

the aforesaid view, I find support from *Southern Roadways (Private) Ltd. v. Employees' State Insurance Corporation*, (10) and *Prem Sukh and others v. Manager, Employees' State Insurance Corporation and others*, (11). Therefore, the Court below was clearly in error in coming to the conclusion that the Corporation was not entitled to demand contributions prior to December, 1969, as the benefit was not extended to the employees before that date.

(11) For the reasons recorded above, F.A.O. No. 78 of 1975 is allowed and the order of the Court below is modified and it is held that the entire demand of contributions made by the Corporation was justified and the application filed by the factory under section 75 of the Act had no merit. As a consequence, F.A.O. No. 83 of 1975 and the application filed by the factory under section 75 of the Act, are dismissed. The Corporation shall have costs in both these appeals which are quantified at Rs. 500.

H. S. B.

Before S. S. Kang, J.

MANOHAR LAL—Petitioner.

versus

STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ Petition No. 4498 of 1981

March 27, 1984

Punjab Civil Services (Premature Retirement) Rules, 1975—Rules 3 to 5—Government employee attaining age of 55 years seeking premature retirement—Such employee depositing three months salary and also giving notice for that purpose—Such employee—Whether can be said to have automatically retired on the expiry of period of notice—Discretion to refuse to sanction the retirement—Whether vests in the Government.

Held, that a reading of Rule 3 of the Punjab Civil Services (Premature Retirement) Rules, 1975 would show that any Government employee may, after giving three months' notice in writing to

(10) (1973)44 F.J.R. 447 (A.P).

(11) 1981 Lab. I.C. 939 (Raj).

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the appropriate authority, retire from service on the date on which he completes 25 years' qualifying service or attains 50 years of age. According to rule 4 of the Retirement Rules, the employee who retires or is required to retire under Rule 3, shall be granted pension and death-cum-retirement gratuity. Rule 5 of the Rules gives an overriding effect to the provisions contained in the Retirement Rules as it lays down that notwithstanding anything inconsistent therewith contained in any other rules, the provisions of the Retirement Rules shall have effect. As such where the notice has been given seeking premature retirement the employee shall be deemed to have retired from service after the expiry of three months from the date of notice and the State Government has not been given any discretion to refuse to sanction the retirement of a person who has been given notice under rule 3 of the Rules. Only in the case of a Government servant who has been suspended and who seeks premature retirement under Rule 3, the approval of the appropriate authority is needed. As such, it has to be held that the employee stood automatically retired under rule 3 of the Retirement Rules after the expiry of three months' notice seeking premature retirement.

(Paras 5 & 6)

Petition under Article 226 of the Constitution of India praying that a writ of Certiorari, Mandamus or any other suitable writ, direction or order be passed directing the respondents to:—

- (a) produce the complete records of the case;
- (b) quash the order at annexure P-10 dismissing the petitioner from service;
- (c) issue a writ of Mandamus directing the respondents to decide the petitioner's case regarding his pension, gratuity etc., as admissible to him in accordance with law and to pay to him all the arrears along with interest at the rate of 12 per cent per annum;
- (d) the Hon'ble High Court may also pass any such order which it may deem fit in the case and also grant all such benefits to which the petitioner may be found entitled;
- (e) the cost of the petition may also be granted.

J. L. Gupta, Sr. Advocate (Rakesh Khanna, Advocate with him),
for the Petitioner.

S. S. Shergil, A.A.G., Punjab, for the Respondent.

JUDGMENT

Sukhdev Singh Kang, J.—

(1) Manohar Lal has filed this writ petition under Articles 226/227 of the Constitution of India for the issuance of a writ of *certiorari* quashing the orders, dated May 22, 1978, of his dismissal and a writ of *mandamus* directing the respondents to finalize his case regarding the payment of pension and gratuity and other reliefs to which he is entitled.

(2) The petitioner joined service as a Teacher in a Government Primary School on November 25, 1952. On September 22, 1975, a charge sheet was served on the petitioner in which it was alleged that he had made a false statement in his application for employment regarding his qualification and experience. On November 6, 1976, the petitioner attained the age of 55 years. On May 12, 1977, the petitioner deposited a sum of Rs. 1,831.50 in the Punjab Treasury, Chandigarh, which sum represented his three months salary in lieu of three months notice. On the same day he gave a notice to the Director of Public Instructions, Punjab, intimating him that the petitioner had attained the age of 56 years. In accordance with the Punjab Civil Service Rules he had deposited three months' pay in the Treasury in lieu of notice. He should be deemed to have retired from service with effect from May 12, 1977, and his papers for pension, gratuity, etc., may be prepared immediately (A copy of the notice is Annexure P-2). The petitioner received a letter, dated May 13, 1977, from the Block Education Officer, Jullundur (West I) informing him that the copy of his letter, dated May 12, 1977, addressed to the Director of Public Instruction, Punjab, Chandigarh, has been endorsed to him. The petitioner was requested to supply a duplicate copy of the challan form verified by the Bank Manager to that office so that the department may be approached for further necessary action. The petitioner was requested to appear in the school in connection with the handing over of his charge. (A copy of the letter is appended as Annexure P-3). On May 13, 1977, the above officer directed Shri Sukhdarshan Singh, Teacher, Primary School, Bajra, to take over charge from Shri Manohar Lal, Teacher, who had resigned from service with effect from May 12, 1977, and a report to this effect should be sent to that office so that necessary action may be taken. Consequently a charge report was prepared on May 14, 1977, evidencing that Shri Sukhdarshan Singh, Teacher, had

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taken over from Shri Manohar Lal and no school articles are outstanding against him, nor is there any amount due from him. This report is signed by Shri Sukhdarshan Singh, Teacher, the Head Master and the petitioner. (A copy of the same is Annexure P-5). Vide Annexure P-6 Smt. Gurdeep Kaur, Teacher, working in the Primary School, Hussainpur, was adjusted in the Government Primary School, Bajra against the vacancy caused by the petitioner's retirement.

(3) On July 25, 1977, the petitioner wrote to the Director of Public Instructions, Punjab, Chandigarh, that he had retired from service on May 12, 1977. Complete charge was taken over from him. The Head Master had sent information in this regard,—vide report, dated May 14, 1977. In this situation the question of relieving the petitioner or his submitting a reply to the show cause notice did not arise. (A copy of the same is Annexure P-8). The Director, Education Department (Primary Education),—vide his order, dated May 22, 1978, dismissed Manohar Lal, petitioner, from service with effect from May 12, 1977, because in the departmental enquiry it had been established that the petitioner had fraudulently obtained a special certificate by submitting wrong qualifications and giving a false affidavit to the Punjab Education Department. This order was endorsed to the petitioner on July 17, 1978. The petitioner filed an appeal against this order before the Secretary to Government, Punjab, Education Department, but did not receive any intimation regarding the result thereof. He was then constrained to file the present petition.

(4) In the reply filed by Shri Gurdev Singh Joshi, Deputy District Primary Education Officer, Jullundur, it has been admitted that the petitioner was appointed as a Teacher on November 25, 1952 and he attained the age of 55 years on November 6, 1976. It was averred that he was served with a show cause notice for dismissal from service on February 18, 1977. Instead of giving any reply to the show cause notice, the petitioner on his own volition, deposited Rs. 1,831.50 in lieu of three months' notice and considered himself as retired from Government service. He was never permitted by the competent authority to retire from service as required under rule 5.32 of the Punjab Civil Services Rules, Volume II. There is no provision in the rules under which a Government servant can consider himself as retired from service by depositing three months' salary in lieu of three months' notice. The fact is that he wanted to avoid extreme punishment of dismissal from service. It was

admitted that the charge of the school articles and other records was taken from the petitioner but it was never intended to retire the petitioner from service. It was apprehended that the petitioner might destroy the record kept in his custody. So, it was considered safe to take over important school record, including account books and other material which was under his charge. He stopped attending his duty wilfully. It was considered necessary to make arrangement in his place. He was never formally relieved of his duty because disciplinary proceedings were pending against him. It was reiterated that the petitioner was never allowed to retire from Government service, rather he was dismissed from Government service with effect from May 12, 1977, under the orders of the competent Authority. A dismissed Government employee cannot be allowed the benefits of pension, gratuity, *et cetera*.

(5) The following relevant statutory provision may be noticed at the very threshold:—

“*Punjab Civil Services (Premature Retirement) Rules, 1975:*

Para (1)(a) : The appropriate authority shall, if it is of the opinion that it is in public interest to do so, have the absolute right, by giving an employee prior notice in writing, to retire that employee on the date on which he completes twenty-five years of qualifying service or attains fifty years of age or on any date thereafter to be specified in the notice.

(b) The period of such notice shall not be less than three months:

Provided that where at least three months' notice is not given or notice for a period less than three months is given, the employee shall be entitled to claim a sum equivalent to the amount of his pay and allowances, at the same rates at which he was drawing them immediately before the date of retirement, for a period of three months or, as the case may be; for the period by which such notice falls short of three months.

(2) Any Government employee may, after giving at least three months' previous notice in writing to the

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appropriate authority retire from service on the date on which he completes twenty-five years of qualifying service or attains fifty years of age or on any date thereafter to be specified in the notice:

Provided that no employee under suspension shall retire from service except with the specific approval of the appropriate authority.

- R. 4. A retiring pension and death-cum-retirement gratuity shall be granted to a Government employee, who retires or is required to retire under rule 3.
- R. 5. The provisions of these rules shall have effect notwithstanding anything inconsistent therewith contained in any other rules for the time being in force."

(6) The admitted facts are that the petitioner had joined service on November, 25, 1952. He attained the age of 55 years on November 6, 1976. He deposited Rs. 1,831.50 equivalent to his three months' pay in lieu of three months' notice, in the Punjab Government Treasury, at Chandigarh. He served a notice on the Director of Public Instructions (Schools), Punjab, Chandigarh, intimating him that he had deposited three months' salary in lieu of a notice in the Punjab Government Treasury and he shall be deemed to have retired from service with effect from May 12, 1977. In accordance with rule 3 of the Punjab Civil Services (Premature Retirement) Rules, 1975 (for short "the Retirement Rules") any Government employee may, after giving at least three months' previous notice, in writing, to the appropriate authority, retire from service on the date on which he completes 25 years' qualifying service or attains 50 years of age. This is, however, subject to a proviso that any employee, who is under suspension, can retire from service only with the specific approval of the appropriate authority. According to rule 4 of the Retirement Rules, the employee who retires or is required to retire under rule 3, shall be granted pension and death-cum-retirement gratuity. Rule 5 of the Retirement Rules gives an overriding effect to the provisions contained in these Retirement Rules. It lays down that notwithstanding anything inconsistent therewith contained in any other rules, the provisions of the Retirement Rules shall have effect. So, the Retirement Rules will govern the matters of retirement and consequent pension and gratuity of

the retiring Government servant. Even the substituted rule 5.32 of the Punjab Civil Services Rules, Volume II, takes notice of the provisions of rule 4 of the Retirement Rules and produces the provision in that rule that retiring pension is granted to a Government employee who retires or is required to retire. The petitioner after attaining the age of 58 years gave a notice on May 12, 1977. At the same time he deposited three months' salary in lieu of notice and prayed that he may be deemed to have retired with effect from May 12, 1977. Even if it is accepted that the deposit of three months' salary will not obviate the necessity of giving a notice, the petition must succeed. The period of notice ended in August, 1977. The petitioner shall be deemed to have retired from service after the expiry of three months from the date of the notice. The State Government has not been given any discretion to refuse to sanction the retirement of a person, who has given notice under rule 3 of the Retirement Rules. Only in the case of a Government servant who has been suspended and who seeks premature retirement under rule 3, the approval of the appropriate Authority is needed. In the case of those employees who are not under suspension no such approval is required. With the lapse of time of notice, the employee automatically stands retired. The order of dismissal was passed on May 22, 1978, i.e., about nine months after the retirement of the petitioner. A Government servant, who had already retired, could not be dismissed from service. The mutual relationship of master and servant between Government and the employee had already stood snapped. Only a person, who was still in Government service, could be dismissed. This penalty could not be imposed on a Government servant, who had already retired.

(7) Mr. S. S. Shergill, the learned Assistant Advocate-General, Punjab, could not refer me to any statutory provision which may require the approval or sanction of the Government for retiring a Government servant after a proper and valid notice under Rule 3 of the Retirement Rules. With the service of a charge-sheet or the pendency of departmental inquiry will not keep the application of the provisions of rule 3 of the Retirement Rules in abeyance. As the law stands, there is no need for a Government servant, who has attained the age of 50 years or has rendered 25 years' qualifying service and has served a three months' notice, in writing, on the appropriate Authority, to seek the approval of the Government for retirement. After the lapse of the notice period, the Government employee automatically stands retired from service. There is, no

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doubt, a lacuna in the Retirement Rules. Even a person charged with very serious irregularities or acts of commission or omission or indiscipline can seek premature retirement after completing 25 years' qualifying service or attaining the age of 50 years. Not only that he is entitled to a retiring pension and death-cum-retirement gratuity also. However, it is for the rule-making authority to look into the matter and make suitable amendments. This case has to be decided in accordance with the extant law.

(8) Consequently, I hold that the petitioner stood automatically retired under rule 3 of the Retirement Rules after three months of the service of notice, dated May 12, 1977. There was no need for any approval of the Government. The absence of any such approval is of no consequence. Since the petitioner already stood retired in August, 1977, no disciplinary proceedings could continue against him and the orders of dismissal, dated May 22, 1978, passed against him are wholly void. In the result this writ petition is allowed and the order of petitioner's dismissal, dated May 22, 1978 is quashed. The petitioner shall be deemed to have retired from service in the month of August, 1977. He shall be entitled to the pension and death-cum-retirement gratuity. The respondents shall take immediate steps to decide his case of pension and payment of death-cum-retirement gratuity. The respondents shall pay the petitioner Rs. 300 as costs.

H. S. B.

Before I. S. Tiwana, J.

RAM LABHAYA,—Appellant.

versus

STATE OF HARYANA,—Respondent.

Regular First Appeal No. 145 of 1983

March 29, 1984

Land Acquisition Act (I of 1894)—Section 23(1) Clause 'fourth'—Person seeking compensation running brick kiln functioning on the acquired land at the time of notification under section 4—Functioning of a brick kiln subsequently stopped—Possession of land taken after brick kiln ceased to function—Brick Kiln owners