

and others) (4) filed on behalf of some dealers, the same Division Bench declined to strike down the Wheat Dealers Licensing and Price Control (Fourth Amendment) Order, 1974, by which the wholesale dealers (of Punjab) were required to sell all their stocks of wheat in excess of a certain limit, to the Government at a fixed price and a restriction was even placed upon them to sell wheat only to the consumers and not to any other licensed dealer.

(13) Shorn of **Partap Singh Kadian** which was the main plank of arguments by the learned counsel for the appellants, hardly anything more could be and was urged in support of the appeal which fails and is hereby dismissed with costs.

Prem Chand Jain, J.—I agree.

*H.S.B.*

CIVIL MISCELLANEOUS.

Before R. S. Narula, Chief Justice and Harbans Lal, J.

GURDIAL SINGH,—Petitioner

*versus*

THE STATE OF PUNJAB, ETC.,—Respondents.

Civil Writ No. 5139 of 1975.

November 4, 1975.

*Punjab Civil Services (Premature Retirement) Rules 1975—Rules 2(1), 3, 5 and 6—Constitution of India 1950—Articles 309, 310, 311 and 313—Police Act (5 of 1861)—Sections 2, 7 and 12—Punjab Police Rules 1934, Volume I—Rules 9.15, 9.16 and 9.18 and Volume II Rule 12.1(5)—Rules relating to appointment and conditions of service of members of subordinate Police Force—Whether can be framed by the Governor under Article 309—Rule 3 of the 1975 rules—Whether encroaches upon the field covered by rule 9.18 of the Police Rules—The 1975 rules—Whether override the Police Rules—Such rules—Whether can be invoked against the subordinate police officials—Premature retirement on grounds of inefficiency, corruption or incompetency—No imputation or charge made in the order—Article 311—Whether*

(4) C.W. 6372—74 decided on 14th February, 1975.

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*attracted—Order not stating that retirement is in ‘public interest’—Whether vitiated—Rules providing for premature retirement after putting in appreciable number of years of service—Whether violate Article 311—Order of premature retirement—When could be challenged.*

*Held* that though the power of the Governor under the proviso to Article 309 of the Constitution of India 1950 is meant for covering a transitory gap or a transitional period, the only limitation placed on that gap or period is of enactment of the relevant service rules on the subject in question by the State Legislature. The transitional nature of the power of the Governor under that Article has no relation to the time factor except in the sense so indicated. This power of the Governor under the proviso to Article 309 is co-extensive with that of the State Legislature subject only to the two limitations contained in the Article, namely (a) the rule framed by the Governor should not be contrary to any provision of the Constitution and (b) such a rule should not be inconsistent with any law made on the subject by the State Legislature. In the absence of a provision in the Constitution like section 243 of the Government of India Act, 1935, and specially in view of the amendments to section 2 of the Police Act 1861, the Governor is competent to make rules relating to appointment and conditions of service of the members of the subordinate Police Force under Article 309, in the same manner and to the same extent as he is competent to make rules for any other Civil Service of the State.

(Para 39).

*Held* that the Governor is authorised by the proviso to Article 309 of the Constitution to amend or repeal any Police Rules either by expressly providing or even by implication by framing a rule which abrogates or effaces an existing police rule. No rule relating to the conditions of service of a public servant framed under an Act becomes part of the Act itself so as to be impregnable against its repeal or amendment by the Governor in exercise of his powers either under the same Act or under the proviso to Article 309. The rules framed under sections 7 and 12 of the Police Act and subsequently framed or amended under section 2 of that Act do not assume the character of an Act of the Legislature and do not, therefore, become immune to amendment or repeal by the Governor in exercise of his rule-making authority. Since the Police Act does not contain any condition of service relating to simple premature retirement of members of the subordinate Police Force, there is no bar to the Governor or the State Government making rules on that subject under the proviso to Article 309 of the Constitution or section 2 of the Act. The field as regards conditions of service for premature retirement of subordinate police personnel is, therefore, not covered by any legislative enactment or any other such rule which might stand in the way of the Governor exercising his authority under the

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proviso to Article 309. Thus rule 3 of the 1975 Rules neither encroaches upon nor purports to encroach upon the field covered by rule 9.18 of the Punjab Police Rules 1934 Volume I.

(Paras 26 and 39).

*Held*, that the 1975 Rules have been made to override anything inconsistent with these rules "contained in any other rules for the time being in force". By operation of rule 5 the 1975 Rules override whatever may be inconsistent with the operative part of these rules in any other rule whatsoever which was in force in Punjab on the date when the 1975 rules came into force subject only to one exception and that is of rules which cannot be framed by the Governor either under the proviso to Article 309 or in exercise of any other statutory power conferred on him by any enactment such as section 2 of the Police Act. Since the Governor has the power to frame rules relating to premature retirement of subordinate police personnel under the proviso to Article 309 as well as under section 2 of the Police Act, the provision of rule 9.18 of the Police Rules (if it is deemed to be inconsistent with the 1975 Rules) is not saved from the operation and attack of rule 5 of the 1975 Rules.

(Para 27).

*Held* that the 1975 Rules are not a part of the Punjab Civil Services Rules but an independent set of rules framed by the Governor under Article 309 of the Constitution and apply to the subordinate ranks of the Police Force because the members of those ranks fall within the definition of "employee" in the 1975 Rules which override all other rules for the time being in force. There is a clear and important distinction between rule 12.1(5) of the Police Rules on the one hand and rule 5 of the 1975 Rules on the other. Whereas supremacy is accorded to the Police Rules over the Punjab Civil Services Rules while applying the latter to the subordinate police ranks by rule 12.1(5), overriding effect is given to the 1975 Rules by rule 5 thereof over all other rules relating to the matters covered by the 1975 Rules which might have been in force in the State of Punjab on the date on which the 1975 Rules came into force. Thus the 1975 Rules are not a part of the Punjab Civil Services Rules. Those Rules do not, therefore, apply to the members of the subordinate Police Force by operation of rule 12.1(5) of the Police Rules, but on account of their own force as the Rules apply to all the civil servants of the Punjab State (except those exempted under rule 7 thereof), and the police establishment is not mentioned in rule 7.

(Paras 28 and 39).

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*Held* that the right to be in Government service is (subject to the constitutional safeguard under Article 311 of the Constitution) a mere right to hold the post to which one is appointed according to the rules applicable to the post or the Service. So long as there is some guidance in the Rules relating to compulsory retirement, such Rules cannot be held to be violative of Article 311 as retirement from Service after working for an appreciable number of years is not a punishment of any kind. The provision for resorting to such retirement in the public interest furnishes sufficient guidance for the circumstances in which an order of such retirement may be passed. While misconduct and inefficiency are factors that do enter into account in an order of dismissal or removal as well as in an order of premature retirement, the difference lies in the fact that while in the case of retirement they merely furnish the back-ground and there is no duty to hold an inquiry into them, as those factors are considered only for the satisfaction of the authorities who have to decide the question of retirement: in the case of dismissal or removal, they form the very basis on which the punishment is inflicted, which necessitates a formal inquiry in accordance with the provisions of Article 311(2) of the Constitution. Where no imputation or charge is made in the order of premature retirement, but at the insistence of the concerned Government servant to be supplied with the grounds which led to the decision of the Government to retire him being, communicated to him the grounds of inefficiency or corruption are brought to his notice or are conveyed to him, Article 311 is not attracted so long as the test regarding the concerned Government servant not having lost any benefit which had already accrued to him is satisfied. The doctrine of unveiling the order of termination of service with a view to find out the motive or the foundation of the order applies to cases of termination of service by way of punishment and does not apply to cases of premature retirement except for the purpose of deciding the *bona fides* of the authority passing the order.

(Para 39).

*Held* that the mere fact that the order of retirement does not state that it has been passed in 'public interest' does not vitiate or invalidate the order so long as the material to show the application of mind for passing that order in public interest is disclosed to the Court in case of challenge being made to the *bona fides* of the order.

(Para 39).

*Held* that the correctness of the opinion formed by the Government about the retirement of a particular Government servant being in public interest cannot be challenged before the High Court so long as the opinion is not shown to have been formed *mala fide*. Premature retirement does not involve any civil consequences and does not result in the loss of any rights acquired by a Government servant before his retirement. An order of premature retirement does not

amount to penal action against a Government servant. Such a rule merely embodies one of the facets of the pressure doctrine embodied in Article 310 of the Constitution. An order of premature retirement can be quashed or set aside by a Court only if it is either shown to have been actuated by malice or is shown to have been passed in an arbitrary or capricious manner or by an authority not competent to pass such an order under the relevant service rules.

(Para 39).

*Petition under Articles 226/227 of the Constitution of India praying that :—*

- (i) *a writ in the nature of certiorari quashing the order dated 18th of August, 1975 retiring the petitioner from the service of the police department of the Punjab Government under the Punjab Civil Services (Premature) Retirement Rules, 1975, be issued;*
- (ii) *a writ in the nature of mandamus directing the respondents not to interfere with the rights of the petitioner to continue in service up to the age of 55 years which is the age of superannuation prescribed under the Punjab Police Rules, 1934, be issued;*

It is further prayed that:—

- (iii) *the condition of attaching original/certified copies of the annexures be dispensed with ;*
- (iv) *the condition of issuing notices to the respondents be dispensed as under the circumstances of the case, there is no time left with the petitioner to issue notices, as required under the High Court Rules and Orders ;*
- (v) *it is further prayed that during the pendency of the writ petition the operation of the impugned order be stayed.*

Kuldip Singh, Bar-at-Law and R. R. Mongia, Advocate, for the Petitioner.

I. S. Tiwana, Deputy Advocate-General (Punjab), for the respondents.

#### JUDGMENT

*Narula. C. J.—*(1) I propose to dispose of these six connected writ petitions (C.Ws. 5062, 5137, 5139, 5143, 5144 and 5182 of 1975) by this

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common judgment as the questions of law that arise regarding the interpretation, application and validity of rule 3 of the Punjab Civil Services (Premature Retirement) Rules, 1975 (hereinafter called the 1975 Rules) are the same in almost all these cases. Except for one case (Civil Writ Petition 5182 of 1975—*Mohinder Singh Saini v. The State of Punjab and others*), all other petitions have been filed by subordinate police officials against the respective notices of retirement served on them under the aforesaid rules. The peculiar points urged before us on behalf of the Sub-Inspectors/Assistant Sub-Inspectors of Police do not arise in *Mohinder Singh Saini's case*. All the questions raised in that case, however, arise in the case of the police officers. It would in these circumstances suffice to give the detailed facts of only the first case in which all the common questions were argued by Mr. Kuldip Singh, Bar-at-Law (with the consent of the counsel for the petitioners in all these cases). That is the case of A.S.I. Gurdial Singh, petitioner in C.W.P. 5139 of 1975.

(2) Gurdial Singh (hereinafter referred to as the petitioner) who was born on February 27, 1925, was confirmed as Head Constable in the Punjab Police and was promoted as officiating Assistant Sub-Inspector of Police on April 7, 1965, but had not yet been confirmed in that rank till the impugned notice of retirement was served on him when he was posted at Ferozepore. His case is that he got one adverse report relating to his honesty in 1971 which merely required watch being kept over him, and that the only other adverse entry made in his character-roll in 1973 related to a criminal case under section 324 read with section 34 of the Indian Penal Code in which he was acquitted by the Judicial Magistrate on November 16, 1973, and that no other adverse entry was ever conveyed to him. He has further averred that after the said adverse entry in 1973, he served in the Police Training Centre during 1974, where he earned "excellent report", and also two commendation certificates. Throughout his service he claims to have obtained 22 commendation certificates and a cash award of Rs. 250.

(3) The petitioner was admittedly more than 50 years old when the impugned order, dated August 18, 1975 (Annexure P. 2) retiring him from service on three months' notice was served on him in the following words:—

"You, A.S.I. Gurdial Singh, No. 719/ASR of this district, have since attained the age of 50 years, having the date of your

birth as February 27, 1925, and service more than 25 years. You are, therefore, given three months' notice of retirement under the Punjab Civil Services (Premature Retirement) Rules, 1975, and thereafter you will be considered as on retiring pension."

On the receipt of that order he filed the present petition impugning the validity thereof. He has arrayed the State of Punjab (through the Secretary to the Punjab Government), the Inspector-General of Police, Punjab, and the Senior Superintendent of Police, Ferozepore, as respondents to the writ petition.

(4) Respondent No. 3, the Senior Superintendent of Police, Ferozepore, has filed his affidavit, dated September 17, 1975, as return to the rule issued to the respondents. He has not admitted that the petitioner earned only two adverse reports. He has given a list of several different periods from April 1, 1965, to January 21, 1974, when warnings are recorded to have been given to the petitioner as per entries in his confidential reports. He has further deposed that the petitioner had in fact acknowledged at least four bad reports out of the seven listed in the written statement, and that he had filed a representation against his bad report for the year 1970-71, which was rejected by the Deputy Inspector-General of Police on January 25, 1975, and a copy of the said order was served on and acknowledged by the petitioner on January 31, 1975. Acknowledgements of the petitioners for the remaining three bad reports are stated to be not forthcoming. It has been admitted that the criminal case under section 324 read with section 34 of the Indian Penal Code filed against the petitioner in 1973 resulted in his acquittal, but it has been denied that the adverse report given to the petitioner for the year 1973 was based on the criminal case. The grounds on which the order of petitioner's premature retirement has been impugned have all been denied and will be dealt with at suitable places hereinafter. It has been specifically emphasised that the impugned notice of retirement served on the petitioner has not been issued to him as a measure of punishment, and that the petitioner was being retired "in public interest", about which the Senior Superintendent of Police had satisfied himself before passing the impugned order. He has denied that the order of petitioner's retirement is based on any collateral or extraneous grounds or that the decision in question has been taken in an arbitrary manner without the application of the mind of the appropriate authority.

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(5) The 1975 Rules came into force from the date of their notification in the Punjab Government Official Gazette on July 28, 1975. Rule 3 of those rules under which the impugned order has been passed is in the following terms:—

“3. (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 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.”

(6) “Appropriate authority” within the meaning of rule 3 has been defined in rule 2(1) to mean the authority which has the power to make substantive appointments to the post or service from which the Government employee is retired or wants to retire or any other authority to which it is subordinate. “Employee” has been defined in clause (2) of rule 2 to mean any person appointed to public services



and posts in connection with the affairs of the State of Punjab excluding those listed in rule 7. Rule 7 excludes from the operation of the 1975 Rules the members of the All-India Services. The persons appointed to the Secretarial staff of the Legislative Assembly, and the persons belonging to any judicial service of the State were also excluded from the operation of this rule by clauses (ii) and (iii) of rule 7, but the rules have subsequently been made applicable to those two classes of employees also by an amendment of the 1975 Rules. Rule 5 states that these rules shall have effect notwithstanding anything inconsistent therewith contained in any other rules for the time being in force. Rule 6 repeals all rules regarding the conditions of service "as respects premature retirement" of persons appointed to public services and posts in connection with the affairs of the State of Punjab in force immediately before the commencement of these rules, provided that (a) such repeal shall not affect the previous operation of the rules repealed by rule 6 or any action taken thereunder, and (b) any proceedings under the rules repealed by the 1975 Rules pending at the commencement of these rules shall be continued and disposed of in accordance with the provisions of the 1975 Rules as if such proceedings were proceedings under these rules. Rule 8 provides that if any doubt arises as to the interpretation of any of the provisions of these rules, the matter shall be referred to the Governor or such other authority as may be specified by the Governor by a general or special order and the Governor or such other authority shall decide the same.

(7) Except for some minor additional points urged in some individual cases, the following common questions raised and argued in all these petitions have been formulated by Mr. Kuldip Singh, learned counsel for the petitioners in Civil Writ Petitions 5137 and 5139 of 1975 (S. I. Kasturi Lal's case and A.S.I. Gurdial Singh's case), and adopted by Mr. M. R. Agnihotri, learned counsel for the the petitioners in Civil Writ Petitions 5143 and 5144 of 1975 (A.S.I. Kirpal Singh's case and A.S.I. Baldev Singh's case), and by Shri Suraj Parkash Gupta, Advocate for A.S.I. Kartar Singh petitioner in Civil Writ Petition 5062 of 1975:—

- (i) Powers under Article 309 of the Constitution (under which Article 1975 Rules have been framed) can only be exercised if there is no law made by the appropriate Legislature in that respect. In so far as the Punjab Police Force has been constituted under the Central Police Act

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of 1861, and under the Punjab Police Rules, 1934, which (taken together) form a complete code in respect of the appointment and conditions of service of the police employees, the Governor of Punjab has no authority to make any rules regarding the conditions of service of the petitioners who are the members of the Punjab Police Force, in exercise of his powers of transitory nature under the proviso to Article 309 of the Constitution.

- (ii) The Police Rules 9.15, 9.16, 9.17 and 9.18 provide for conditions of service of the petitioners relating to retirement and pension in detail. The ground covered by these rules cannot be encroached upon by the Governor in exercise of his interim powers under the proviso to Article 309 of the Constitution. Rule 3 of the 1975 Rules purports to encroach upon the field covered by rule 9.18 of the Punjab Police Rules, Volume I.
- (iii) The 1975 Rules by operation of rule 5 thereof override only such rules which had been framed earlier by the Governor of Punjab in exercise of his powers under Article 309 of the Constitution. Only those earlier rules relating to premature retirement which had been framed under Article 309 have been substituted by the 1975 Rules. Rule 5 aforesaid does not affect or impinge on any rule relating to premature retirement which had been framed by the State or the Central Legislature or by the State Government or Central Government in exercise of any other powers conferred on it by some Central enactment like the Police Act.
- (iv) Under rule 12.1(5) of the Punjab Police Rules, Volume II, only Civil Service Rules have been made applicable to the subordinate police force. The 1975 Rules are not part of the Civil Service Rules, and hence cannot be invoked against the subordinate police officials by operation of rule 12.1 of the Punjab Police Rules.
- (v) In any case the 1975 Rules being inconsistent with rules 9.15, 9.16, 9.17 and 9.18 of the Punjab Police Rules, Volume I, rule 12.1 would not make the 1975 Rules applicable to the Police Department as even out of the Civil Service Rules only those have been made applicable by operation

of rule 12.1 which are not inconsistent with the Police Rules.

- (vi) In fact the order of premature retirement of each of the writ-petitioners is based on the finding that he is inefficient, corrupt or incompetent, and, therefore, the impugned order in each case is hit by Article 311 of the Constitution, as each of these epithets casts a stigma on the conduct of the respective petitioner.
- (vii) "Public interest" in rule 3 of the 1975 Rules does not include any ground which could possibly attract the provisions of Article 311 of the Constitution. The State is trying to circumvent the provisions of Article 311 of the Constitution in the garb of "public interest."
- (viii) There is no material in any of these cases on which an order of premature retirement in public interest could be lawfully made. The appropriate authority has in fact never applied its mind to the question of "public interest", but has merely acted in a mechanical manner under instructions from the higher authorities.

(8) The scheme of Article 309 of the Constitution is well-known. The powers of the appropriate Legislature as well as of the President of India or the Governor of a State exercisable under that Article are "subject to the provisions of the Constitution." The principal authority to regulate the recruitment and conditions of service of persons appointed to public service and posts in connection with the affairs of the Union or of any State is vested in the appropriate Legislature of the Union or of the State as the case may be. There is no doubt that the authority vested in the Governor of a State under the proviso to Article 309 is exercisable only so long as the appropriate Legislature has not laid down the regulations relating to recruitment and conditions of service by its appropriate enactment. In that sense, Mr. Kuldip Singh is correct in describing the Governor's rule-making powers under Article 309 as of a transitory nature *vide* observations of B. Siva Rao at page 717 of his "Framing of India's Constitution-A Study". It is also correct that the field in which the Governor of a State can exercise the delegated legislative functions under the proviso to Article 309 in relation to conditions of service is only such which is not already occupied by an appropriate legislative enactment made under the purview of that Article. This interim nature

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of the authority of the Governor under the proviso to cover a transitory gap is apparent from the said authority having been confined to the time until which provision in that behalf is made by or under an act of the appropriate Legislature in exercise of the legislative authority under the purview of that Article. It is only those rules which are made by the Governor regulating the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of his State that do not impinge or encroach upon any law made under the purview of Article 309 that have effect, and that also subject to the provisions of such a legislative enactment. Mr. Kuldip Singh is, therefore, correct in contending that rule 3 of the 1975 Rules (and consequently the entire 1975 Rules as the pivot around which they rotate is rule 3) must be struck down in its application to the members of the subordinate Police Force in case of proof of any of the following eventualities, namely:—

- (a) if any provision of the Constitution prohibits the framing of a rule relating to conditions of service of the subordinate Police Force or specifically prohibits the framing of a rule relating to premature retirement of members of the Police Force ;
- (b) if the condition of service relating to the absolute right of the State Government to retire a member of the Police Force after he has attained the age of 50 years or completed 25 years' service has already been provided in the Police Act or in any law made by the appropriate Legislature before the framing of the 1975 Rules ; or
- (c) if rule 3 of the 1975 Rules is inconsistent with the provisions of any such Act as may have been enacted by the appropriate Legislature in exercise of its authority under the purview of Article 309.

According to Mr. Kuldip Singh, the 1975 Rules do not stand any of the three tests referred to above. Our attention was invited to the various provisions contained in Chapter II of Part X of the Government of India Act, 1935, starting with section 240 and ending with section 243. Section 240(1) of the 1935 Act corresponds to Article 310 of the Constitution. The remaining sub-sections of section 240 for all practical purposes correspond to Article 311 of the Constitution. Section 241 of the 1935 Act relates to the field which is now

covered by Article 309 of the Constitution. Section 242 dealt with the application of section 241 to the railway, customs, postal and telegraph services, and the officials of Courts. Section 243 was in the following terms:—

“Notwithstanding anything in the foregoing provisions of this chapter, the conditions of service of the subordinate ranks of the various police forces in India shall be such as may be determined by or under the Acts relating to those forces respectively.”

There is no doubt that if the position had remained as it was when section 243 of the 1935 Act was in force, no rule could be made by the Governor relating to the conditions of service of the subordinate ranks of the various police forces under a provision corresponding to section 241 of that Act, and such conditions of service could be determined only by or under the Police Act. That, however, is not the position. There is no provision in the Constitution (which came into force on January 26, 1950) corresponding to section 243 of the 1935 Act. The result is that the subordinate police forces in the State do not now stand apart from other public services of the State and the members of such forces are now entitled to the protection of Article 311 and their conditions of service can be laid down by the State Legislature, and until provision in that behalf is made by the appropriate Legislature by any rules made by the Governor which do not come into conflict with any provision of the Police Act. This fact is also apparent from the various provisions of the Police Act (5 of 1861) (hereinafter called the Act). The preamble to that Act provides:—

“Whereas it is expedient to reorganise the police and to make it a more efficient instrument for the prevention and detection of crime .....

The constitution of the Police Force is provided by section 2 of the Act. The said section as amended and enforced after the coming into force of the Constitution, provides:—

“The entire police establishment under a State Government shall for purposes of this Act be deemed to be one police force and shall be formally enrolled; and shall consist of such number of above-mentioned officers and men, and

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shall be constituted in such manner as shall from time to time be ordered by the State Government.

Subject to the provisions of this Act, the pay and all other conditions of service of members of the subordinate ranks of any Police Force shall be such as may be determined by the State Government."

(9) The amendments made in section 2 authorising the constitution of the Police Force as ordered by the State Government and particularly directing that conditions of service of members of the subordinate ranks shall be such as may be determined by the State Government clearly and vocally show the intention of omitting a provision like section 243 of the 1935 Act from the Constitution. Not only are members of the subordinate Police Force in the State now equated to their counterparts in the non-police departments of the State by the exclusion of the provision of section 243 of the 1935 Act from the Constitution, but the amendment of section 2 of the Police Act specifically providing for the conditions of service of the subordinate police officers being determined by the State Government leaves no doubt in the legal position. The only limitation placed by section 2 of the Act on the powers of the State Government to lay down the conditions of service of the members of the subordinate ranks of the Police Force in that provision is that the conditions of service so provided have to be "subject to the provisions of" the Police Act. If, therefore, any rule relating to conditions of service of the subordinate police staff made by the State Government in exercise of its powers under section 2 of the Police Act comes into conflict with any provision of the Act itself such rule shall to such extent be void and *ultra vires* the Act. Section 7 of the Act states as below:—

"Subject to the provisions of Article 311 of the Constitution and such rules as the State Government may from time to time make under this Act, the Inspector-General, the Deputy Inspectors-General, Assistant Inspectors-General and District Superintendents of Police may at any time dismiss, suspend or reduce any police officer of the subordinate ranks whom they shall think remiss or negligent in the discharge of his duty, or unfit for the same ;.....".

The above-quoted provision also shows that even such an important matter as dismissal, suspension or reduction in rank of a subordinate

police officer has been made not only subject to the provisions of Article 311 of the Constitution, but also further subject to such rules as the State Government may make under the Act. A perusal of this provision of the Act leaves no doubt in my mind that nothing contained in the Constitution or in the Act bars the exercise of the rule-making power of the State Government in respect of the members of the subordinate Police Force in the State.

(10) The 1975 Rules have been framed by the State Government and could no doubt be made under sections 2 and 7 of the Act in respect of the subordinate ranks of the State Police Force. There is nothing in the Act barring the framing of such rules, and no provision of the Act is infringed, violated or impinged upon by rule 3 of the 1975 Rules. Mr. Kuldip Singh submitted that even if this legal position could be correct, it does not save the 1975 Rules as they do not purport to have been framed under section 2 of the Act, but under Article 309 of the Constitution. There is no force in this argument for at least two reasons. Firstly, while framing the rules the Punjab Government did not rely on its powers under Article 309 of the Constitution alone, but also on "all other powers" enabling it to frame such rules. Secondly, it appears to me that if the authority which makes the rule has the legal power and jurisdiction to make them, the rules would not become invalid merely because specific reference is not made to the particular provision of law under which such rules could be made, and reference has either been made to some different power or to only one of the various provisions under which such rules could be framed. For purposes of the rule-making authority, there is no practical difference between the expression "the Governor" as used in the proviso to Article 309 of the Constitution, and the words "State Government" as used in section 2 of the Act. "State Government" in respect of anything done after the commencement of the Constitution means by virtue of section 3(60)(c) of the General Clauses Act (10 of 1897) the Governor. Conversely the rule-making powers of the Governor are also exercised by the Governor with the aid and advice of the Council of Ministers. In fact, as held by their Lordships of the Supreme Court in *Samsher Singh Vs. State of Punjab and another* (1), even where the Governor has any discretion, he exercises it in harmony with his Council of Ministers. In any case, except for matters placed by the Constitution

(1) A.I.R. 1974 Supreme Court 2192.

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in his personal discretion, the Governor is not required to act personally, but only with the aid and advice of his ministers. It is unnecessary to dilate on this subject because none of the parties has contended before us that the 1975 Rules have not been made by the State Government (as envisaged by section 2 of the Police Act), but by the Governor in his discretion without the aid and advice of his Council of Ministers. No such argument was advanced in this case.

(11) According to Mr. Kuldip Singh, the 1975 Rules come into conflict with section 7 of the Act. We are unable to agree with him in this respect. Section 7 does not deal with premature retirement. In fact it merely enumerates the authorities competent to impose the punishments referred to therein, and does not either directly or indirectly deal with or cover the subject of retirement much less premature retirement. We have, therefore, no hesitation in rejecting the argument of the learned counsel to the effect that even if the 1975 Rules are deemed to be authorised by section 2 of the Act, the same should be struck down as being violative of section 7 of the Act as rules under section 2 can only be made subject to the provisions of the Act. For the same reason we hold that there was no bar to the exercise of the Governor's authority in making the 1975 Rules relating to premature retirement because any legislative enactment (the Police Act according to Mr. Kuldip Singh) has already provided for it. We have not been shown any provision in the Police Act dealing with premature retirement.

(12) The second limb of this argument of Mr. Kuldip Singh is that the Police Rules should on the authority of the judgment of their Lordships of the Supreme Court in the *State of Uttar Pradesh and others v. Babu Ram Upadhya* (2), be deemed to be a part of the Police Act, and in so far as the Police Rules lay down the conditions of service of the subordinate Police Force, the field relating to this subject stands covered by legislative enactments and is not open for being traversed by the Governor in exercise of his powers either under the proviso to Article 309 of the Constitution or under section 2 of the Act. This argument is also fallacious. All that was held by their Lordships of the Supreme Court in *Babu Ram Upadhya's case* (supra) was that the rules made under a statute must be treated "for all purposes of construction or obligation" exactly as if they were in the Act, and are to be of the same effect as if contained in the Act, and have, therefore, to be judicially noticed "for all purposes of construction or obligation". Nothing stated by their Lordships in

(2) A.I.R. 1961 S.C. 751.



*Babu Ram Upadhya's case* is in our opinion capable of conveying that rules framed by a subordinate Authority under a legislative enactment are deemed to have been framed by the Legislature itself. The strongest argument in this behalf could be advanced in respect of the rules which are required by a statute to be laid before both Houses of the Parliament, and have to take effect subject to such amendments therein as may be made by the Parliament. Even in respect of such rules it has been held by their Lordships of the Supreme Court in *Hukam Chand, etc. v. Union of India and others* (3), that they do not partake of the nature of a law made by the Parliament itself. The question which arose for decision before their Lordships of the Supreme Court in the above-mentioned case was whether the retrospective effect expressly given by the Central Government to the amendment of rule 49 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, could be deemed to have been authorised by section 40 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, which empowers the Central Government to frame rules subject to such modification therein as may be made by the Parliament during the course of the time when the rules were required to be laid on the table of both the Houses of Parliament. The argument which did not succeed in the Supreme Court was that the Central Government had the power to give retrospective effect to the rules framed by it in exercise of the authority vested in it by an Act which requires the rules to be laid before the Houses of Parliament as thereby Parliament's stamp is imprinted on such a set of rules which should be deemed to be a part of the legislative enactment itself, and can, therefore, be retrospective. Their Lordships repelled that argument and held that unlike a Sovereign Legislature which has power to enact laws with retrospective operation, an authority vested with the power of making subordinate legislation has to act within the limits of its power and cannot transgress the same. Emphasis was laid on the fact that the initial difference between subordinate legislation and the statute laws lies in the fact that a subordinate law-making body is bound by the terms of its delegated or derived authority and the Court of law, will not give effect to the rules thus made, unless they satisfy all the conditions precedent to the validity of the rules. The argument about the Central Government having been clothed by sub-section (3) of section 40 with the same powers as are enjoyed

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(3) A.I.R. 1972 Supreme Court 2427.

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by the Parliament was rejected by the Supreme Court in the following words:—

“The fact that the rules framed under the Act have to be laid before each House of Parliament would not confer validity on a rule if it is made not in conformity with section 40 of the Act.”

It was observed that the act of the Central Government laying the rules before each House of Parliament would not prevent the Courts from scrutinising the validity of the rules and holding them to be *ultra vires* if on such scrutiny the rules are found to be beyond the rule-making power of the Central Government. In the face of the above-mentioned pronouncement of the Supreme Court in *Hukam Chand's case*, it does not in our opinion lie in the mouth of the petitioners to allege that the rules framed under the Police Act have become a part of the Police Act itself for purposes of their achieving the same sanctity which is enjoyed by the provisions of the Act.

(13) Moreover, if Mr. Kuldip Singh were to be correct in his above-mentioned submission, the result would be that once rules have been framed under an Act, they become part of the Act, and inasmuch as power of the Governor to make service rules operates only in a field not covered by a legislative enactment, the Governor would become powerless after once framing any rules, and would not be able to amend, vary, alter or repeal them as such action would amount to varying, altering or repealing an Act of the Legislature. This illustration is in my opinion by itself sufficient to expose the hollowness of this particular argument of the learned counsel.

(14) For the same reason the argument that the Police Rules have acquired the status of a statute on the strength of the judgment of the Supreme Court in *Bachan Singh and another v. Union of India and others* (4), is without merit. It was held in that case that when the President of India made some amendment in some Administrative Rules in exercise of his powers under Article 309 of the Constitution, the entire body of the administrative rules became statutory by incorporation of the amendment. The fallacy behind the argument advanced in this respect is that the petitioners think that ‘statutory’

(4) 1972 S.L.R. 397.

and 'statute' are synonyms. This is not so. In fact the rules framed in exercise of a power conferred by a statute become statutory, but they do not become the statute itself so as to be immune from being changed under the proviso to Article 309.

(15) For the reasons recorded above, we find no force in the first point urged by the counsel for the petitioners and hold that the Governor of Punjab (or the Punjab State Government) has the authority to make rules regarding the conditions of service of the petitioners who are members of the Punjab Police Force, in exercise of his powers under Article 309 of the Constitution as well as in exercise of his powers under sections 2 and 7 of the Act.

(16) The submissions of Mr. Kuldip Singh on the second point proceeded like this. Section 2 of the Act authorises the State Government and section 12 of the Act authorises the Inspector-General to make rules relating to the conditions of service, and the reorganisation, classification and distribution of the Police Force. The Punjab Police Rules, 1934, purport to have been issued by and with the authority of the "Provincial Government" under sections 7 and 12 of the Police Act. These words were printed in the original rules as framed in 1934, and continue to remain there. While reading State Government for the Provincial Government, the rules are now deemed to be in force not only under sections 7 and 12 of the Act, but also under section 2 thereof, as it is the common case of both sides that no separate rules have been framed by the State Government under section 2 of the Act (except certain amendments made in the Police Rules after 1950 under section 2 of the Act) and the Police Rules do cover at least partly the subjects envisaged by section 2. Sub-rule (1) of rule 9.15 of those Rules states that superannuation pension is granted to an officer in superior service "entitled or compelled by rule to retire at a particular age". Reference is given in that sub-rule to the corresponding provision contained in article 458 of the Civil Service Regulations. That article provides that a superannuation pension is granted to an officer in superior service entitled or compelled by rule to retire at a particular age. Sub-rule (2) of rule 9.15 deals with the age of superannuation of ministerial officer. Sub-rule (3) of that rule deals with non-ministerial officer of the Police Force, and is in the following terms:—

"Officers other than ministerial, who have attained the age of 55 should ordinarily be required to retire and should not be retained in service except where unquestionable public

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grounds for retention exist, and there is no doubt as to the physical fitness of the officer. Extensions may not be granted for any period exceeding one year at a time."

(17) Rule 9.16 deals with retention in service of a police official after the age of 55 years, and is not relevant for our purposes. Rule 9.17 deals with the maintenance of a permanent age register. Rule 9.18 covers the subject of retiring pension. When originally framed in 1934 it was in the following words:—

- (1) A retiring pension is granted to an officer who is permitted to retire under Article 465, Civil Service Regulations, after completing qualifying service for thirty years. Government retains the right to decline to permit an officer to retire before reaching the age of superannuation, should this be necessary in the public interest.
- (2) Conditions under which police officers of the All-India or Provincial Services may retire voluntarily or be compelled to retire after completion of 25 years' service are contained in Article 465-A, Civil Service Regulations.
- (3) The officer, whose duty it would be to fill up the appointment if vacant, shall record his orders on the application to retire, which, if in vernacular, should be accompanied by a translation in English. If the officer, who applies for pension, is permitted to retire, the application shall be forwarded with the pension papers (*vide* Articles 906 and 930, Civil Service Regulations)."

For the original sub-rules (1) and (2) of rule 9.18, the following has been substituted by the Punjab Police (Second Amendment) Rules, 1963, framed by the Governor of Punjab in exercise of his powers under sections 2 and 7 of the Police Act,—*vide* Punjab Government notification No. GSR-40/CA. 5/1861/Ss. 2 & 7/Amd. (2)/63, dated February 12, 1963, published in the Punjab Government Gazette (Extraordinary) on the same day:—

"(1) A retiring pension is granted to an officer—

- (a) who is permitted to retire from service after completing qualifying service for twenty-five years or such lesser period as may, for any class of officers, be prescribed; or

- (b) who is compulsorily retired under sub-rule (2) after completing ten years' qualifying service;
- (2) The Inspector-General of Police may, with the previous approval of the State Government, compulsorily retire any Police Officer, other than that belonging to Indian Police Service or Punjab State Police Service, who has completed ten years' qualifying service, without giving any reasons. An officer who is so compulsorily retired will not be entitled to claim any special compensation for his retirement.

Note 1.—The right to retire compulsorily shall not be exercised except when it is in the public interest to dispense with the further services of an officer, such as on account of inefficiency, dishonesty, corruption, or infamous conduct. Thus the rule is intended for use—

- (i) against an officer whose efficiency is impaired but against whom it is not desirable to make formal charges of inefficiency or who has ceased to be fully efficient (i.e., when an officer's value is clearly incommensurate with the pay which he draws) but not to such a degree as to warrant his retirement on a compassionate allowance. It is not the intention to use the provisions of this rule as a financial weapon, that is to say, the provision should be used only in the case of an officer who is considered unfit for retention on personal as opposed to financial grounds;
- (ii) in cases where reputation for corruption, dishonesty or infamous conduct is clearly established even though no specific instance is likely to be proved.

Note 2.—The officer shall be given an adequate opportunity of making any representation that he may desire to make against the proposed action, and such representation shall be taken into consideration before his compulsory retirement is ordered. In all cases of compulsory retirement of enrolled police officers, the Inspector-General of Police shall effect such retirement with the previous approval of the State Government in accordance with the instructions, if any, issued by the Government on the subject from time to time."

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In view of the provisions contained in the above quoted rules counsel has submitted that:—

- (i) rule 9.18 is in Chapter IX of Volume I relating to “pensions”, i.e., retirement and not in Chapter XIV of Volume II which deals with discipline and conduct, and, therefore, this rule fully covers the subject of premature retirement;
- (ii) When the age of superannuation of Punjab Government servants was raised from 55 years to 58 years, the benefit of that general rule was not extended to the members of the subordinate Police Force, and their claim in that respect was repelled by this Court in more than one case on the ground that their age of superannuation is governed by rule 9.15(3) of the Police Rules which is a special rule, and they could not take benefit of the amendment of the general rule for other employees of the Punjab Government; and
- (iii) rule 9.18(1) and (2) as substituted in the Police Rules by the 1963 amendment covers the entire field relating to premature retirement, and the 1975 Rules framed by the Governor cannot and do not apply to the members of the subordinate Police Force as :—
  - (a) whereas the 1975 Rules are general rules for all employees of the Punjab Government, rule 9.18 is the special rule for members of the Police Force, and wherever a special rule comes into conflict with the general rule, it is the special one which alone must take effect by ousting the general one; and
  - (b) even if both the rules could apply to the petitioners, the one which is more beneficial to their interest should be applied and the other should be excluded from operation against them.

(18) Before noticing the detailed arguments of Mr. Kuldip Singh on this point (the second point), the corresponding rules applicable to the civil services in Punjab may be noticed. Rule 3.26 of the Punjab Civil Services Rules, Volume I, Part I, provides for compulsory retirement, i.e., superannuation and corresponds to rule 9.15 (3)

of the Police Rules. Clause (a) of that rule states that except as provided in other clauses of that rule, the date of compulsory retirement of a Government servant is 58 years, and he must not be retained in service after the age of compulsory retirement, except in exceptional circumstances with the sanction of competent authority on public grounds, which must be recorded in writing. Sub-clause (2) of clause (c) of that rule relates to extension of service and sub-clause (3) to reappointment. Rule 5.32 of the Punjab Civil Services Rules, Volume II, deals with conditions of grant of retiring pension. Clause (a) of that rule states that a retiring pension is granted to a Government employee who is permitted to retire from service after completing qualifying service. Clause (b) provides that a retiring pension is also granted to a Government employee who is required by Government to retire after completing twenty-five years qualifying service or more and who has not attained the age of fifty-five years. Notes 1 and 2 under clause (b) of rule 5.32 *ibid* read as follows :—

“Note 1.—Government retains an absolute right to retire any Government employee after he has completed 25 years of service qualifying for pension if he is holding a pensionable post or has completed service for a similar period if he is holding non-pensionable post, but is entitled to the benefits of Contributory Provident Fund without giving any reasons and no claim to special compensation on this account will be entertained. This right will not be exercised except when it is in the public interest to dispense with the further services of a Government employee such as on account of inefficiency, dishonesty, corruption or infamous conduct. Thus clause (b) of this rule is intended for use—

- (i) against a Government employee whose efficiency is impaired but against whom it is not desirable to make formal charges of inefficiency or who has ceased to be fully efficient (i.e. when a Government employee's value is clearly incommensurate with the pay which he draws) but not to such a degree as to warrant his retirement on a compassionate allowance. It is not the intention to use the provisions of this note as a financial weapon, that is to say, the provisions should be

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used only in the case of Government employees who are considered unfit for retention on personal as opposed to financial grounds ;

- (ii) in cases where reputation for corruption, dishonesty, or infamous conduct is clearly established even though no specific instance is likely to be proved under the Punjab Civil Services (Punishment and Appeal) Rules, Appendix 24 of Volume I, Part II, or the Public Service (Inquiries Act XXXVII of 1850).

The word 'Government' used in this note should be interpreted to mean the authority which has the power of removing the Government employee concerned from service under the Civil Services (Punishment and Appeal) Rules.

*Note 2.*—Government employee should be given a reasonable opportunity to show cause against the proposed action under clause (b) of this rule. No Gazetted Government employees shall, however, be retired without the approval of Council of Ministers. In all cases of compulsory retirement of Gazetted Government employees belonging to the State Services the Public Service Commission shall be consulted. In the case of non-Gazetted Government employees the Heads of Departments should effect such retirement with the previous approval of the State Government.

This rule almost verbatim corresponds to the present rule 9.18 of the Police Rules.

(19) Then comes clause (c) of rule 5.32 which authorises the grant of a retiring pension to a Government employee, who is retired by the appointing authority on or after he attains the age of 55 years by giving him not less than three months' notice, or who retires on or after attaining the age of 55 years, by giving not less than three months' notice. Note I under clause (c) of rule 5.32 (for which there is no corresponding provision in the Police Rules) states that:—

“Appointing authority retains an absolute right to retire any Government employee, except a Class IV Government employee, on or after he has attained the age of 55 years



without assigning any reason. A corresponding right is also available to such a Government employee to retire on or after he has attained the age of 55 years."

There is no police rule corresponding to this provision. The argument of Mr. Kuldip Singh is that according to the law laid down by two Single Benches and one Division Bench of this Court, the provisions of rule 3.26 prescribing the age of superannuation and of rule 5.32 dealing with premature retirement either on the ground of inefficiency, dishonesty, corruption or infamous conduct or otherwise in exercise of the absolute right of the Government retained by it under note 1 to clause (c) of rule 5.32 do not apply to members of the subordinate Police Force because clause (ii) of rule 1.4 of the Punjab Civil Services Rules, Volume I, Part I, clearly states that the Punjab Civil Services Rules shall not apply to "any person for whose appointment and conditions of service special provision is made by or under any law for the time being in force." Counsel says that insofar as special provision has been made by the Police Act and the Police Rules which are still in force for the appointment and conditions of service of the subordinate members of the Police Force, the application of the Punjab Civil Services Rules to such members of the Police Force has been expressly excluded by rule 1.4 of those rules. The further submission of the counsel is that the 1975 Rules have been substituted for notes 1 and 2 under clause (b) and note 1 under clause (c) of rule 5.32 of the Punjab Civil Services Rules, Volume II, and insofar as the original rules do not apply to the members of the Police Force, the 1975 Rules, which have been substituted therefor have also no application to the police officials. The main judgment out of the three cases to which reference has been made by the learned counsel in this behalf is of Tuli, J. in (5), *A.S.I. Girdhari Lal v. The Inspector-General of Police, Haryana, Chandigarh and others*. *A.S.I. Girdhari Lal* had been given extension in service for some time after he had attained the age of 55 years on December 1, 1967, but his further retention in service was not agreed to by communication, dated December 6, 1968, in consequence whereof three months' notice was served on him to retire him with effect from March 15, 1969. The notice and order of his retirement after he had attained the age of 55 years and before he had become 58 years old was impugned by Girdhari Lal in the writ petition. It was, *inter alia*, claimed on his behalf that the age

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(5) Civil Writ 429 of 1969 decided on March 12, 1969.

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of superannuation of the Punjab Government employees having been raised from 55 years to 58 years, *vide* Punjab Government circular, dated May 21, 1964, his case could not be considered as that of extension in service, and he was entitled to continue in service till he attained the age of 58 years till it was decided to retire him under rule 5.32 of the Punjab Civil Services Rules. Tuli, J. repelled that argument by agreeing with the contention of the State counsel that rules 3.26 and 5.32 of the Punjab Civil Services Rules do not apply to the case of a member of the Police Force below the rank of a Deputy Superintendent of Police on account of the exception to the applicability of those rules to all the Punjab Civil Services Rules having been carved out by clause (ii) of rule 1.4 of the Punjab Civil Services Rules, Volume I, Part I, which has already been quoted above. It was pointed out that the provisions relating to superannuation pension and premature retirement of subordinate police officers had been made by rules 9.15 to 9.18 of the Police Rules which are special provisions made under the Police Act (and, therefore, special provisions made by or under any law for the time being in force) within the meaning of clause (ii) of rule 1.4 of the Punjab Civil Services Rules, Volume I. It was held that it is the Police Rules which governed A.S.I. Girdhari Lal, in so far as his age of superannuation was concerned, and inasmuch as the said Rules provide the said age to be 55 years, the retention of A.S.I. Girdhari Lal in service after he had attained the age of 55 years could not be claimed under the Civil Services Rules in which the age of superannuation had been enhanced from 55 years to 58 years. It was further held that rule 12.1 of the Punjab Police Rules as amended by the Punjab Police (Second Amendment) Rules, 1963, did not make any difference to the situation. Sub-rule (5) which was added to rule 12.1 by the 1963 amendment reads:—

“In matters relating to general conditions of service such as pay, pension, leave, joining time and travelling allowance, the subordinate ranks of the Police Force of the State of Punjab shall be governed by the Punjab Civil Service Rules, for the time being in force, insofar as they are not inconsistent with the provisions contained in these rules.”

It was noticed that rule 12.1 existed when the age of superannuation in rule 9.15 of the Police Rules as well as in rule 3.26 of the Punjab Civil Services Rules was the same that is 55 years, but as soon as the Police Rules continued to prescribe the age of 55 years, but the same had been raised to 58 years for other services in the Punjab

State, the provisions of the Civil Services Rules became inconsistent with the provisions contained in Punjab Civil Services Rules so far as the age of superannuation is concerned. Relying on the earlier judgment of P. C. Jain, J., in (6) *Jagdish Raj Dogra v. The Superintendent of Police and others*, the learned Judge (Tuli, J.) held that A.S.I. Girdhari Lal was governed by rules 9.15 and 9.16 of the Punjab Police Rules, 1934, and he had no right to continue in service till his attaining the age of 58 years. Consequently it was held that so long as the Punjab Police Rules were not amended so as to substitute the age of 58 years for the age of 55 years in rule 9.15 (3) the decision of the Punjab Government to raise the age of superannuation from 55 years to 58 years by letter, dated March 28, 1963, should be held not to apply to the members of the Police Force.

(20) The third judgment of this Court to which counsel referred in this behalf is of Jain, J. in (7) *Nasib Singh v. The State of Punjab and others*. In both the Single Bench cases decided by Mr. Justice Jain (referred to above), the learned Judge merely followed the judgment of Tuli, J., in the case of *A.S.I. Girdhari Lal* (supra). Reference was also made in this connection to the observations of a learned Single Judge of the Allahabad High Court in *Mukhtiar Singh v. State and others*, (8), wherein after referring to the provisions of section 7 of the Police Act relating to the powers of appointment and dismissal of police officers vested in the various police authorities, the learned Judge held as below :—

“The opening words of the section (section 7 of the Police Act), i.e., ‘subject to such rules as the State Government may from time to time make under this Act’ clearly indicate that the rules that will be applicable to the case of the police personnel are the rules framed under the Police Act. The words ‘such rules . . . . . under this Act’ are very significant. The provisions of Chapter XXXII of the U.P. Police Regulations have been made under section 7 of the Police Act as is clearly shown by rule 477 of the Police Regulations .....

(6) C.W. 2439 of 1966 decided on January 28, 1969.

(7) Civil Writ Petition 330 of 1968 decided on July 28, 1969.

(8) A.I.R. 1959 Allahabad 569.

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(21) The most emphatic argument of Mr. Kuldip Singh on this point was that when the police officers claimed the protection and relief under the Punjab Civil Services Rules which were made generally for all Punjab Government employees raising their age of superannuation from 55 years to 58 years, they were refused the relief and their claims were repelled on the ground that they had to look to the Police Act and the Police Rules alone as the special and complete code governing their conditions of service, and that when the Police Act and the Police Rules are more beneficial to them in matters of premature retirement, the Government should not be allowed to argue that even the members of the subordinate Police Force are governed by those general rules and not by the specific rules relating to superannuation and premature retirement contained in Police Rules 9.15 to 9.18. Reference was in this connection made to the amendment in the notes under clause (b) of rule 5.32 consequent on the pronouncement of their Lordships of the Supreme Court in *Gurdev Singh Sidhu v. The State of Punjab and another* (9), and it was argued that notwithstanding the said amendment no change was made in rule 9.18 of the Police Rules as amended on February 12, 1963, relating to premature retirement of subordinate police officials. In *Gurdev Singh's case*, the Supreme Court held that the termination of the services of a permanent public servant under a rule authorising the State to compulsorily retire him at the end of ten years' service though called a rule relating to compulsory retirement is in substance a rule for removal from service within the meaning of Article 311(2) of the Constitution, and would, therefore, be hit by that Article, but if a permanent public servant is compulsorily retired under such a rule which prescribes the normal age of superannuation and provides "for a reasonably long period of qualified service after which alone compulsory retirement can be ordered", such a rule would not amount to unauthorised dismissal or removal under Article 311(2) of the Constitution. It was in consequence of the pronouncement of their Lordships of the Supreme Court in *Gurdev Singh Sidhu's case* (supra) that 25 years' qualifying service was substituted in note 1 to clause (b) of rule 5.32 of the Punjab Civil Services Rules, Volume II in place of ten years which had been provided earlier. It was pointed out by the learned counsel that in spite of the pronouncement of their Lordships of the Supreme Court in *Gurdev Singh Sindhu's case* ten years qualifying service as a condition precedent for compulsory retirement was preserved in clause (b) of sub-rule (1) of rule 9.18 of the Punjab Police

(9) A.I.R. 1964 Supreme Court 1585.

Rules as amended in 1963, simply because the Police Force is treated as a special type of service to which the general Government servants' rules are not applicable. It was in that very connection that it was pointed out that rule 9.15 is in the chapter relating to pensions, that is relating to retirement and not in Chapter XIV of Volume II which deals with discipline and conduct.

(22) It was in the above-quoted detailed back-ground that Mr. Kuldip Singh brought to the forefront his precise submission about the 1975 Rules not being applicable to his clients, as the said Rules deal with premature retirement, a subject which is claimed to be completely covered for the police services by rule 9.18. The said police rule is according to Mr. Kuldip Singh more beneficial for the police officials as no one can be prematurely retired under that rule without being given a show-cause notice and without being heard in reply thereto though such retirement can be ordered after putting in only ten years' service as compared with the 1975 Rules in which one cannot be retired before putting in at least 25 years service, but under the 1975 Rules there is no requirement of any show-cause notice or opportunity being given to the concerned Government servant. Counsel submitted that the 1975 Rules impinge on the rule relating to the age of superannuation provided by rule 9.15 (3) of the Police Rules and on the provision for premature retirement contained in rule 9.18 of those Rules. It is on this basis that he contended that without amending rule 9.18 or adding to the existing Police Rules the conditions of service of the petitioners could not be effected. Special emphasis was laid on the fact that even the Punjab Police (Second Amendment) Rules, 1963, were framed under section 2 of the Police Act, and not under proviso to Article 309 of the Constitution. In fact at one stage counsel threw a challenge at the face of the learned Deputy Advocate-General to show if ever the Governor of Punjab had made any rules relating to the Police Force under the Proviso to Article 309 of the Constitution. That challenge was, however, successfully met by Mr. Iqbal Singh Tiwana by citing the following illustration:—

The rules for the appointment and training of Deputy Superintendents of Police in the Punjab were originally contained in Appendix 12.1 under rule 12.1 in Chapter XII of the Punjab Police Rules, 1934, Volume II (on page 27). These Rules were substituted by the Punjab Police Service Rules, 1959, framed by the Governor in exercise

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of the powers conferred on him by the proviso to Article 309, and were published in the Punjab Government Gazette, dated December 11, 1959, at pages 2381 to 2384.

(23) Mr. Tiwana, submitted in reply to the above-mentioned arguments of Mr. Kuldip Singh that the 1975 Rules are not a part of the Punjab Civil Services regulations, and the exclusion of application of those regulations to the Police Force by Civil Services Rule 1.4 does not, therefore, oust the applicability of the 1975 Rules to the police establishment. His submission was that the only reason why the Punjab Civil Services Rules do not apply to the Police Force is because clause (ii) of rule 1.4 specifically states that those rules would not apply to a Service for which provision is made as regards the appointment and conditions of service of its members by any other law for the time being in force. Once it is held that the 1975 Rules stand independent of the Punjab Civil Services Rules and are not a part thereof, nothing stated in rule 1.4(ii) of the Punjab Civil Services Rules would affect the applicability of the 1975 Rules to the members of the police establishment. Mr. Tiwana is correct in submitting that the Police Force is as much a civil service within the meaning of Article 309 of the Constitution as it is within the meaning of that expression used in Articles 310 and 311 particularly after the Constitution has abolished the distinction between police officials and other civil servants for purposes of Article 309 as well as Article 311 by not providing in the Constitution any Article analogous to section 243 of the Government of India Act, 1935. Reference was made in this connection to the observations of the Supreme Court in *Jagannath Prasad Sharma v. The State of Uttar Pradesh and others* (10), wherein it has been observed that the protections guaranteed by sub-sections (2) and (3) of section 240 of the Government of India Act, 1935, did not apply to the police officers in view of the special provision contained in section 243 of that Act, but the distinction between the police officers and other civil services in the matter of protection by constitutional guarantee has been abolished with effect from January 26, 1950, and the recruitment and conditions of service of all persons serving the Union or the State are now governed by Article 309, and their tenure by Article 310 of the Constitution. In the face of the authoritative pronouncement of their Lordships of the Supreme Court in *Jagannath Prasad Sharma's case* (supra), the whole argument of Mr. Kuldip Singh to the effect that no service rules can be framed

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(10) A.I.R. 1961 Supreme Court, 1245.

for the subordinate Police Force by the Governor of Punjab in exercise of his powers under the proviso to Article 309 of the Constitution even after the coming into force of the present Constitution crumbles down. Article 309 gives absolute power to the Governor to frame any rule relating to the appointment or conditions of service of any class of civil servants within the State so long as it does not come into conflict with any provision of the Constitution or any law enacted by the State Legislature under the purview of Article 309. Mr. Tiwana pointed out that "police" is an exclusively State subject under entry 2 of List II in the seventh Schedule and that the existing service law's which were in force before the Constitution including the Police Act and the Rules framed thereunder remain in operation as existing laws under Article 313 of the Constitution (except those which are inconsistent with the Constitution) only until other provision is made. Mr. Tiwana appears to be correct in submitting that the language of Article 313 clearly shows that the pre-Constitution Punjab Police Rules remain in force by operation of that Article of the Constitution only until the same are modified, amended or repealed by the State Government and not for ever. Even the Police Act continues to remain in force by operation of Article 313 only so long as the State Legislature does not make any other provision by a legislative enactment within the meaning of Article 313 of the Constitution. Emphasis was also laid by Mr. Tiwana on the judgment of their Lordships of the Supreme Court in *B. S. Vadava v. Union of India and others* (11), wherein it was held that in the absence of any Act passed by the appropriate Legislature "on the matter", the rules made by the President under the proviso to Article 309 of the Constitution can act prospectively as well as retrospectively. It was pointed out that apart from the limitation regarding the existence of a legislative enactment on the subject, there is no other limitation imposed on the powers under the proviso to Article 309 regarding the ambit of the operation of the rules which can be framed by the President or the Governor thereunder. Their Lordships held:—

"In other words, the rules (framed under the proviso to Article 309 of the Constitution), unless they can be impeached on grounds such as breach of Part III, or any other constitutional provision, must be enforced, if made by the appropriate authority."

(11) A.I.R. 1969 Supreme Court, 118.

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The decision of the Supreme Court in *N. Lakshmana Rao and others, etc. v. State of Karnataka and others, etc.*, (12) is also significant in this respect as it has been laid down therein that the expression "until other provision is made" used in the proviso to Article 309 of the Constitution means a provision which can be made by the legislature or by the Governor or the executive as the power of the Governor under the proviso to Article 309 is co-extensive with the power of the legislature under the purview of Article 309. It was on that basis that their Lordships held that the Governor could in the absence of any enactment by the Legislature alter the age of retirement and that the terms of service of primary teachers which were continued by the Mysore Compulsory Primary Education Act could be altered by the Governor under Article 309 of the Constitution.

(24) The following conclusions of law arise from the above discussion on this point:—

- (i) the power of the Governor under the proviso to Article 309 of the Constitution is co-extensive with that of the appropriate Legislature subject to the limitation contained in that Article, namely the rule not being contrary to any provision of the Constitution and the rule not being inconsistent with any law made on the subject by the appropriate Legislature;
- (ii) after the repeal of the Government of India Act, 1935, and in the absence of a provision like section 243 of the Government of India Act, 1935, the Governor is competent to make rules relating to appointment and conditions of service of the members of the subordinate Police Force under the proviso to Article 309 of the Constitution in the same manner and to the same extent as he is competent to make rules for other civil servants of the State ;
- (iii) either by an express order repealing or amending a police rule or by implication by making a rule which is made to abrogate an existing police rule, the Governor may in exercise of his rule-making authority under Article 309 of the Constitution amend or repeal a police rule ; and

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(12) A.I.R. 1975 Supreme Court 1646.



- (iv) the rules originally framed under sections 7 and 12 of the Police Act, and subsequently framed under section 2 of that Act do not assume the character of an Act of the Legislature itself, and do not, therefore, become immune to a change being made therein by the Governor in exercise of his rule-making authority.

(25) Keeping in view the propositions of law deduced by me above, it appears to me that the contention of Mr. Kuldip Singh to the effect that the 1975 Rules do not apply to the Assistant Sub-Inspectors or to the Sub-Inspectors of Police in Punjab because the field relating to the matter of superannuation and premature retirement is fully occupied by rules 9.15 to 9.18, and does not leave any room for the Governor to encroach thereupon is without any merit. The exhaustive definition of "employee" in rule 2(2) which has already been quoted earlier clearly includes in it a member of the subordinate Police Force. Rule 5 of the 1975 Rules has given overriding effect to rule 3 of those Rules. If, therefore, any other service rule applicable to the State employees is inconsistent with the 1975 Rules, the latter would override the former. To me there appear to be two ways of looking at this subject. Retirement can be divided into four different categories, namely:—

- (i) automatic retirement on attaining the age of superannuation ;
- (ii) compulsory retirement as a measure of punishment ;
- (iii) premature retirement after having put in a reasonably long period of service without assigning any reason; and
- (iv) premature retirement on the ground of inefficiency, dishonesty, corruption or infamous conduct which cannot be resorted to without affording the delinquent official an opportunity to show cause against his proposed premature retirement.

There is no dispute about the first two categories of retirement being distinct from each other. Nor is there any dispute about the last two categories of retirement being distinct from each of the first two. It has, however, been contended by Mr. Kuldip Singh that it is fallacious to divide the last two classes of premature retirement into distinct compartments as in fact both of them constitute one single kind of action, though the procedure prescribed for retiring a person may be slightly different in one case than the other. If Mr. Kuldip Singh is

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correct in this respect, the 1975 Rules have by operation of rule 6 thereof not only repealed the absolute power of the Government under note 1 to clause (c) of rule 5.32, but also notes 1 to 3 under clause (b) of that rule. If, however, premature retirement on grounds of inefficiency, dishonesty, corruption, etc. is a distinct separate heading, the 1975 Rules cannot be said to have repealed the notes under clause (b), but only the notes under clause (c) of rule 5.32 of the Punjab Civil Services Rules, Volume II. If the division of cases of premature retirement made by me into two different classifications is correct, and if the notes under clause (b) of rule 5.32 still hold the field notwithstanding the promulgation of the 1975 Rules, the provision made for premature retirement on the ground of inefficiency, etc., in rule 9.18 of the Police Rules also stands distinct, and inasmuch as the field relating to premature retirement in public interest without any show-cause notice in the Police Rules is not occupied by any existing police rule of the nature of note 1 under clause (c) of rule 5.32, the 1975 Rules which come under that category (and not in the category covered by rule 9.18) apply to the police officials also. If, however, this splitting up of the cases of premature retirement by me is not correct, then by operation of rule 6 of the 1975 Rules, rule 9.18 of the Police Rules has also been abrogated or repealed in the same manner as the notes under clause (b) of rule 5.32 of the Civil Services Rules Volume II have been repealed, as that is also covered by the repeal clause. In either eventuality, the 1975 Rules would apply to the members of the subordinate Police Force.

(26) In view of this situation rule 3 of the 1975 Rules neither encroaches upon nor purports to encroach upon the field covered by rule 9.18 of the Punjab Police Rules, Volume I. The field as regards conditions of service for premature retirement of subordinate police personnel is, therefore, not covered by any legislative enactment or any other such rule which might stand in the way of the Governor exercising his authority under the proviso to Article 309. Point No. (i) urged by Mr. Kuldeep Singh also, therefore, fails.

(27) Nor are we able to agree with the learned counsel for the petitioners that rule 5 of the 1975 Rules overrides only such other rules which had been framed by the Governor of Punjab "in exercise of his powers under Article 309 of the Constitution", or that only those rules relating to premature retirement which had been framed under the proviso to Article 309 have been substituted by the 1975 Rules, and that, therefore, rule 5 could not and has not repealed rule

9.18 of the Police Rules. No such limitation is discernible from the plain language of rule 5. The 1975 Rules have been made to override anything inconsistent with these rules "contained in any other rules for the time being in force". It appears to me to be impossible to introduce into rule 5 by some process of interpretation after the words "in any other rules" and before the words "for the time being in force" the words "framed under the proviso to Article 309 of the Constitution". By operation of rule 5 the 1975 Rules override whatever may be inconsistent with the operative part of these rules in any other rule whatsoever which was in force in Punjab on July 28, 1975, subject only to one exception, and that is of rules which cannot be framed by the Governor either under the proviso to Article 309 or in exercise of any other statutory power conferred on him by any enactment such as section 2 of the Police Act. Since the Governor has the power to frame rules relating to premature retirement of subordinate police personnel under the proviso to Article 309 as well as under section 2 of the Police Act, the provision of rule 9.18 of the Police Rules (if it is deemed to be inconsistent with the 1975 Rules) is not saved from the operation and attack of rule 5 of the 1975 Rules. There is, therefore, no merit even in the third point urged by the learned counsel for the petitioners.

(28) By Punjab Government Home (Police) Department notification No. GSR-40/CA.5/1861/Ss. 2 & 7/Amd.(2)/63, dated February 12, 1963 (published in the Punjab Government Gazette Extraordinary of that date at page 119), the Governor of Punjab made the Punjab Police (Second Amendment) Rules, 1963. One of the amendments thereby made was to add sub-rule (5) to rule 12.1 of the Punjab Police Rules, Volume II, which has already been quoted in an earlier part of this judgment. In the face of a separate and specific rule relating to age of superannuation contained in rule 9.15(3) of the Punjab Police Rules, the age of retirement provided in the Punjab Civil Services Rules would no doubt not apply to the police personnel. Similarly in the matters relating to premature retirement on the ground of inefficiency, corruption, etc., it is rule 9.18 as amended in 1963, and not notes 1 and 2 under clause (b) of rule 5.32 of the Punjab Civil Services Rules, Volume II, that would apply to the subordinate ranks of the Police Force in the State; but so far as the 1975 Rules are concerned, they are not a part of the Punjab Civil Services Rules, but an independent set of rules framed by the Governor under Article 309 of the Constitution and apply to the subordinate ranks of the Police Force because the members of those

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ranks fall within the definition of "employee" in the 1975 Rules which override all other rules for the time being in force. There is a clear and important distinction between rule 12.1(5) of the Police Rules on the one hand and rule 5 of the 1975 Rules on the other. Whereas supremacy is accorded to the Police Rules over the Punjab Civil Services Rules while applying the latter to the subordinate police ranks by rule 12.1(5), overriding effect is given to the 1975 Rules by rule 5 thereof over all other rules relating to the matters covered by the 1975 Rules which might have been in force in the State of Punjab on the date on which the 1975 Rules came into force. Mr. Kuldip Singh, therefore, appears to be quite correct in submitting that the 1975 Rules are not a part of the Punjab Civil Services Rules, and cannot, therefore, be invoked against any member of the subordinate ranks of the police in Punjab by operation of rule 12.1(5). The 1975 Rules apply on account of their own force and not on account of sub-rule (5) of rule 12.1. This disposes of the fourth point raised by Mr. Kuldip Singh.

(29) We are, however, unable to agree that the 1975 Rules are inconsistent with rules 9.15 to 9.18 of the Punjab Police Rules, Volume I. The subject covered by rule 9.15 (superannuation pension) is not at all touched by anything contained in the 1975 Rules. On the contrary, as already pointed out, Article 458 of the Civil Services Regulations and rule 9.15(1) of the Police Rules are almost identical. There is no doubt that sub-rule (3) of rule 9.15 is inconsistent with the corresponding rule relating to age of superannuation contained in the Punjab Civil Services Rules, but that is a subject which is not dealt with by the 1975 Rules as the age of superannuation is neither reduced nor extended by those rules. Similarly there is nothing in the 1975 Rules which touches the subject covered by rule 9.16 of the Police Rules which deals with retention of a police employee in service after attaining the age of superannuation (55 years in case of subordinate ranks of the police. The 1975 Rules do not prescribe anything relating to retention of any employee in service after attaining the age of superannuation (which is 58 years for other State employees except for ministerial servants). Nor is there anything in the 1975 Rules which may be inconsistent with rule 9.17 of the Police Rules. I have already dealt with rule 9.18 of the Punjab Police Rules, while discussing the arguments of Mr. Kuldip Singh on the second point. If it is held that premature retirement is of two types, the one covered by the notes under clause (b) and the other covered by the notes under clause (c) of rule 5.32 of the Civil Services Rules, Volume II, there is nothing

inconsistent between the 1975 Rules and rule 9.18 of the Police Rules, if, however, it is assumed that both the sets of notes deal with premature retirement and in the absence of any provision for one of those (innocent retirement), the other one is deemed to cover the whole of the field relating to the subject of premature retirement, rule 9.18 insofar as it is inconsistent with the 1975 Rules, would stand repealed by operation of rule 6 and would otherwise have been overridden by the force of rule 5 of the 1975 Rules. It is on this ground that rules 9.15 to 9.18 will not stand as impediments in the way of the operation and application of the 1975 Rules to the subordinate ranks of the Punjab Police and not because of rule 12.1 of the Punjab Police Rules for the reasons already recorded in an earlier part of this judgment, the main reason being that the 1975 Rules are not a part of the Punjab Civil Services Rules. The arguments advanced under the fifth point cannot, therefore, be of any avail to the petitioners.

(30) The sixth point urged by the learned counsel for the petitioners is at the first sight quite attractive, but does not in my opinion stand ultimate scrutiny in view of certain settled proposition of law. The basic thing which must be borne in mind is that after all the right to be in Government service is a mere right to hold the post to which one is appointed according to the rules applicable to the post or the service. Of course all service rules are subject to the constitutional protection afforded by Article 311 against the infliction of any of the well-recognised major punishments enumerated in that Article. The second thing is that so long as there is some guidance in the rules relating to compulsory retirement of a Government servant, it cannot be held to be violative of Article 311 of the Constitution as retirement from service after working for an appreciable number of years is not a punishment of any kind and Article 311 cannot, therefore, apply to it. The third settled proposition is that by compulsory or premature retirement authorised in public interest by valid rules, a Government servant does not lose any of the benefits of his past service, which have already been earned by him. The requirement of public interest for retiring a Government servant before attaining the age of superannuation has been held by their Lordships in *Tara Singh, etc., etc. v. State of Rajasthan and others*, (13), to be a safety valve for making such orders so as to exclude arbitrariness or bad faith creeping in:

(13) A.I.R. 1975 Supreme Court 1487.

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Supreme Court has held in that case that the right to hold a Government post is defeasible according to the rules and when a person completes 25 years of service and the efficiency of such a person is impaired, and yet the Government does not consider it desirable to bring any charge of inefficiency or incompetence against such an employee, the Government passes orders of compulsory retirement of the incompetent incumbent. This judgment is also an authority for holding that retirement on account of incompetency or inefficiency does not cast any stigma so as to attract Article 311.

(31) Though no mention of inefficiency or corruption or incompetence has been made in the impugned order in any of these petitions, counsel has tried to argue that the petitioners have been ordered to be retired on such grounds because:—

(i) administrative instructions had been issued by the Government almost simultaneously with the promulgation of the 1975 Rules, and also within a short time thereafter to weed out inefficient, corrupt or incompetent officers under the new rules; and

(ii) the records shown by the Government to the Court at the instance of the petitioners revealed that after consideration of the service records of all the officers of a particular rank in each district separately, only those have been served with notices of retirement whose service record betrayed either inefficiency or corruption or incompetence or more than one of these things.

This does not in my opinion entitle the petitioners to claim that Article 311 of the Constitution applies to these cases. In *Tara Singh's case* (supra) the Supreme Court has also held that where in a writ petition against an order of compulsory retirement passed in conformity with the relevant service rules it was contended on behalf of the petitioners that the order was passed in the back-ground that the petitioner had outlived his utility to the Government, but the order did not say so, the order did not contain any stigma against the petitioner so as to attract the applicability of Article 311. It is further significant that in some of the cases which were before the Supreme Court while hearing the case of *Tara Singh and others*, the orders of compulsory retirement did not contain any reference to the Government having been satisfied "in public interest" to dispense with the services of the concerned employees. This was the

position in petitions Nos. 1448 and 1898 of 1973, referred to in paragraphs 3 and 4 of the A.I.R. report of the judgment of their Lordships in *Tara Singh's case*. The orders of retirement in those petitions were also upheld and were not set aside on the ground that they did not mention about the existence of public interest. Their Lordships also held in *Tara Singh's case* that so long as the order of retirement does not contain any stigma on the conduct of the Government servant sought to be retired, the mere premature retirement did not cast any stigma and could not, therefore, attract Article 311 of the Constitution. In view of the judgment of their Lordships of the Supreme Court in the case of *Tara Singh and others*, there is no force in the sixth contention of Mr. Kuldip Singh. I would, therefore, hold that neither the 1975 Rules nor the impugned orders passed thereunder violate in any manner the constitutional guarantee of Article 311.

(32) Counsel may in a way be correct in submitting that the expression "public interest" in rule 3 of the 1975 Rules does not include such termination of service which would attract Article 311 of the Constitution, but that by itself is of no use to the petitioners as the cases to which Article 311 of the Constitution applies have been succinctly classified by the Supreme Court in the leading and basic case on the subject of compulsory retirement—*Shyam Lal v. State of Uttar Pradesh, and another*, (14), which still holds the field. It has been held that every termination of service does not amount to dismissal or removal, and, therefore, that Article does not apply to all cases of termination of services. Their Lordships have held that grounds personal to the officer involving the levelling of some imputation or charge against him which may conceivably be controverted or explained by the officer may attract Article 311, but there is no such element of charge or imputation in the case of compulsory retirement. Whereas removal or dismissal is inflicted as a punishment or as a penalty and involves loss of benefits already earned, this is not so in case of compulsory retirement as the employee is entitled to the pension, etc., which he has actually earned, and, therefore, there is no diminution of the accrued benefit in cases of retirement. It was on this basis that it was authoritatively held in *Shyam Lal's case* that compulsory retirement does not amount to dismissal or removal, and does not, therefore, attract the provisions of Article 311 of the Constitution. Such an order is not open to any challenge on the ground that the officer had not been afforded

(14) A.I.R. 1954 Supreme Court 369.

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opportunity of showing cause against the action proposed to be taken against him. It is significant that whereas in *Shyamal's case* a charge-sheet had actually been served on the petitioner and a notice had been issued to him to explain as to why he should not be compulsorily retired from service, and there was admittedly some imputation against the officer, Article 311 was held to be not attracted as the letter asking for his explanation had made it clear that the Government was not holding any formal inquiry, but the action was being taken in order to enable the Government to make up its mind on the question whether it was in the public interest to compulsorily retire the petitioner. It is of still greater significance that their Lordships held in *Shyamal's case* that every case of compulsory retirement is bound to have a back-ground but for which an order of retirement might be termed as arbitrary.

(33) The *ratio decidendi* of the judgment of the Supreme Court in *Shyamal's case* (supra) was held by their Lordships in the *State of Bombay v. Saubhagchand M. Doshi*, (15) to be this :—

“Under the rules an order of dismissal is a punishment laid on a Government servant, when it is found that he has been guilty of misconduct or inefficiency or the like, and it is penal in character, because it involves loss of pension which under the rules would have accrued in respect of the service already put in. An order of removal also stands on the same footing as an order of dismissal, and involves the same consequences, the only difference between them being that while a servant who is dismissed is not eligible for re-appointment one who is removed, is. An order of retirement differs both from an order of dismissal and an order of removal, in that it is not a form of punishment prescribed by the rules, and involves no penal consequences, inasmuch as the person retired is entitled to pension proportionate to the period of service standing to his credit.”

Their Lordships further held in *Saubhagchand M. Doshi's case* (supra) that it does not make any difference in the position that rule 165-A of Bombay Civil Services Rules provides, unlike Note I to Article

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(15) A.I.R. 1957 Supreme Court 892.



465-A in *Shyamal v. State of Uttar Pradesh and another*, (16) that the power is not to be exercised except in cases of misconduct or inefficiency as whenever the Government decides to retire a Government servant before the age of superannuation, it does so for some good reason, and that, in general would be misconduct or inefficiency. Their Lordships observed that in providing that no action for compulsory retirement would be taken except in case of misconduct or inefficiency, rule 165-A of the Bombay Civil Services Rules only made explicit what was implicit in Note 1 to Article 465-A. Their Lordships observed in paragraphs 11 of the judgment as below:—

“The fact to be noted is that while misconduct and inefficiency are factors that enter into the accounts where the order is one of dismissal or removal or of retirement, there is this difference that while in the case of retirement they merely furnish the background and the enquiry, if held—and there is no duty to hold an enquiry—is only for the satisfaction of the authorities who have to take action, in the case of dismissal or removal, they form the very basis on which the order is made and the enquiry thereon must be formal, and must satisfy the rules of natural justice and the requirements of Article 311(2).

It should be added that questions of the above character could arise only when the rules fix both an age of superannuation and an age for compulsory retirement and the services of a civil servant are terminated between these two points of time. But where there is no rule fixing the age of compulsory retirement, or if there is one and the servant is retired before the age prescribed therein, then that can be regarded only as dismissal or removal within Article 311 (2).”

It was on the above basis that the Supreme Court held that rule 165-A of the Bombay Civil Services Rules was not violative of Article 311 (2) and was *intra vires*, and the order of retirement passed under that rule was valid. Reference may also be made in this context to the judgment of their Lordships in *Dalip Singh v. State of Punjab*, A.I.R. 1960 Supreme Court 1305. The grounds which

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led to the compulsory retirement of the Government servant had been supplied to him in that case in response to his request for the same after receiving the order of the Rajpramukh retiring him from service for administrative reasons. The charges against Dalip Singh on the basis of which Government had decided to retire him on administrative grounds were furnished to him in the Government's reply to Dalip Singh's request. The order of retirement was attacked on the ground that it violated Article 311(2) of the Constitution as the order of his retirement amounted to his removal from service within the meaning of Article 311 of the Constitution on account of the charges which formed the basis of the order of retirement though the same were not mentioned in the order itself. The trial Court had decreed Dalip Singh's suit but the High Court had reversed the decision of the trial Court and dismissed his suit. On further appeal to the Supreme Court, their Lordships after referring to the two tests laid down in *Shyam Lal's case* and in *Saubhagchand M. Doshi's case* for finding out whether Article 311 was attracted or not held that while misconduct and inefficiency are factors that do enter into the account in an order of dismissal or removal as well as in an order of premature retirement, the difference lies in the fact that while in the case of retirement they merely furnish the background and there is no duty to hold an inquiry into them as it is only for the satisfaction of the authorities who have to decide about retirement, in the case of dismissal or removal they form the very basis on which the punishment is inflicted and the enquiry thereon must be formal, and must satisfy the rules of natural justice as well as the requirements of Article 311(2). Their Lordships observed that the order of retirement passed by the Rajpramukh did not even purport to be based on a charge of misconduct or inefficiency, and it merely stated that the retirement was being ordered for administrative reasons. It was only after Dalip Singh's own insistence to be supplied with the grounds which led to the decision that the charges were communicated to him, and, therefore, in such a situation there was no basis for saying that the order of retirement contained any imputation or charge against the officer. It was authoritatively held that the fact that consideration of misconduct or inefficiency weighed with the Government in coming to its conclusion to retire Dalip Singh did not amount to any imputation or charge against the officer. Their Lordships held that since the other test regarding his not having lost any benefit which had already accrued to him was also satisfied, the order of his compulsory retirement did not amount to removal or dismissal within the meaning of Article 311 of the Constitution.

(34) Their Lordships of the Supreme Court have finally settled the following propositions of law in their judgment in the *Union of India v. Colonel J. N. Sinha and another* (16) :—

- (i) the correctness of the opinion formed by the Government about the retirement being in public interest cannot be challenged before Courts so long as the opinion has been formed *bona fide* ;
- (ii) the Government servant does not by compulsory retirement lose any of the rights acquired by him before retirement ;
- (iii) compulsory retirement does not involve any civil consequences ;
- (iv) a rule providing for compulsory retirement is not intended for taking any penal action against a Government servant;
- (v) such a rule merely embodies one of the facts of the pleasure doctrine embodied in Article 310 of the Constitution ;
- (vi) while minimum service is guaranteed to a Government servant, the Government is given power to energise its machinery and make it more efficient by compulsorily retiring those who in its opinion should not be there in public interest; and
- (vii) the Court can set aside an order of compulsory retirement only if—
  - (a) it is actuated by malice as *mala fides* strike at the root of everything; or
  - (b) the order is arbitrary or capricious.

(35) In the face of the law laid down by the Supreme Court in the abovementioned and other such cases, it is impossible to hold that merely because the petitioners were amongst the officials who were retired under the 1975 Rules after the issue of administrative instructions thereby directing that inefficient, corrupt and incompetent officers may be weeded out, Article 311 would be attracted

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to the cases of the petitioners in whose case the impugned orders are for pure and simple retirement under the 1975 Rules, and do not cast any stigma on the conduct of any of the petitioners. The petitioners are getting the pension earned by them. They are not debarred from being appointed to any service for which they may be eligible and qualified. The order of retirement does not cast any stigma on them. The background in which they are being retired furnishes the legal justification for their retirement and shows that the impugned orders are not arbitrary or fanciful, but are based on firm well recognised principles for enforcing rules for premature retirement. There is, therefore, no merit even in the sixth contention of Mr. Kuldip Singh.

(36) Coming to the seventh point urged by the counsel, it is clear from the discussion on the sixth point that merely because in reply to the charge of arbitrariness levelled by the petitioners, the Government has shown that their records justify the retirement of each of the petitioners so that the same may not be called arbitrary or *mala fide* does not mean that the State is trying to circumvent the provisions of Article 311 of the Constitution in the garb of "public interest." "Administrative grounds" or "public interest" are well-known grounds for which premature retirement is resorted to. Mr. Kuldip Singh argued that it is not in the public interest to circumvent the provisions of Article 311 of the Constitution. He further argued that it is in the public interest that the protection of Article 311 of the Constitution may be afforded to the petitioners. This argument is fallacious inasmuch as the question of invoking the protection of Article 311 can arise only in those cases which are covered by that Article, that is the cases of imposition of the penalty of dismissal or removal; but the protection of that Article cannot be claimed in the case of pure and simple retirement under the relevant service rules. The reference by Mr. Kuldip Singh to the judgments of the Supreme Court in *Appar Apar Singh v. The State of Punjab and others*, (17), *The State of Bihar and others v. Shiva Bikshuk Mishra* (18), *Shamsher Singh v. State of Punjab and another* (19), and *State of Uttar Pradesh and others v. Sughar Singh* (20), is not at all relevant for our purposes as none of those cases was of premature retirement or compulsory retirement. Three

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(17) 1971 S.L.R. 71.

(18) 1970 S.L.R. 863.

(19) 1974 (2) S.L.R. 701.

(20) 1974 (1) S.L.R. 435.

of those cases were of reversion to lower rank and one was of removal from service. The question that arose for decision in those cases was whether the mere fact that the order of reversion or removal was innocuous prevented the Supreme Court from going behind the order and finding out as to what was the foundation thereof. It was in that context that their Lordships held that the motive for the termination of services is irrelevant but the foundation is relevant. Those considerations are irrelevant in cases of retirement after serving the Government for appreciably long period in which case the Government servant does not lose any benefit which has already accrued to him. In all the abovementioned cases referred to by Mr. Kuldip Singh if the orders of termination of services had been upheld, the incumbents would have lost all the benefits that had accrued to them till the passing of the impugned orders. In *T. G. Shivacharan Singh v. The State of Mysore* (21), besides reiterating the grounds previously covered by their Lordships' judgment in *Shyam Lal's case* and in *Saubhagchand M. Doshi's case* it was held that whether or not retirement of a public servant is in the public interest is a matter for the State Government to consider. There is no constitutional limitation to reduce the age of retirement itself if the Government so desires (vide *N. Lakshmana Rao and others etc. v. State of Karnataka and others etc.* (12), and premature retirement after having served the State for about 25 years cannot be held to be violative of Article 311. There is, therefore, no force even in the seventh contention of the learned counsel for the petitioners which is accordingly repelled.

(37) Coming to the last ground urged by the counsel, we may only point out that we have been shown the tabulated statement prepared in the office of each District Superintendent of Police containing all the adverse entries, punishment and adverse remarks, etc. earned by the police officers out of which respective Superintendents of Police have personally selected a few officers in each district for being retired under the 1975 Rules. The extent to which detailed particulars have been given in this tabulated statement and the care with which the Superintendents of Police have scrutinised them and made notes against some of the names shows that the appropriate authority has in each case seriously applied its mind to the question of public interest and it is entirely erroneous for the petitioners to think that orders for their retirement have been passed in a mechanical manner and under instructions from any higher authority. It

(21) A.I.R. 1965 Supreme Court 280.

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has neither been alleged nor proved that any higher authority directed any Superintendent of Police to retire any particular Assistant Sub-Inspector or Sub-Inspector of Police or any other officer. The administrative instructions relied upon by the petitioners of which copies have been placed before us are of general nature and were issued to all Heads of Departments. In fact the issue of those administrative instructions appears to us to have served as a safety valve for the appropriate authorities to decide each case according to the guidelines laid down therein and to exclude as much as practicable any possible element of arbitrariness or caprice in passing the orders of retirement. As stated above, the learned Deputy Advocate-General showed us the tabulated statement of the respective service records of the petitioners. Suffice it to say that after seeing the same it is impossible to hold that the appropriate authorities had no material before them to judge and decide whether the cases of the petitioners did or did not justify action being taken under the 1975 Rules. Mr. Kuldip Singh submitted that it would be in "public interest" to retire a man only if a better officer is there to man the particular post or it has become impossible for the existing man to deliver the goods. This is only one instance of 'public interest' but not the sole one. It is too late in the day to urge that it is not in the public interest to chop off the dead wood in public services or that corrupt or inefficient officers are not dead wood.

(38) We were also referred (by the learned counsel for the petitioners) to the judgment of Gopi Nath, J. of the Allahabad High Court in *Dr. R. S. Gupta v. State of U. P. and others*, (22), wherein following the earlier unreported D. B. judgment of that Court in *State of U. P. v. R. S. Saxena* (23), the order of compulsory retirement was quashed on the ground that the Government servant could not be held to be unworthy of his job and unfit to be retained in service because only five months prior to his compulsory retirement he had been promoted to the responsible post of Chief Medical Officer. Each case depends on its own facts. In none of the cases before us was any petitioner promoted to any high or responsible job shortly before the passing of the order to retire him. *Dr. R. S. Gupta's case* is, therefore, of no avail to the petitioners.

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(22) 1975 All India Services Law Reporter 548.

(23) Special Appeal No. 165 of 1974 (decided on July 25, 1974).

(39) That disposes of all the eight common points urged by the counsel for the petitioners. As a result of the discussion thereof and for the reasons already recorded, we hold as below :—

- (i) though the power of the Governor under the proviso to Article 309 of the Constitution is meant for covering a transitory gap or a transitional period, the only limitation placed on that gap or period is of enactment of the relevant service rules on the subject in question by the State Legislature. The transitional nature of the power of the Governor under that Article has no relation to the time factor except in the sense indicated above ;
- (ii) the power of the Governor under the proviso to Article 309 is co-extensive with that of the State Legislature subject only to the two limitations contained in the Article, namely :—
  - (a) the rule framed by the Governor should not be contrary to any provision of the Constitution ; and
  - (b) such a rule should not be inconsistent with any law made on the subject by the State Legislature ;
- (iii) in the absence of a provision in the Constitution like section 243 of the Government of India Act, 1935, and specially in view of the amendments to section 2 of the Police Act, the Governor is now competent to make rules relating to appointment and conditions of service of the members of the subordinate Police Force under Article 309, in the same manner and to the same extent as he is competent to make rules for any other Civil Service of the State ;
- (iv) the Governor is authorised by the proviso to Article 309 of the Constitution to amend or repeal any Police Rules either by expressly so providing or even by implication by framing a rule which abrogates or effaces an existing police rule ;
- (v) no rule relating to the conditions of service of a public servant framed under an Act becomes part of the Act itself

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so as to be impregnable against its repeal or amendment by the Governor in exercise of his powers either under the same Act or under the proviso to Article 309 ;

(vi) the rules framed under sections 7 and 12 of the Police Act and subsequently framed or amended under section 2 of that Act do not assume the character of an Act of the Legislature and do not, therefore, become immune to amendment or repeal by the Governor in exercise of his rule-making authority ;

(vii) since the Police Act does not contain any condition of service relating to simple premature retirement of members of the subordinate Police Force, there is no bar to the Governor or the State Government making rules on that subject under the proviso to Article 309 of the Constitution or section 2 of the Act ;

(viii) premature retirement can be of two types, namely :—

(a) of the type referred to in notes 1 to 3 of clause (b) of rule 5.32 of the Punjab Civil Services Rules, Volume II ; and

(b) of the type mentioned in note 1 under clause (c) of that rule, i.e.

premature retirement on account of inefficiency, or corruption, etc. after giving notice and opportunity to the incumbent on the one hand and premature retirement *simpliciter* without any show-cause notice after the Government servant has put in an appreciable number of years of service.

Rule 9.18 of the Police Rules falls in the first category and is almost a verbatim copy of notes 1 to 3 of clause (b) of rule 5.32. There is no provision in the Police Rules corresponding to note 1 under clause (c) of rule 5.32. The field covered by the premature retirement of the second type is not occupied by any provision in the Police Rules ;

(ix) the 1975 Rules are not a part of the Punjab Civil Services Rules. Those Rules do not, therefore, apply to the



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members of the subordinate Police Force by operation of rule 12.1(5) of the Police Rules, but on account of their own force as the Rules apply to all the civil servants of the Punjab State (except those exempted under rule 7 thereof), and the police establishment is not mentioned in rule 7 ;

- (x) if rule 9.18 of the Police Rules is deemed to cover the whole subject of premature retirement and not only of one particular category thereof, rule 9.18 has been repealed by operation of rule 6 of the 1975 Rules. The only Rules now applicable to members of the subordinate Police Force in Punjab relating to their premature retirement *simpliciter* without any opportunity to show cause, and without losing any accrued benefits are the 1975 Rules. The rule providing for premature retirement without loss of any benefits after putting in an appreciable number of years of service does not contravene Article 311 of the Constitution merely because the rule itself provides for such retirement not being resorted to except in case of misconduct or inefficiency (vide *Shyamlal v. State of Uttar Pradesh and another* (14).
- (xi) while misconduct and inefficiency are factors that do enter into account in an order of dismissal or removal as well as in an order of premature retirement, the difference lies in the fact that while in the case of retirement they merely furnish the background and there is no duty to hold an inquiry into them, as those factors are considered only for the satisfaction of the authorities who have to decide the question of retirement, in the case of dismissal or removal, they form the very basis on which the punishment is inflicted, which necessitates a formal inquiry in accordance with the provisions of Article 311(2) of the Constitution (vide *Dalip Singh v. State of Punjab* (24).
- (xii) where no imputation or charge is made in the order of premature retirement, but at the insistence of the concerned Government servant to be supplied with the grounds which led to the decision of the Government to

(24) A.I.R. 1960 Supreme Court 1305.

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retire him being communicated to him the grounds of inefficiency or corruption are brought to his notice or are conveyed to him, Article 311 is not attracted so long as the test regarding the concerned Government servant not having lost any benefit which had already accrued to him is satisfied ;

- (xiii) the right to be in Government service is (subject to the constitutional safeguard under Article 311 of the Constitution) a mere right to hold the post to which one is appointed according to the rules applicable to the post or the Service. So long as there is some guidance in the Rules relating to compulsory retirement, such Rules cannot be held to be violative of Article 311 as retirement from Service after working for an appreciable number of years is not a punishment of any kind. The provision for resorting to such retirement in the public interest furnishes sufficient guidance for the circumstances in which an order of such retirement may be passed ;
- (xiv) the mere fact that the order of retirement does not state that it has been passed in "public interest" does not vitiate or invalidate the order so long as the material to show the application of mind for passing that order in public interest is disclosed to the Court in case of challenge being made to the *bona fides* of the order ;
- (xv) as held by the Supreme Court in *Colonel J. N. Sihna's case* (16), the correctness of the opinion formed by the Government about the retirement of a particular Government servant being in public interest cannot be challenged before the High Court so long as the opinion is not shown to have been formed *mala fide* ;
- (xvi) premature retirement does not involve any civil consequences and does not result in the loss of any rights acquired by a Government servant before his retirement. An order of premature retirement does not amount to penal action against a Government servant. Such a rule merely embodies one of the facets of the pleasure doctrine embodied in Article 310 of the Constitution ;

- (xvii) an order of premature retirement can be quashed or set aside by a Court only if it is either shown to have been actuated by malice or is shown to have been passed in an arbitrary or capricious manner or by an authority not competent to pass such an order under the relevant service rules ;
- (xviii) the doctrine of unveiling the order of termination of service with a view to find out the motive or the foundation of the order applies to cases of termination of service by way of punishment and does not apply to cases of premature retirement except for the purpose of deciding the *bona fides* of the authority passing the order ; and
- (xix) premature retirement after having rendered 25 years Government service amounts to such retirement after having served the Government for a substantial number of years, and is, therefore, not violative of Article 311 of the Constitution.

(40) Coming to the individual cases, nothing more than what has been stated above was argued in *Gurdial Singh's case*. (C.W. P. 5139 of 1975) and *Kasturi Lal's case* (civil writ p. 5137 of 1975). In *A.S.I. Baldev Singh's case* (civil writ petition 5144 of 1975), Mr. M. R. Agnihotri laid emphasis on the fact that the order of retirement itself stated that the same was being passed in view of the petitioner's unsatisfactory record. Mere reference to unsatisfactory record does not in our opinion cast any such stigma as to convert a pure case of premature retirement into one of punishment. Moreover the concept of stigma is relevant only in cases of punishment and not in cases of retirement. The reliance placed by the learned counsel for the petitioners on the judgment of the Supreme Court in *Madan Mohan Prasad v. State of Bihar and others*, (25) is misconceived. Though the order of termination of the service of Madan Mohan Prasad holding the permanent post of a Munsif though temporarily for 17 years without any inquiry against him was held to be violative of Article 311(2), in view of the background of that order formed by the statement given by the Chief Minister in the Assembly about his services being unsatisfactory and Government's intention

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to serve him show-cause notice, was held to carry with it a stigma of inefficiency and misconduct on the part of the Government servant, such considerations are irrelevant in cases of premature retirement as held by the Supreme Court in *Shyam Lal's case*, in *Saubhagchand M. Doshi's case* and in other cases to which reference has been made elsewhere. No additional argument in *Baldev Singh's case*, therefore, succeeds.

(41) Mr. Agnihotri also took up an additional argument in *A. S. I. Kirpal Singh's case* (C.W. P. 5143 of 1975), to the effect that Kirpal Singh was an employee in Government Railway Police and having been promoted as an officiating Assistant Sub-Inspector with effect from September 1, 1959, by the Assistant Inspector-General of the Government Railway Police could not be retired under orders of the Assistant Superintendent of Police. Counsel appears to have been misled into this argument by analogy of Article 311 of the Constitution. The authority which can dismiss or remove a Government servant under Article 311 of the Constitution is not to be lower than the one which actually appointed him. The notice of retirement under rule 3 of the 1975 Rules has not to be given by the "appointing authority", but by the "appropriate authority" which means an officer of such rank who can appoint a Government servant of the category who is sought to be retired or any officer of a higher rank. A.S.I. Kirpal Singh had not been an Assistant Sub-Inspector of Police anywhere except in the Government Railway Police. It is not disputed that the Assistant Superintendent of Government Railway Police is competent to appoint an Assistant Sub-Inspector in the Government Railway Police though the officer of that rank in the district police is not entitled to make such an appointment. The officer who has issued the notice to A.S.I. Kirpal Singh, therefore, falls within the definition of "appropriate authority" contained in rule 3 of the 1975 Rules.

(42) Mr. Suraj Parkash Gupta, learned counsel for A.S.I. Kartar Singh in Civil Writ Petition 5062 of 1975 prayed for the impugned order of premature retirement being set aside on the additional ground that his client had been allowed to cross the efficiency bar only on September 4, 1974, and there being nothing against him during the subsequent period, the order of his retirement (Annexure P-5) passed on August 18, 1975, suffers from official *mala fides*. Our

reference was invited in this connection to the order, dated March 25, 1975 (Annexure P-4), allowing A.S.I. Kartar Singh to cross the efficiency bar with effect from September 4, 1974. It was vehemently argued that the record of the officer was such that shortly before the order of his retirement passed on August 18, 1975, he was allowed to cross his efficiency bar with effect from an earlier date. His representation, dated May 5, 1973 (Annexure P-1), shows that a warning had been administered to him on January 10, 1973, and was conveyed to him on February 6, 1973, wherein the petitioner had been described as corrupt requiring improvement in his moral character and reputation for fair dealings with the public. That representation was rejected by the Superintendent of Police on August 7, 1974 (Annexure P-2). His further representation to the Inspector-General of Police against the said remarks was also not allowed. He was retired after having served the Department for more than 25 years. In paragraph 9 of the return filed by the State in reply to his writ petition it was denied that any commendation certificate had been issued to him after July 22, 1973. We were orally told by the State counsel on the basis of the record with him that the commendation certificate for 1974-75 had been erroneously issued to him and was subsequently cancelled. It has also been deposed in that paragraph that even after the date from which the petitioner was allowed to cross efficiency bar (4th September, 1974), he had got bad reports for 1974 and 1975.

(43) The original personal file of A.S.I. Kartar Singh was shown to us as well as to his counsel. The remarks earned by him for the period August 26, 1971 to March 31, 1972, regarding his honesty were "corrupt". In the column relating to his reputation for fair dealings with the public it was stated "requires improvement". The Senior Superintendent of Police had with his own hand ultimately stated on May 1, 1972, that A.S.I. Kartar Singh was "a corrupt officer who requires to be kept under strict control." Similarly in the annual confidential report of this officer for the year 1972-73, it was stated by the Senior Superintendent of Police that A.S.I. Kartar Singh was "an aged hand who is marking time in anticipation of his retirement." Against the column of honesty in his annual confidential report for the year 1974-75, it was stated "did not enjoy good reputation." The Senior Superintendent of Police stated in regard to him in his remarks that he was "a hard working NGO who, however, needs close watch as far as integrity is concerned." Without

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going into unnecessary details of the remaining service record of A.S.I. Kartar Singh it cannot be successfully argued in the face of what is stated above that the order of his retirement was not based on any material or was arbitrary. The crossing of efficiency bar is not always relevant in the matter of premature retirement as the entire service record of a Government servant has to be scanned and reviewed for deciding whether the official should be allowed or not to continue beyond the age at which the rules permit him to be retired. In support of his contention that the crossing of efficiency bar washed out all the previous adverse entries in his personal file, counsel relied on the judgment of the Supreme Court in the *State of Punjab v. Dewan Chuni Lal* (26), judgment of the Madras High Court in *P. Shankar Rao v. The Government of India and another* (27), the judgment of a learned Single Judge of this Court in *Shri Shadi Lal v. The Deputy Commissioner, Gurgaon, and others* (28) and *Shri Tarlok Singh Pat-Patia v. The State of Punjab and others* (29). All that was held in *Dewan Chuni Lal's case* (supra) was that reports earlier to the crossing of efficiency bar should not have been considered at all in the departmental inquiry against him resulting in his dismissal. That was not a case of premature retirement. The judgment of Madras High Court in *P. Shankar Rao's case* (supra) does not at all help the petitioner. It was firstly held in that case that when an order of compulsory retirement does not contain any stigma it cannot be considered as a punishment, and secondly that an order of compulsory retirement does not result in forfeiture of the benefits which the officer has already earned. It was further held that the only circumstance in which a Court may be justified to set aside the decision of compulsory retirement is where the grounds on which the retirement is ordered are non-existent or invalid. The observations in the judgment of the Madras High Court about whatever had been brought up against P. Shankar Rao in the inquiry against him would no longer be operative in law as a Division Bench of the High Court had found the material to be non-existent-cannot help the petitioners as no such finding has been recorded by any Court in any of the cases before us. In *Shadi Lal's case* (supra) decided by Tuli, J., the crossing of the efficiency bar was held to condone all previous adverse entries at the time of consideration of the officer for promotion. That was also not a case

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(26) 1970 S.L.R. 373.

(27) 1971 (1) S.L.R. 2.

(28) 1974 (1) S.L.R. 217.

(29) 1974 (1) S.L.R. 728.

of retirement, but was one of promotion. The ratio of the judgment of the same learned Judge in *Tarlok Singh Pat-Patia's case* (supra), which relates to compulsory retirement, is against the petitioner. It was held therein that if after an inquiry an official is reinstated and given increments and also promotion, the adverse reports earned by him earlier cannot be used for his compulsory retirement. A.S.I. Kartar Singh did not earn any promotion immediately before his retirement. It has nowhere been held that if a Government servant has been allowed to cross his efficiency bar, the rule relating to premature retirement would not apply to him or cannot be invoked against him. Considerations for promoting an officer or for punishing an officer are very different from those which have to be weighed for deciding the question of retention or retirement of a Government servant at a particular age specified in the relevant rules. We are, therefore, unable to find any justification for interfering with the order of retirement of A.S.I. Kartar Singh.

(44) Allegations of malice against Gurdev Singh, respondent No. 4 have been made by Mohinder Singh Saini, Agriculture Inspector, the petitioner in Civil Writ Petition 5182 of 1975. Gurdev Singh was formerly Block Development and Panchayat Officer, Bhatinda, and was stated to be the Deputy Director of Panchayats, Ferozepore, at the time of the filing of the writ petition. Gurdev Singh has denied in his affidavit, dated September 26, 1975, that he had any vindictive attitude towards the petitioner and had any *mala fide* intention against him. Allegations made by the petitioner against him are far-fetched. The order of his retirement, dated August 25, 1975 (Annexure P. 16), was passed by the Director of Agriculture and not by Gurdev Singh. We have no reason to doubt the affidavit of Gurdev Singh that he had no malice against the petitioner. In any case it is impossible to believe that the Director of Agriculture would have passed an order retiring the petitioner merely at the instance of Gurdev Singh without satisfying himself about the justification for the same. After hearing counsel for the petitioner at length, we are not satisfied that any case of malice has been made out against respondent No. 4. Except for the allegation of malice, no additional or new argument was advanced by Mr. D. S. Bali in this case.

(45) In view of our findings recorded above, we dismiss all these petitions, but leave the parties to bear their own costs.

*Harbans Lal, J.*—I entirely agree and have nothing to add.

*N. K. S.*