

CIVIL MISCELLANEOUS

*Before Tej Chand, J.*MOHAN SINGH,—*Petitioner.**versus*STATE OF HARYANA AND OTHERS,—*Respondents.*

Civil Writ No. 2146 of 1967.

February 29th, 1968.

Punjab Civil Services Rules, Volume II—Rule 5.32, Note 2(c)(ii)—Rule requiring three month's notice to retire a Government servant at the age of 55—Notice of 26 days—Offer to give, pay and allowances for such period that falls short to complete three months—Notice—Whether valid.

Held, that if the requirements of the statutory rules are, that in order to retire a Government servant on or after he attains the age of 55, not less than three month's notice shall be given to him, and there is no alternative provision that in lieu of notice, three months' pay can be given, the notice which does not give three months' time cannot be saved on the ground that the intention underlying the principle requiring the giving of notice that the Government servant if given three months' pay including the period when he does not serve the Government, his service can be lawfully terminated. The language of the statutory rule is clear and does not admit of equivocation and does not equate the payment of three months' pay to giving of inadequate notice or to none whatever. Unless the notice is given as the law directs or allows, the party to whom it is given is not bound to recognise or act upon it nor, indeed, it is a notice. What gives the notice life and efficiency is the legal sanction.

Petition under Articles 226 and 227 of the Constitution of India, praying that a writ in the nature of certiorari, mandamus or any other appropriate writ, order or direction be issued quashing the impugned order of Respondent No. 3, Annexure A-2, dated 3rd June, 1967 and Annexure A-3, dated 19th June, 1967, by which the petitioner has been retired from service.

RAJINDER SACHAR, ADVOCATE, for the Petitioner.

C. D. DEWAN, DEPUTY ADVOCATE-GENERAL, HARYANA WITH R. N. MITTAL, ADVOCATE, R. N. NARULA, ADVOCATE, FOR ADVOCATE-GENERAL, PUNJAB, for the Respondents.

ORDER

TEK CHAND, J.—This is a writ petition under Articles 226 and 227 of the Constitution of India for the issuance of an appropriate writ quashing the orders of the Chief Conservator of Forests (respondent No. 3), dated 3rd of June, 1967 (Annexure A-2) and 19th of June, 1967 (Annexure A-3). The petitioner who was born on 15th of July, 1912, had joined the Forests Department in the State of Punjab in 1933 and he was to reach the age of 55 years on 15th of July, 1967. By rule 3.26 (a) of the Punjab Civil Services Rules, Volume I, Part I, it is provided that :—

“The date of compulsory retirement of a Government servant, other than a class IV Government servant, is the date on which he attains the age of 58 years.”

Originally, the age of compulsory retirement was 55 years but it was raised to 58 years with effect from 28th of March, 1963. The relevant rules were amended by notification No. 12086(5)-FRII-63/12002, dated the 11th November, 1963, issued by the Governor, under Article 309 of the Constitution.

Note 2(c)(ii) under rule 5.32 of the Punjab Civil Services Rules, Volume II, relating to pensions and provident funds provides :—

“2(c) A retiring pension is also granted to a Government servant other than a Class IV Government servant :—

- (i) who is retired by the Appointing Authority on or after he attains the age of 55 years, by giving him not less than 3 months' notice;
- (ii) who retires on or after attaining the age of 55 years by giving three months' notice of his intention to retire to the Appointing Authority.”

The petitioner received an office order, dated 3rd of June, 1967 (Annexure A-2), which is reproduced below :—

“Shri Mohan Singh, Deputy Ranger, who is to attain the age of 55 years on 15th July, 1967, is hereby retired from service with effect from 15th July, 1967 (forenoon) on pension as admissible to him under the rules.

(Sd.) Conservator of Forests,
Haryana, Chandigarh.”

There is another communication to the petitioner from the Chief Conservator of Forests, Haryana, dated 19th of June, 1967, stating :—

“As per instructions contained in Punjab Government letter No. 5410-3GS/11926, dated 28th March, 1963, and rule 5.32 of Punjab C.S.R., Volume II, you are hereby served with three months' notice to the effect that on your attaining the age of 55 years, on 15th July, 1967 (forenoon) you will be retired from service on pension as may be admissible to you under the rules, and your services will no longer be required by the Department beyond that date and in case notice falls short of full three months, you shall be paid pay and allowance for such period as falls short to complete three months, by the Divisional Forest Officer, Karnal.

(Sd.) Chief Conservator of Forests,
Haryana, Chandigarh.”

The petitioner's prayer for the issuance of a writ rests on the submission that no notice as required by the relevant rule has been served on him and, therefore, he should be deemed not to have been retired. It may be mentioned that in the petition, the prayer is for the quashing of the orders of respondent No. 3 (Annexures A-2 and A-3). The order at Annexure A-3 was substituted by order of the same date, *vide* Annexure R-1. It is R-1 that has been reproduced and the question of quashing to be considered will be in respect of Annexures A-2 and R-1.

On behalf of the State of Haryana, a written statement has been filed. The State of Punjab was also impleaded but as the petitioner was serving under Government of Haryana, no relief can be granted to him against the State of Punjab which has no concern with the writ petition. The argument of the parties rests on the interpretation of note 2(c)(ii) reproduced above and on the adequacy of the notice (Annexure R-1). The relevant rule requires giving of “not less than three months' notice”. There is no provision as to tendering or offer of payment of three months' pay in lieu of notice. The notice It is, dated 19th of June, 1967 and mentions you are hereby served (Annexure R-1) does not comply with the requirements of the rule. with three months' notice to the effect that on 15th of July, 1967 (forenoon) you will be retired from service. This language contradicts itself. It is not three months' notice but only 26 days' notice.

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The notice is manifestly defective and as such it cannot be considered as notice according to law. On this ground alone, the petition deserves to be allowed. Attempt has, however, been made to save the notice on the basis of what follows :—

“In case notice falls short of full three months, you shall be paid pay and allowances for such period as falls short to complete three months, by the Divisional Forest Officer, Karnal.”

The notice obviously was for 26 days and there was no meaning in saying that in case it falls short of three months. It has been canvassed before me on behalf of the State that the above language should cover the lacuna in the notice. The requirements of the statutory rules are that not less than three months' notice shall be given. There is no alternative provision that in lieu of notice, three months' pay can be given. The notice cannot be saved on the basis of the argument that the intention underlying the principle requiring the giving of notice is that the Government servant if he is given three months' pay including the period when he does not serve the Government, his services can be lawfully terminated. This Court has to see to the language of the statutory rule which is clear, and does not admit of any equivocation, and does not equate the payment of three months' pay to giving of inadequate notice or to none whatever.

Mr. C. D. Dewan has cited a Division Bench decision in *Union of India v. Lachmi Narain* (1), in which Rule 5 of Central Civil Services (Temporary Services) Rules was considered. The contention before the Bench was that Rule 5 contemplated giving of one months' notice or pay in lieu thereof and since in the present case the plaintiff was paid a sum equivalent to amount of his pay and allowances for 15 days instead of one month, the order was not in accordance with the Rule. This contention did not prevail with the Bench for the reason that 15 days' pay was paid to the plaintiff instead of one month's pay. It was observed, “The condition of three months' notice, in my view, is not of such a vital nature that its non-observance should invalidate the order of retirement. The spirit underlying the rule requiring three months' notice, obviously, is that the Government servant should be given enough time so that he can

(1) 1967 S.L.R. 286.

make arrangement for seeking employment elsewhere during that period, and if immediate retirement is contemplated, he should be paid three months' pay in lieu of notice". The language of Rule 5 is totally different from that of Rule 5.32 of the Punjab Civil Services Rules. Rule 5 provides :—

- "5. (a) The service of a temporary Government servant who is not in quasi-permanent service shall be liable to termination at any time by notice in writing given either by the Government servant to the appointing authority, or by the appointing authority to the Government servant.
- (b) The period of such notice shall be one month, unless otherwise agreed to by the Government and by the Government servant :

Provided that the service of any such Government servant may be terminated forthwith by payment to him of a sum equivalent to the amount of his pay plus allowances for the period of the notice or as the case may be, for the period by which such notice falls short of one month or any agreed longer period :

Provided

The equivalent of what is contained in the above proviso is not to be found in the rule under consideration in this case, the language of which is categoric. The decision of the Division Bench is distinguishable as the language of the rule which was being construed, was dissimilar and contemplated a more flexible interpretation.

Shri Rajinder Sachar, learned counsel for the petitioner has cited in support of his contention *Chaman Lal Kapur, P.E.S., Class I v. The State of Punjab* (2). That was a case in which the petitioner had not received the notice as provided by Rule 5.32 of the Punjab Civil Services Rules and further the payment of three months' pay and allowances which were payable to the petitioner, had not been made. I have followed the view expressed by P. C. Pandit, J., in *Khazan Chand Dhamija v. The State of Punjab and another* (3), to the effect

(2) 1967 S.L.R. 924.

(3) 1964 P.L.R. 818.

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that a premature retirement without notice is not valid. The language of Rule 5.32 of the Punjab Civil Services Rules which is also the rule concerned in this case, differed in material particulars from the language of the rule which the Division Bench was called upon to construe. The service of notice made in the way and manner recognised and sanctioned by the law is an essential requisite of it. Unless the notice is given as the law directs or allows, the party to whom it is given is not bound to recognise or act upon it nor, indeed, is it a notice. What gives the notice life and efficiency is the legal sanction. The impugned notice in this case did not have the requisite legal sanction.

I feel satisfied that the requirements of the statutory rule have not been complied with. Neither the order of 3rd June, 1967 (Annexure A-2), nor the communication, dated 19th June, 1967 (Annexure R-1), satisfies the requirement as to the giving of valid notice in accordance with statutory rule. In the circumstances, I quash the orders retiring the petitioner from service. It is, however, open to the appropriate authority to retire the petitioner by giving a notice complying with the requirements of the rule. The petition of writ is allowed and *mandamus* shall issue to respondents Nos. 1 and 3, the State of Haryana and the Chief Conservator of Forests, Haryana, respectively. Respondent No. 2, the State of Punjab, is an unnecessary party and no relief has been sought by the petitioner or can be granted against that State. There will be no order as to costs.

R. N. M.

REVISIONAL CIVIL

Before Mehtar Singh, C. J.

INDERJIT SINGH,—*Petitioner.*

versus

RAJ KUMAR GUPTA AND ANOTHER,—*Respondents*

Civil Revision No. 219 of 1966

March 1st, 1968.

Punjab Gram Panchayat Act, 1952 (IV of 1953)—S. 79—Code of Criminal Procedure (Act V of 1898)—Ss. 480 and 481—Penal Code (XLV of 1860)—S. 228—Judicial Proceedings before Panchayat—Ss. 480 and 481 of Code of Criminal