called upon, however, to appear in some examinations in 1955-56 and the services of petitioners who failed in those examinations were terminated on giving them a month's notice. The reason given in the notices terminating their services was that they failed to pass the examinations held in 1955 and 1956. It is these notices terminating their services which have been challenged by means of these petitions.

3. It is necessary in order to appreciate the points raised in the case to give in brief the history and the events which led the State Government to start the cadre of the present Lekhpals. In 1940 such employees of the State were known as Patwaris. As many as 28,000 of them organised themselves into 'The U. P. Patwaris Association'. They were originally part-time servants of the State Government in the Revenue Department. After the abolition of the zamindari their services appear to have been in great demand. The association hold meetings and passed resolutions demanding increment in pay and allowances. They made certain representations to the State Government and a large number of them even went on a 'pen down strike' on 9-1-53 with the result that the Government withdrew the official recognition, of the Association on 19-2-53. Thereupon under the new Land

Records Manual which was published in Jaunary, 1953, the new rules regarding recruitment, conditions of service and duties of Patwaris were embodied. On 26-1-53 the Association then held a meeting, passed a resolution in protest and it was further resolved that all the Patwaris should submit their resignation on 2-2-1953 with request that they may be relieved of their work by 4-3-53- In pursuance of that resolution, about 26000 of them submitted resignations. The Government, however, decided to accept their resignations and they were relieved of their duties soon after the submission of their resignation even before 4-3-53, and on 5-3-53 the Government announced creation of a new, cadre of Lekhpals and proceeded to recruit personnel for that service. Most of the old Patwaris were also to be included in the new recruitment. The new cadre also includes Patwaris whose record of service was free from blemishes and who had withdrawn their resignations. It is the new Lekhpals who were appointed in pursuance of the new scheme which may be called an emergency scheme of appointment sometimes in April, 1953, who have filed these present petitions challenging the notices terminating their services. On 7-3-53 an order was issued under the signature of the Secretary to Government Uttar Pradesh, Revenue Department laying down the conditions of services of the new Lekhpals who had to be recruited as a result of the reorganisation of the services of the Patwaris. Clause 2(2) of this notification provides that the cadre of the service of Lekhpals would be 2/3rd of the present strength of the Patwaris in each District, and out of this 2/3rd strength3/4th would be recruited on a permanent basis and the remaining 1/4th on a temporary basis for future adjustments. The temporary appointments had to be made on the clear understanding that they would be terminable at one month's notice from either side. The cadre of new Lekhpals was to be made up of:

(a) all Patwaris who did not resign provided they did not attain the age of 60 years on March 31, 1953.

(b) the Patwaris who resigned, but withdrew their resignations by March 4, 1953, out of such Patwaris whose resignations had not been accepted till 4-3-53 or before they were ordered to hand over charge; out of those whose resignations had been accepted only those were to be absorbed who had an excellent record of work and who had not taken active part in the agitation.

4. Sub-clause (4) of the order provided that the service was to be permanent and pensionable. Under Sub-clause (6) the period of probation for new recruits was to be two years. Sub-clause (7) (a) of the circular provided that the minimum educational qualifications would be Hindustani Middle or Junior High School Examination. Higher educational qualifications were not to be given preferential claim in appointments. Sub-clause (7) (b) of the notification provides that there would be a test of physical endurance for the new recruits to be prescribed by the Land Reforms Commissioner. The subsequent paragraphs of the order deal with the scale of pay, dearness allowance and travailing allowance. The order then provides for the salaries which will be payable to the old Patwaris.

Paragraph 5 of the order impresses upon the District Officers to take immediate steps for the filling up of the cadre of Lekhpals in the light of the conditions laid down in the earlier part of the notification. Paragraph 6 then provides that it would be necessary to give an intensive course of two months training in the duties and functions not only of what the Patwaris used to perform in the past but also of those of the village level workers so that the personnel so recruited may be able to render help to the planning department in its multifarious activities. The training in the development work would be for a fortnight and the Planning Department would be requested to draw up a programme of the training.

Paragraph 7 of the order then requests the District Officers to submit for the approval of the Govt. draft service rules for the Lekhpals and necessary adjustments to the rules relating to the recruitment of Supervisor and Assistant Registrar Qanungos for the adjustment of seniority. The Land Reforms Commissioner was further requested by the State Government, Revenue Department to draw up a short intensive course of training for the members of the service.

5. No other contract of appointment entered into between the Lekhpals and the Government has been filed in this case either on behalf of the petitioner or on behalf of the State, nor any other rules which may have been subsequently made by the Land Reforms Commissioner on the basis of this circular and may have been approved by the State Government, have been placed before me by either of

the parties. In these circumstances) I take it to be admitted that the conditions on which the peti-tioners were employed as Lekhpals are to be found in this circular.

There may have been some minor variations in these conditions having regard to the circumstances, of each case but broadly it can be accepted that the terms of appointment are ail contained in this order. Various other instructions were later on issued from time to time by the Land Reforms Commissioner to the Collectors and District authorities clarifying certain positions with regard to the conditions of service of Lekhpals, but for the purposes of the present case it is not necessary for me to go into these circulars till we come to August, 1954 when on 13th August, 1954 a circular was issued by the Land Reforms Commissioner to all the District Officers in U. P. containing the general instructions issued with the approval of the Government for the training of Lekhpals in survey, land record planning and development.

6. Paragraph 10 of the general instructions a copy of which was appended to the circular as appendix 'A' provided that after the training was over the Lekhpals under training were to be examined for survey, map correction, preparation of specimen of records and duties of Lekhpals. It further provided that if the Lekhpals failed to pass the test they will render themselves liable to removal. The contention raised by the petitioner's counsel is that for the first time in August, 1954, it was brought to the notice of these Lekhpals that in the event of their failure to pass the examination which was to be held after the training was complete, they would render themselves liable to removal. Prior to this it was never pointed out to them that they will be examined at any time and failure to qualify in those examinations will make them liable to removal.

In pursuance of this scheme of training most of these petitioners received a regular training and examinations were held. On the 9th December, 1954, another letter was issued to all the District Officers from the Land Reforms Commissioner's office in connection with the recruitment of Lekhpals in which it was stated that on reconsideration of the matter the Government had cancelled the order by which it had held that the Lekhpals newly recruited in the category mentioned in para 2 (3) (c) in the Government Order dated 7-3-53 should be deemed to have been

appointed purely on temporary basis and that their appointment was liable to termination at one month's notice from either side.

It was, however, further laid down in this letter that Lakhpals who were appointed on probatoin under instruction contained in the D. O. letter issued from the Land Reforms Commissioner dated 30-3-53 and whosa work or conduct or both was found unsatisfactory can be removed under the ordinary rules. In considering cases for confirmation their cases were, therefore, to be very strictly scrutinized, and it further ensured that only those Lekhpals would be confirmed whose work and conduct as also the result of the examination after their training, which was going on at that time, justified their confirmation.

In continuation of this letter of 9th December, 1954, another letter was issued from Land Reforms Commissioner's office on 18-2-1955 to all the District Officers in U. P. and in Clause (a) of that letter it was laid down that only those Lekhpals were to be confirmed on the expiry of the period of their probation who hadput in satisfactory service and had also passed examination held after their training. In Clause (b) it was provided that the cases of those Lekhpals who had passed their examinations but whose work and conduct had not been satisfactory were to be examined by the District Officers, and if the District Officer decided to extend the period of probation he had to send up the proposals to the Land Reforms Commissioner for orders.

In other cases the services of the Lekhpals were to be terminated. Clause '(c) provided that in cases where the work and conduct had been found satisfactory but the Lekhpals had failed to pass the examination the period of probation was to be extended by the District Officers themselves for one year. They were to be examined again in the month of November, 1955, and if they failed their services were to be terminated. Clause (d) provided that those Lekhpals who had failed in the examination and whose work and conduct bad also not been satisfactory had not to be retained in service.

7. From a perusal of these two letters it appears that some sort of training was going on in December and on the basis of the examination held after the training by the middle of February, 1955, the Land Reforms Commissioner had issued

instructions to the District Officers firstly that all the Lekhpals who had passed the examination and had shown good conduct had to be confirmed. Those who had passed the examination but their conducts were not satisfactory and the District authorities decided that their period of probation should be extended they could make a recommendation for approval to the Land Reforms Commissioner, otherwise their services were to be terminated. In cases where the conduct was satisfactory, but they had failed the probation period had to be extended by the District Officers themselves and they were again to be examined in the month of November, 1955, and if they again failed their services were to be terminated Those who had both failed and their conducts were unsatisfactory their services were to be terminated immediately.

8. We are not concerned with what happened in pursuance of thesei instructions. It appears that another examination was held in the month of November, 1955, and many persons appeared in that examination. They failed in that examination and a supplementary examination was then held sometimes in 1956. By a letter dated 19th January, 1956, issued from the office of Land Reforms Commissioner certain further conditions were laid down for the supplementary examination, of the Lekhpals.

Another letter was issued on 8th June, 1956, from the office of the Land Reforms Commissioner to all the District Officers, and it was provided in it in Clause (2) of the letter that the services of those candidates who were unsuccessful even after the grant of five grace marks and whose cases for further grace marks were not recommended by the District Officers were to be dispensed with by giving them one month's notice of discharge and they were to be replaced by suitable qualified hands. It is in pursuance of these instructions that notices were issued terminating the services of the petitioners after giving them one month's notice.

9. Various contentions have been raised by the learned counsel for the petitioners. Different cases were argued by different coun-sal but briefly, the main points that were urged by them were:

(1) Firstly, that the petitioners were appointed as permanent employees on permanent cadre under the orders of the Government issued on 7th March, 1953,

and their services could not be terminated on the ground that they failed to pass an examination which they were asked to undergo subsequent to their appointments.

(2) Secondly, it was contended that they were civil servants in the employ of the State Government and by the orders terminating their services in effect they have been removed from service on the ground of inefficiency and the protection afforded to them under Article 311 of the Constitution has been violated.

(3) Thirdly, it was contended that even if it be accepted that their appointments were on. probation and that it was open to the employers not to confirm them that could only have been done on the ground that their work during the period of probation was unsatisfactory, and their service could not be terminated on the ground that they did not fulfil another qualification which was introduced after their appointment.

It was further contended that it was not open to the State Government to terminate their services on the ground that they failed to pass their examination after expiry of their period of probation. In this connection it was also contended that even during the probationary period they were entitled to the protection under Civil Services (Classification, Control and Appeal) Rules and the termination of their services in the present case was in violation of the said Rules. It was further contended that it was not open to the Land Reforms Commissioner by a circular to introduce new conditions into the contract on which they entered into service and which were laid down in the Government Order of 7th March, 1953.

10. From the history mentioned above and the circumstances under which these) appointments were made, it will appear that on account of the resignations tendered by the Pat-waris en masse a situation had arisen where the government had to make new recruitments. The Governor in exercise of his powers under Article 309 of the Constitution created new service named as Lekhpals and under the terms and conditions embodied in the Government Order of 7th March, 1953, the appointments of the present petitioners were made. Article 309 of the Constitution provides that subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of

persons appointed to public services and posts in connection with the affairs of the Union or of any state.

Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor or Rajpramukh of a State or such persons as he may direct in the case of services and posts in connection with the affairs of the State to make rules regulating the recruitment and the conditions of service of persons appointed to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this Article, and any rules so made shall have effect subject to the provisions of any such Act.

11. The proviso, therefore, till the appropriate steps are taken to regulate the service conditions of the employees of the State Government, gives power to the Governor to regulate the recruitment and conditions of service by rules. The Government Order under which the present petitioners were appointed and the new services of Lekhpals were created, was one passed in the exercise of the powers under Article 309 of the Constitution. The main contention, however, raised on behalf of the Advocate General for the State was that the petitioners were not entitled to the protection of Article 311 of the Constitution in as much as they have not been removed, dismissed or reduced in rank within the meaning of Article 311. It is not necessary to mention that the word 'dismissal' or 'removal' under Article 311 has been given a technical meaning and it has been held by the Supreme Court that the protection of Article 311 cannot be claimed in cases by an employee where his services have been terminated under a contract, or in cases where the termination of services does not involve any censure of the employee's conduct. In this connection reference may be made to the case of Satish Chandra Anand v. Union of India, 1953 Section C. R., 655 : (AIR 1953 SC 250) (A). In this case after dealing with the history of Article 311 of the Constitution it was held by the Supreme Court that 'there is a distinction drawn in Rule 49 of the Civil Services (Classification, Control and Appeal) Rules between removal and dismissal. The removal does not disqualify from future employment and the dismissal is one which ordinarily disqualifies persons from future employment. In Rule 49 it is further provided that the discharge of a person engaged under contract, in

accordance with the terms of his contract, does not amount to removal or dismissal within the meaning of this rule- These terms are used in the same sense in Article 311." The Article therefore has no application to the case where the services are terminated in accordance with the terms of the contract. The other case to which reference may be made is the case of Shyam Lal v. State of U. P. and Union of India, (1955) S. C. R. 26 : (AIR 3954 SC 369) (B). In that case their Lordships were considering the question of termination of service brought about by compulsory retirement. Reference may be made to the following observations at page 41 (of SCR) : (at p. 374 of AIR) of the report : -

'Removal, like dismissal, no doubt brings about a termination of service but every termination of service does not amount to dismissal or removal. A reference to the Explanation to Rule 49 quoted above will show that several kinds of termination of service do not amount to removal or dismissal ..... The answer tothe question will depend on whether the nature and incidents of the action resulting in dismissal or removal are to be found in the action of compulsory retirement.

There can be no doubt that removal -- I am using the term synonymously with dismissal --generally implies that the office is regarded as in some manner blameworthy or deficient, that is to say, that he has been guilty of some misconduct or is lacking in ability or capacity or the will to discharge his duties as he should do. The action of removal taken against him in such circumstances is thus founded and justified on some ground personal to the officer. Such grounds, therefore, involve the levelling of some imputation or charge against officer which mayconceivably be controverted or explained by the officer.'

These observations to my mind clearly lay down that termination -of service on the ground that an employee is lacking in ability or capacity to discharge his duties carries with it an imputation against the officer's conduct which may be controverted or explained by him and in the present case the argument of the Advocate General is that The examination is only with a view to test the ability or capacity of the employee to discharge his duties and as such the provisions of Article 311 would in this case he not attracted.

12. In the present case it was urged by the Advocate General that the petitioners were employed on probation for two years and it was open to the State Government not to confirm them if the State Government found that they were inefficient or they were not suitable for the post. What the State Government in effect did in the present case was to examine them at the end of their training and if they failed in those examinations, they were declared unfit to hold the job and it was within the powers of the State Government not to confirm them under those circumstances. The appointment on probation itself carries the liability not to be confirmed if the employer at the end of the period of probation comes to the conclusion that the employee has proved himself unfit for the post, and in order to ascertain his efficiency or fitness it is open to the State to adopt the method of examination. It was further contended by the Advocate General that in the Government Order of the 7th of March, 1953, containing the conditions of employment it was provided that it would be necessary to give an intensive course of two months' training in the duties and functions not only of what the Patwaris used to perform in the past but also those of a village level worker so that the personal so recruited may be able to render help to the Planning Department in its multifarious activities. The training therefore in the development work would be for a fortnight and the Planning Department would be requested to draw up a programme of the training. It was in pursuance of this clause, which provided for training, that subsequently a circular was issued by the Land Reforms Commissioner containing entire instructions for Training. These instructions were approved by the Governor. This approval does not appear from any letter on record in this case, but I have looked into the original file produced before me by the State counsel and the counsel for the petitioners had no objection to my looking into the original approval granted by the Government to the scheme of training.

13. It was further contended by the Advocate General that the provision for examination is nothing but a part of the intensive scheme for training which was one of the terms of employment. If the petitioners who took the appointment on the distinct understanding that they will have to undergo a certain course of training, it is not open to them now to say that if the examination is a part of that scheme of training it would not be open to the employer to test whether they had in fact

properly taken the training, by an examination at the end of the training, and if the petitioners failed at the examination it was open to the State to utilize the results of that test to determine whether they should be con-firmed or not.

The fallacy in the argument of the Advocate General, to my mind, is that it assumes that as the order of 7th March, 1953 provides for an intensive training it necessarily contemplates an examination at the end of the training and it further assumes that the failure at the examination is a valid ground for refusing confirmation to a probationer. If the termination of the service is only giving effect to the necessary implication behind a service being probationary it may be said that the termination of! service was not by way of punishment and consequently Article 311 was not attracted. But in my opinion, there is no justification for holding that the appointments on probation necessarily carry with them the liability of services being terminated on the ground that the probationer failed to pass at the end of the training an examination which was held subsequent to the appointment.

Even if the petitioners may not be entitled to the protection of Article 311, the present notices for termination of the service will have to be set aside on the ground that the provisions of rule 55 of Civil Services (Classification Control and Appeals) Rules, have not been complied with. Rule 55(3) of the said rules, which have been amended by the Governor in the exercise of his powers under Article 309 and which are at present in force, reads as follows:-

This rule shall also not apply where it is proposed to terminate the employment of a probationer whether during or at the end of the period of probation, or to dismiss, remove or reduce in rank a temporary government servant, for any specific fault or on account of his unsuitability for the services In such cases, the probationer or temporary government servant concerned shall be apprised of the grounds of such proposal, given an opportunity to show cause against the action to be taken against him, and his explanation in this behalf, if any, shall be duly considered before orders are passed by the competent authority.'

This rule, to my mind, clearly provides that even an employment of a probationer cannot be terminated whether during or at the end of the probationary period, unless he has been apprised of the grounds of such proposal given an opportunity

to show cause against the action to be taken against him, and his explanation has been duly considered.

14. From the perusal of the various circulars issued from the office of the Land Reforms Commissioner, it is evident that the period of probation of the petitioners was extended and it has been admitted that the period of probation continued till the time when the action was taken terminating the services of the petitioners. In view of that, admission the provisions of Sub-clause (3) of Rule 55, clearly apply to the facts of the present case. It has not been stated by the State Counsel, that the petitioners wore ever apprised of the grounds of such proposal or were given opportunity to show cause against any action to be taken against them or their explanations were ever considered before the orders were passed.

The argument which was addressed in this connection by the Advocate General in reply was that if and when an action was proposed to be taken against the petitioner for some specific fault or on account of his unsuitability such a procedure had to be gone into but in the present case the ground on which the services havebeen terminated is not a specific fault which has been considered as the ground of unsuitability but his failure to properly undergo the training as disclosed by the results of his examination. It is very difficult to accept this contention. It is true that there was no specific fault of the petitioners for the termination of their employment, but the termination in the present case was nothing else except on account of their unsuitabiiity for the service.

If the intensive course of training, as accepted by the Advocate General, was a part of the terms of employment and if examination was nothing but an integral part of the scheme of intensive training, the results of the examination cannot be utilised for any other purpose except for the purpose of testing the suitability of the employee for the service. The fact that they failed to pass the examination was nothing else but that they were found unsuitable for the service. There was, therefore, in my opinion a clear non-compliance of the provisions of Rule 55 (3) of the Civil Services (Classification, Control and Appeal) Rules. It had not been seriously contested that these rules apply to the petitioners. In the case of Banarsidas v. State of U.P., 1956 All L.J. 517, at p. 519; ((S) AIR 1956 SC 520 at

p 522) (C), it was observed by their Lordships of the Supreme Court that:

'The old patwaris held part-time jobs under the Government. The new cadre of Lekhpals is intended to reorganise a similar service on a more satisfactory basis both from the point of view of the Government and of the employee themselves. Under the new scheme, the Lekhpals are intended to be whole-time servants of the Government on a considerable higher scale of pay and with better prospects subject, of course, to the Government Servants' Conduct Rules.'

15. It was then contended by Mr. Khare that the proviso to Article 309 of the Constitution lays down that till the Legislature steps in the Governor can regulate the conditions of service by the rules framed by him. As soon as the Legislature steps in the rules become subject to the provisions of the legislative enactment. The Government Order which gave power to the various authorities to appoint Lekhpals stood modified by the U. P. Amending Act No. XVIII of 1956, whereby Section 23 of the Land Revenue Act was amended and the following Section was substituted:--

'The State Government shall appoint a Lekhpal for each Halqa for preparation of record specified under the Act and for performance of such other duties as may be prescribed.'

The argument of Mr. Khare in brief is that after this amendment of Section 23 the power to appoint expressly vests in the State Government and if there was any power which vested by delegation in certain officers, the rule to that effect stands modified by this amendment. The power to terminate the service is included in the power of appointment and the various authorities who have given notices terminating the services of the petitioners exercised it only as being included in the power of appointment. As the power to appoint no longer vests in them in view of the Amending Act, no power to terminate the services now remains with them and thus the notices issued by those Officers are obviously illegal.

16. By the Amending Act 18 of 1956, it has been provided that in S. 21 and all other sections of the Act wherever word 'Patwari' occurs the word 'Lekhpal' shall be substituted. Section 234 (b) of the Land Revenue Act gives powers to the State

Government to frame rules reigarding their appointment, transfer, payment of salaries, suspension and dismissal. In view of these provisions it was, therefore, quite competent for the State Government to frame rules regulating the appointment of the Lekhpals.

It was, therefore, open to the State Government, even though the appointing authority is the Government, to frame rules giving powers to officers to regulate the appointment and the transfers of the Patwaris, and it has been pointed out by the Standing Counsel that the various authorities who issued notices terminating the services of the petitioners have been authorised to appoint the Lekhpals under the rules framed by the State Government under Section 234 of the Land Revenue Act. If that is so, there is power vesting in these officers to terminate their services. It is, therefore, not necessary for me to examine whether the Amending Act will have a retrospective effect or that it will have the effect of modifying the powers of various officers which they had under the earlier Government Order to appoint the present petitioners as Lekhpals.

17. In some of the cases reliance was also placed on paragraph 5, of the Land Records Manual which provides that every Patwari on appointment in a substantive vacancy shall be placed on probation for a period of one year. Clause (b) of this para provides that if it appears at any time during or at the end of the period of probation that the Patwari has not made sufficient use of his opportunities or otherwise to acquit himself satisfactorily, he shall be removed from service provided that the Assistant Collector incharge of the Sub-division may extend the period of probation to two years. Clause (c) provides that a probationer shall be confirmed in his appointment at the end of the period of probation if his work and conduct have been found satisfactory.

18. Relying upon this paragraph it was argued that at the end of the probationary period the probationer is to be confirmed in his appointment except if his conduct has been found unsatisfactory. In the present case there is no finding that the conduct of the petitioners was found unsatisfactory. There is no further allegation that their probationary period has not yet expired. In this connection it was further argued that by the Amending Act, 18 of 56 wherever the word Patwari occurred it

would be substituted by word Lekhpal, and therefore paragraph 5, applies to the present case.

In terms paragraph 5 applied to the Patwaris only. Paragraph 1 and onwards of Chapter 1 of the Land Records. Manual deal with the appointment and qualifications of the Patwaris under the Land Revenu Act. The present appointments were made on the new posts of Lekhpals created under the rules framed by the Governor in the exercise of his powers under Article 309 of the Constitution. Paragraph 5 of the Land Records Manual, therefore, to my mind cannot be interpreted to apply to the present petitioners.

19. Lastly, it was contended by the learned counsel for the petitioners that the power which has been exercised by the State and theofficers who are opposite parlies in this case to terminate the services of Lekhpals was an arbitrary exercise of the power and in these circumstances the provisions of Article 14 are attracted. It was stated that an emergency arose in the year 1953 when the Patwaris had all resigned. Prior to that only those Patwaris could be appointed who had certain training in the Patwari's School and whose names were on the approved list. The Governor, when he made rules for the emergency recruitment, purposely did not lay down passing of any examination in survey and map drawing as a qualification for the appointment. After having taken work from these persons for two years, under the garb of testing their efficiency another requirement has been added to their condition of appointment which was an arbitrary exercise of the power.

Even the rules which regulated the terms and conditions of employment could not be modified by a mere circular issued by the Land Reforms Commissioner. It was further contended that if it had been given out to these petitioners at the time of their employment that they will have to undergo an examination at a later stage and failure in the examination will make them liable to removal, they might not have taken the appointments, but now when they have become over age for other appointments and they are thrown out of employment on this ground, it may be difficult for them to find out any other appointment. In these circumstances the exercise of ihe power is arbitrary and is violative of the provisions of Article 14 of the Constitution.

20. In this connection reliance was placed on the case of Bidi Supply Co. v. Union of India. 1956 S. C. R. 267 : ((S) AIR 1956 SC 479) (D) particularly on the observations made by Bose, J, In that case; the constitutionality of Section 5 (7) (A) of the Income-tax Act was involved. The majority of the learned Judges allowed the petition on the ground that the order impugned did not come within the purview of Section 5(7) (A), but Mr. Justice Bose went further and held that the provisions of Section 5(7) (A) themselves were unconstitutional as being violative of the guarantee under Article 14 of fhe Constitution. Particular reference may be made to the following observations at page 280 (of SCR): (at p 435 of AIR), of the report: --

'The truth is that it is impossible to be precise for we are dealing with intangibles and though fhe results are clear il is impossible to pin the thought down to any precise analysis. Article 14 sets out, to my mind, an attitude of mind, a way of life, rather than a precise rule of law. It embodies a general awareness in the consciousness of the people at largo of something that exists and which is very real but which cannot be pinned down to any precise analysis of fact save to say in a given case that it falls this side of the line or that, and because of that decisions on the same point will vary as conditions vary, one conclusion in one part of the country and another somewhere else; one decision today and another tomorrow when the basis of society has altered and the structure of current social thinking is different. It is not the law that alters but the changing conditions of the times and Article 14 narrows down to a question of fact which must be determined by the highest Judges in the land as each case arises.'

In my judgment these observations are of no help to the petitioners. In the present case the constitutionality of any of the provisions ofan Act or law as defined in the Constitution has not been challenged. If the contention of the Advocate General that the examination was only held for the purpose of determining the tuitability of the confirmation of the petitioners which was implied under the terms of employment contained in the notification of the 7th of March 1953 which provided for an intensive scheme of training, it could have been argued that in affect the validity of the Governor's order was challenged, but, as I have already held that the contention of the Advocate General on this point cannot be accepted, it is

therefore not a question of the constitutionality of any of the provisions of law as defined in the Constitution. What in effect has been urged is that the exercise of the power under the regulations which were validly framed has been arbitrary. That to my mind cannot be held to be violation of Article 14 of the Constitution. There is there-fore no force in this contention of the learned counsel for the petitioners.

21. Some special features have been pointed out by the learned counsel appearing in different petitions, but in view of the fact that I have held that the notices terminating the services of the petitioners arc illegal inasmuch as the provisions of Article 311 and of Rule 55(3) of the Fundamental Rules, have been violated it is not necessary to deal with specific cases. I may also point out at this stage that in some of the cases the petitioners were admittedly employed on temporary basis as contemplated in the Government Order of the 7th of March 1953, and in their cases if their services have been terminated by giving a month's notice it has been done in pursuance of the contract and they are not entitled to the reliefs claimed. There are certain other cases in which it has been asserted by the petitioners that they wore permanent employees but ihe State in the counter-affidavit has denied that. In view of this controversy the petitioners are not entitled to any relief under Article 226 of the Constitution. In the other cases it has been asserted by the petitioners that they were permanent employees and in the counter-affidavit filed by the State it is stated that they were appointed on probation. Those are the cases where the notices, as I have already held, were illegal and must be quashed. There are a large number of other cases in which the petitioners have asserted that they were permanent employees but no counter-affidavits could be filed in view of the fact that the cases were ordered to be listed at an early date and consequently the State Counsel had no opportunity to point out whether their employment was temporary or in permanent cadre on probation, If in fact their appointments were temporary their services could be terminated under the contract embodied in the Government Order of the 7th of March 1953 by giving a month's notice, but if they were on probation their cases will also be governed by the provisions of Rule 55(3) of the Civil Services (Classification, Control and Appeal) Rules and Article 311 of the Constitution.

22. In view, however, of my decision onthe point that the provisions of Rule 55 of theCivil Services (Classification, Control and Appeal) Rules and Article 311 have been violatedin this case, I allow this petition and quash thenotice terminating their services; but in the circumstances of the case I make no order as tocosts.