

MOHAN SINGH MALHI

v.

STATE OF PUNJAB

March 25, 1976

[A. N. RAY, C.J. AND JASWANT SINGH, J.]

Compulsory retirement after attaining the age of 55, with three months' salary in lieu of notice—Competency of the State Government to retire—Scope of Rule 5.32(c)(1) of the Punjab Civil Service Rules, Vol. II.

Under Section 5.32(c)(i), a retiring pension is granted to a Government Servant, other than a Class IV Government servant, 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.

The appellant who was served with an order on September 2, 1967, retiring him from service with effect from the date of communication to him of the order on payment of three months' salary and allowances in lieu of notice required by rule 5.32(c)(i) of the Punjab Civil Service Rules Vol. II challenged the order on the ground that the State Government was competent to retire him only with three months' notice but not with salary and allowances in lieu of the notice under the rules. The Writ Petition was accepted by a single judge and in Letters Patent Appeal by the State, the Division Bench referred it to the Full Bench. The Full Bench by majority answered the question referred to it in the affirmative and in favour of the State.

Dismissing the appeal by special leave the Court,

HELD : Rule 5.32 merely provides for a contingency in which a retiring pension is to be granted to a Government servant. Even assuming that the rule by implication requires three months' notice to be given to a Government servant of the description referred to therein before retiring him from service the requirement of the rule cannot be said to be violated if instead of three months' notice, payment of three months salary and allowance is made. The object of the notice being to give sufficient time to the Government servant whom it is intended to retire from service to find employment elsewhere and to prevent him from his being suddenly left in lurch without any means of livelihood, no prejudice can be said to be caused to the Government servant if in lieu of three months' notice, he is given three months salary and allowances. In fact he is put in a more advantageous position by being paid three months' salary and allowances instead of the notice for that period as he is thereby relieved of the obligation to spend his time in the office attending to his duty and gets all the time to himself which he can utilize in finding an alternative job or settling his affairs. Therefore if the appointing authority wants to exercise its right to retire a government servant who has attained the age of 55 years, there is nothing to debar it from validly doing so by payment to him of a sum equivalent to the amount of his pay and allowances for the period of notice. [895 F-H, 896 A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1601 of 1970.

Appeal from the Judgment and Order dated the 20-2-70 of the Punjab and Haryana High Court in L.P.A. No. 552 of 1968.

V. C. Mahajan and S. S. Khanduja, for the Appellant.

O. P. Sharma, for the Respondent.

The Judgment of the Court was delivered by

JASWANT SINGH, J.—The question that arises for decision in this appeal by certificate granted by the High Court of Punjab and

- A** Haryana against its Judgment and order dated February 20, 1970 in L.P.A. No. 552 of 1968 is whether under Rule 5.32(c) of the Punjab Civil Service Rules, Vol. II, the Government can retire an employee on or after he attains the age of 55 years by giving him three months' salary and allowances in lieu of three months' notice.

- B** The facts giving rise to the appeal lie in a short compass and may be stated thus;

- C** Before the partition of the country, the appellant joined the Veterinary Department of the Punjab Government as an Assistant Surgeon on December 1, 1933. In course of time, he was appointed as Director of Animal Husbandry and Warden of Fisheries which post he held from March 16, 1957 to August 14, 1959, when Shri Pritam Singh Brar was appointed Director in his place. On Shri Pritam Singh Brar's attaining the age of superannuation, the appellant was again appointed as Director, Animal Husbandry, on regular basis on August 4, 1965. On September 2, 1967, the appellant was served with the following order :—

- D** "The Governor of Punjab is pleased to retire Shri Mohan Singh Malhi, P.V.S.I. Director, Animal Husbandry, Punjab, Chandigarh with effect from the date of communication to him of this order on payment of three months salary and allowances in lieu of notice required by rule 5.32(c) of the Punjab Civil Service Rules, Volume II.

- E** "2. Shri Harbhajan Singh Saini, Technical Expert Poultry is hereby directed to relieve Shri Mohan Singh Malhi.

S. S. GREWAL

Secretary to Government Punjab
Animal Husbandry Department

- F** Chandigarh,

Dated the 2nd Sept. 67

"No. 3840/AH(I)-67/6213 Chandigarh dated the 2nd Sept. 1967. A copy is forwarded to Shri Mohan Singh Malhi, P.V.S.I."

- G** Against this order, the appellant made several representations which did not evoke a favourable response. Eventually, he approached the High Court on March 18, 1968, by means of a petition under Articles 226 and 227 of the Constitution of India for issue of an appropriate writ quashing the aforesaid order dated September 2, 1967, and declaring that he still continued to be in service. A Single Judge of the High Court allowed the appellant's petition by judgment and order dated April 22, 1968, and quashed the aforesaid order retiring the appellant from service. Aggrieved by the judgment and order of the Single Judge, the State of Punjab preferred a Letters Patent Appeal. The Bench hearing the appeal referred the above mentioned question for decision to a Full Bench of the Court. On
- H**

December 18, 1969, the Full Bench by majority answered the question referred to it in the affirmative. Thereupon the appellant applied for and obtained a certificate of fitness to appeal to this Court. This is how the appeal is before us.

Appearing in support of the appeal, counsel for the appellant has vehemently contended that the aforesaid majority decision of the Full Bench of the High Court is erroneous as there is no provision in the Punjab Civil Service Rules like the one contained in Rule 5 of the Central Civil Services (Temporary Service) Rules, 1949, authorising the State Government to give three months' salary in lieu of three months' notice.

For a proper decision of the question, it is necessary to refer to Rule 5.32(c) of the Punjab Civil Service Rules, Vol. II which runs as under :—

"5.32

...

...

(c) (Vide No. 1243-5FRI-64/1143 dated 4.2.1964)

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 not less than three months notice of his intention to retire to the appointing authority. Provided that where the notice is given before the age of 55 years is attained, it shall be given effect to from a date not earlier than the date on which the 55 years is attained.

NOTE :—Appointing authority retains an absolute right to retire any Government servant except a Class IV servant 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 servant to retire on or after he has attained the age of 55 years."

It will be noticed that the Rule as reproduced above merely provides for a contingency in which a retiring pension is to be granted to a Government servant. Assuming that the rule by implication requires three months' notice to be given to a Government servant of the description referred to therein before retiring him from service, we are unable to understand how that requirement can be said to be violated if instead of three months' notice, payment of three months salary and allowances is made to him. The object of the notice, as well known, is to give sufficient time to the Government servant whom it is intended to retire from service to find employment elsewhere and to prevent his being suddenly left in lurch without any means of livelihood. If that be the object of the notice, no

- A prejudice can be said to be caused to the Government servant if in lieu of three months' notice, he is given three months salary and allowances. In fact, he is put in a more advantageous position by being paid three months' salary and allowances instead of notice for that period as he is thereby relieved of the obligation to spend his time in the office attending to his duty and gets all the time to himself which he can utilize in finding an alternative job or settling his affairs. Thus we are of opinion that if the appointing authority wants to exercise its right to retire a Government servant other than a Class IV Government servant who has attained the age of 55 years, there is nothing to debar it from validly doing so by payment to him of a sum equivalent to the amount of his pay and allowances for the period of the notice.
- C For the foregoing reasons, we are unable to interfere with the majority view of the Full Bench of the High Court. In the result, the appeal fails and is dismissed but in the circumstances of the case without any order as to costs.

S.R.

Appeal dismissed.