A

HANS RAJ

v.

STATE OF PUNJAB AND ORS.

B

October 26, 1984

[D. A. DESAI AND D. P. MADON, JJ.]

Punjab Civil Service (Premature Retirement) Rules 1975, Rule 3 (1)
C *(a)—Premature retirement of government servant—Qualifying service wrongly computed—Whether the order complies with the primary pre-requisites of the rule.*

(ii) Premature Retirement of government servant—Impugned order did not mention that power was exercised in public interest—Whether amounts to non-application of mind and vitiates the order.

D

The appellant joined service as a clerk in the erstwhile Patiala and East Punjab States Union (PEPSU) on 2nd Sept. 1949. Being a temporary employee, he was discharged from service on 30th September 1953. On 22nd February, 1954, he was again recruited as a clerk and later on promoted as senior clerk. The PEPSU government sanctioned condonation of break from Oct. 1, 1953 to Feb. 21, 1954 in the service of the appel-
E lant under Note to sub-para (iii) of para 3 Annexure 'B' of the Pepsu Civil Services (Temporary Service) Rules, 1955 for the purpose of issuing quasi-permanent Certificate only. On the reorganisation of Punjab State in 1966 the appellant came to be allocated to Punjab State. On 20th August, 1975 the Deputy Commissioner of Bhatinda, in exercise of the power conferred by Rule 3(1) (a) of the Punjab Civil Services (Premature
F Retirement) Rules, 1975 passed an order prematurely retiring the appellant from service on the ground that he had completed more than 25 years of service. The appellant challenged the said order before the High Court on the ground (i) That he could not have been retired under Rule 3(1) as he had not completed 25 years of service; and (ii) that the impugned order of premature retirement suffered from the vice of non-application of mind inasmuch as it did not state that the power of prematurely retiring the appellant was exercised in public interest. The respondent contended
G (i) that the appellant had completed more than 25 years of service because the break in service was condoned by the PEPSU Govt; and (ii) that the power of prematurely retiring the appellant was exercised in public interest. The High Court dismissed the Writ Petition holding that once the break in service was condoned, the appellant had completed 25 years of service and therefore the pre-requisite for exercise of power under Rule 3(1) (a) was satisfied.

The appellant contended before this court (1) that the order sanc-
H tioning the condonation of break in service of the appellant was for

the limited purpose of granting quasi-permanent status and issuing quasi-permanent certificate only and that the condonation of break in service did not qualify for pension as observed by the Accountant General of Punjab in his memo addressed to the S.D.O. Bhatinda and therefore the High Court was in error in holding that the appellant had put in 25 years of qualifying service on the date of the impugned order; and (ii) the order suffers from the vice of complete non-application of mind inasmuch as in the impugned order there is not the slightest whisper that the power was exercised in public interest.

Allowing the appeal by the appellant,

HELD : (1) Rule 3(1) (a) of the Premature Retirement Rules confers power on the appropriate authority to retire any employee, if it is of the opinion that it is in the public interest to do so, on the date on which he completes 25 years of qualifying service or attained 50 years of age. Therefore, the appropriate authority must first make up its mind that it is in public interest to retire the employee. Once having reached that satisfaction, it must further find out whether the concerned employee has on the relevant date completed 25 years of qualifying service or whether he has attained the age of 50 years. In the former case it is not 25 years of service but it is 25 years of qualifying service which must have been completed on the date of premature retirement. The power can be exercised on the date on which one of the two alternative fact situation becomes available or on any date thereafter. The expression 'qualifying service' has been defined in rule 2(3) of the Premature Retirement Rules to mean 'service qualifying for pension'. Condition No. 2 in para 4.23 of Chapter IV of the Punjab Civil Services Rules, which deal with condonation of interruption or break in service while computing qualifying service for pension, provides that interruption in service may be condoned if amongst others, service preceding the interruption is not less than five years. [1046D-F ; 1047A]

Sub para (iii) of para 3, Annexure B of Pepsu Civil Services (Temporary Service) Rules, 1955 provides that before a certificate of quasi-permanent capacity can be issued, the Government servant should have on the crucial date rendered service for more than three years. Note appended to the para provides that broken periods of temporary service will not count for purposes of this instruction unless the breaks are condoned specifically by the Government in consultation with the Finance Department and the service thus rendered continues. It further provides that while condoning break in service for the purpose of issuing quasi-permanent capacity certificate, it should be made clear to the persons concerned that the condonation will not entitle them to any benefits regarding *the fixation of pay, seniority, pension, gratuity etc.* and that the periods condoned will be ignored and not counted as service actually rendered. [1049D-E]

(2) It thus becomes crystal clear that the certificate issued by Rajpramukh under the PEPSU Civil Services (Temporary Service) Rules, 1955 condoning break in service was for the limited purpose of issuing quasi-permanent capacity certificate. Not only that the codonation was for this

limited purpose but the negative is clearly spell out when it is specifically provided that the condonation will not enable a person in whose favour the certificate is issued to claim any pension or gratuity etc. In other words, the condonation will not render the earlier service if it is otherwise not includible in the computation of qualifying service to so claim it. For the purpose of computing qualifying service for pension the period for which there was interruption will remain a break in service and as the earlier service as provided by para 4.23, condition No. 2, was for a period less than five years, the same cannot be taken into account for computing qualifying service. Thus the conclusion is inescapable that the qualifying service which the appellant is shown to have rendered commenced from February 22, 1954. Inevitably, therefore on August 20, 1975 he had not completed 25 years of qualifying service and therefore, the primary pre-requisite for exercise of power is not satisfied and the appellant could not have been compulsory retired from service. The High Court unfortunately overlooked the basic requirement for exercise of power namely, completing 25 years of qualifying service and proceeded on the basis that rendering 25 years of service will permit exercise of power. There is a marked and noteworthy distinction between service and qualfying service. [1049F-G & H ; 1050A-C]

(3) The impugned order merely recites that as the appellant has completed more than 25 years of service, he is retired from the service from the date of the order. Silence about recital of public interest is both conspicuous and glaring probably as the power was exercised by an officer of the rank of Deputy Commissioner who was blissfully unaware of it. The argument of the respondent that the appropriate authority exercised the power to compulsorily retire the appellant in public interest in view of an entry made in the annual confidential report of the appellant for the year 1971-72 that his conduct was unsatisfactory and his integrity was doubtful, is not convincing for two reasons : (i) that no record was placed before the Court to show as to whether the adverse entry was ever communicated to the appellant; and (ii) his record previous and subsequent to the year 1971-72 was not placed before us. Therefore, the impugned order also suffers from the vice of non-application of mind. Accordingly, the impugned order compulsorily retiring the appellant from service is illegal and invalid and must be quashed and set aside. [1050F, G, 1051A-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1251 of 1978.

Appeal by Special leave from the Judgment and Order dated the 1st November, 1976 of the Punjab and Haryana High Court in Civil Writ Petition No. 6461 of 1976.

N. D. Garg and *R. K. Garg* for the Appellant.

S. K. Bagga for the Respondent.

The Judgment of the Court was delivered by

DESAI, J. Appellant joined serviec as a Clerk in the Civil Supplies Department of the erstwhile Patiala and East Punjab States Union ('PEPSU' for short) on September 2, 1949. He was a temporary employee and he was discharged from service on September 30, 1953. On February 22, 1954, he was again recruited as a clerk in the Consolidation department of PEPSU. In course of time, he was promoted as senior clerk and came to be allocated to Punjab State on the merger of PEPSU with erstwhile Punjab State. The Deputy Commissioner of Bhatinda transferred the appellant and posted him as Assistant in his office after obtaining concurrence of the Subordinate Service Selection Board, Punjab with effect from January 1, 1962. On the reorganisation of Punjab State in 1966, the appellant came to be allocated to Punjab State. After declaration of national emergency, the Governor of Punjab in exercise of the power conferred by the proviso to Art. 309 of the Constitution and all other powers enabling thereto and with the previous approval of the Central Government under sub-section (7) of sec. 115 of the State Reorganisation Act, 1956 and sub-sec. (6) of the Sec. 82 of the Punjab Reorganisation Act 1966 framed Punjab Civil Services (Premature Retirement) Rules, 1975 (Premature Retirement Rules 'for short). Rule 3 conferred power on the appropriate authority to order premature retirement of the Government servant governed by the rules. It reads is under :

> "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 any 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 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."

In exercise of the power conferred by rule 3(1) (a), Deputy Commissioner, Bhatinda passed an order of the premature retirement of the appellant dated August 20, 1975. It reads as under :

"No. 173 Dated 20.8. 1975

Under Rule 3(1) (a) of the Punjab Civil Services (Premature Retirement) Rules, 1975, Shri Hans Raj, Sub-Divisional Assistant, S.D.O. (Civil) office, Bhatinda who has completed more than 25 years service is hereby retired from service from the date of order.

2. He shall be entitled to three months pay in lieu of notice as is admissible under proviso below rule 3 (1) (b) of the Rules ibid.

3. He shall further be entitled to the benefits of retiring pension and death cum retirement gratuity, admissible under the rules.

Sd/-

Deputy Commissioner,
Bhatinda."

The appellant was accordingly prematurely retired by the appropriate authority on the ground that he has completed more than 25 years of service and that even though he was prematurely retired, he was entitled to the benefits of retiring pension and death cum retirement gratuity, admissible under the rules. The appellant questioned the validity, legality and correctness of the order of premature retirement in C.W.P. No. 6461 of 1976 in the High Court of Punjab and Haryana at Chandigarh. It was *inter alia* contended before a Division Bench of the High Court that on the

relevant date, the appellant had not completed 25 years of qualifying service and therefore, he could not have been retired under Rule 3(1). It was also contended that the impugned order of premature retirement suffered from the vice of non-application of mind in as much as it does not state that the power of prematurely retiring the appellant was exercised in public interest. It was urged that the power to prematurely retire a Government servant conferred by Rule 3 postulates two pre-requisites (i) that it is in public interest to prematurely retire the Government servant and (ii) that either he has completed 25 years of qualifying service or he has attained 50 years of age. It was accordingly contended that if the pre-requisites for exercise of power, are not satisfied, the order would be *ab initio void* and would not have the effect of bringing about the termination of service. There were other contentions raised on behalf of the appellant before the High Court with which we are not concerned in this appeal.

A return was filed on behalf of the respondents by the third respondent—Deputy Commissioner, Bhatinda who has passed the impugned order. It was stated that the conduct of the applicant in the year 1971-72 was found unsatisfactory. His integrity was found doubtful. It was specifically contended that the appellant was prematurely retired from service on his completion of more than 25 years of service and the computation that he had completed 25 years of service was correct because the break in service from October 1, 1953 to February 21, 1954 was condoned by the PEPSU Government vide Revenue Department Letter No. RD-13 (25) SS-/56-7101 dated June 28, 1956 and that once the break in service was condoned, the appellant on the date of premature retirement had completed 25 years of qualifying service. A bald statement was made that the power was exercised in public interest but the impugned order is wholly silent on this material point.

A division Bench of the High Court rejected the writ petition observing that once the break in service from September, 1953 to February 20, 1954 was condoned, the appellant had completed 25 years of service and after recording the statement of the learned counsel appearing on behalf of the respondents that the Memo No. XI/ IN XI/ Misc. file/75-76/1618-19 dated January 1, 1976 issued by the Accounts Officer attached to the Office of the Accountant General, Punjab and addressed to the Sub-Divisional Officer (c), Bhatinda stating therein that the services of the appellant for the period from October 1, 1953 to February 21, 1954 does not qualify for pension as service prior to the break was for a period less than

A five years, would not be given effect to and thereupon concluded that the pre-requisite for exercise of power under rule 3(1) (a) was satisfied. Hence this appeal by special leave.

Mr. N. D. Garg, learned counsel for the appellant convassed two contentions before us : (1) that the order dated August 28, 1956 B issued in the name of the Raj Pramukh of PEPSU sanctioning the condonation of break in service of the appellant for the period October 1, 1953 to February 20, 1954 was for the limited purpose of granting quasi-permanent status and issuing quasi-permanent certificate only and for no other purpose and therefore the Accountant General rightly held that the condonation in break of service C did not qualify for pension and therefore the High Court was in error in holding tnat the appellant had put in 28 years of qualifying service on the date of the impugned order; and (2) the order suffers from the vice of complete non-application of mind inasmuch as in the impugned order there is not the slightest whisper that the power D was exercised in public interest.

Rule 3(1) (a) of the Prematuro Retirement Rules confers power on the appropriate authority to retire any employee, if it is of the opinion that it is in the public interest to do so, on the date on which he completes 25 years of qualifying service or attained E 50 years of age. This power of premature retirement can be exercised firstly in public interest and secondly, if one of the two conditions is satisfied namely that either the employee who is to be retired has completed 25 years of qualifying service on the date on which he is to be retired or he has attained the age of 50 on that date. The power can be exercise on the date on which one of F the two alternative fact situation becomes available or on any date thereafter. Therefore, the appropriate authority must first make up its mind that it is in public interest to retire the employee. Once having reached that satisfaction, it must further find out whether the concerned employee has on the relevant date completed 25 years of qualifying service or whether he has attained the age of 50 years. The respondents in this case assert that the appropriate authority G has retired the appellant as it was of the opinion that it was in public interest to do so and on the relevant date the appellant had completed 25 years of qualifying service.

Taking the second cotention first, it is incumbent upon the respondents to show that on the date of the impugned order, the appellant had completed 25 years of qualifying service. Let there H be no confusion that is it not 25 years of service but it is 25

years of qualifying service which must have been completed before the power can be exercised. The expression 'qualifying service' has been defined in *Rule 2(3)* of the Premature Retirement Rules to mean 'service qualifying for pension. The expression 'service qualifiying as understood in the rules governing pension in the Punjab Civil Services has been given various shedes of meaning. Punjab Civil Services Rules Vol. II, Chapter III para 3.12 provides that 'the service of a Government employee does not qualify for pension unless it conforms to the three conditions therein mentioned :

First — The service must be under Government.

Second— The employment must be substantive and permanent.

Thrid — The service must be paid by Government.

The rules permit condonation of interruption or break in service. If there is a break, how the service prior to the break has to be dealt with for the purpose of computing qualifying service has been dealt with in Chapter IV para 4.23 under the heading D— Condonation of Interruptions and Deficiencies. It provides that 'interruption in service (either between two spells of permanent or temporary service or between a spell of temporary service and permanent service or vice versa), in the case of an officer retiring on or after the 5th January, 1961, may be condoned, subject to the following conditions, therein mentioned. The relevant condition reads as under :

> "(2) Service preceeding the interruption should not be less than five years' duration. In cases where there are two or more interruptions, the total service, pensionary benefits in respect of which shall be lost if the interruptions are not condoned should not be less than five years."

The question is whether the service rendered by the appellant despite the fact that it was temporary for the period September 30, 1953 to February 22, 1954 when he was re-inducted in service can be included in reckoning qualifying service on the date of the impugned order it is conceded that if the service prior to the break is ignored, the appellant had not completed 25 years of qualifying service on the date of the impugned order. To recall a few facts, the appellant joined service on September 2, 1949. He was discharged on September 30, 1953. Therefore, the service prior to

A the break was of roughly four years and 28 days duration. At any rate it was less than five years in duration. Therefore, Condition No. 2 in para 4.23 of the Premature Retirement Rules would be attracted because it provides that interruption in service may be condoned if amongst others, service preceeding the interruption is not less than five years. As the service prior to the break was less B than five years even if the interruption or break in service is condoned unconditionally, the earlier service would not qualify for being reckoned as qualifying service for the purpose of pension. This is exactly what the Accountant General in his order dated January 1, 1976 has opined when he said that in the case of the C appellant service prior to the break being less than five years duration, such service does not qualify for pension. He accordingly computed qualifying service from Feb. 22, 1954 till August 20, 1975 when the impugned order was passed. An arithmatical computation would show that the appellant had not completed 25 years of qualifying service on August 20, 1975.

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It was however, contended on behalf of the respondents that as the break in service from Sept. 30, 1953 to February 21, 1954 was condoned, the appellant can be said to be continuously in service from September 2, 1949 and therefore on August 20, 1975 he had completed more than 25 years of qualifying service. Undoubtedly, the Raj Pramukh of PEPSU had sanctioned condonation of break E in service from October 1, 1953 to February 21, 1954 in the service of the appellant, Whether this condonation would make the service continuous for the purpose of treating earlier service as includible in computing qualifying service, it is necessary to examine the purpose, the content and the benefit granted by this order.

F The order of the Raj Pramukh reads as under :

> "His Highness the Rajpramukh has been pleased to sanction the condonation of break from 1.10.1953 to 21.2.1954 in the service of Shri Hans Raj, under note to sub-para (iii) G of para 3, Annexure 'B' of the Pepsu Civil Services (Temporary Service) Rules, 1955 for the purpose of issuing quasi-permanent Certificate only, provided that his service was not discontinued as a result of resignation or his employment elsewhere and further provided that the incumbent has not been confirmed already."

H This order has been made in exercise of the powers conferred

by sub-para (iii) or para 3 of Annexure 'B' to the PEPSU Civil Services (Temporary Service) Rules, 1955. Sub Rule 2 (b) of the aforementioned rules defines 'quasi-permanant service' to mean 'temporary service commencing from the date on which a declaration issued under rule 3 takes effects and consisting of periods of duty and leave (other than extra-ordinary leave) after that date. Rule 3 provides that Government servant shall be deemed to be in quasi-permanent service ; (i) if he has been in continuous Government service for more than 3 years, and (ii) if the appointing authority, being satisfied as to his character for employment in a quasi-permanent capacity, has issued a declaration to that effect, in accordance with such instruction as the Rajpramukh may issue from time to time. Annexure 'B' sets out instructions regulating the issue of declaration of quasi-permanent eligibility to temporary employees under the PEPSU Civil Services (Temporary service) Rules, 1955. Para (III) of sub-para (3) provides that before a certificate of quasi-permanent capacity can be issued, the Government servant should have on the crucial date rendered service for more than three years. Note appended to the para provides that 'broken periods of temporary service will not count for purposes of this instruction unless the breaks are condoned specifically by the Government in consultation with the Finance Department and the service thus rendered continues.' It further provides that while condoning break in service for the purpose of issuing quasi-permanent capacity certificate, 'it should be made clear to the persons concerned that the condonation will not entitle them to any benefits regarding *the fixation of pay, seniority, pension, gratuity* etc. and that the periods condoned will be ignored and not counted as service actually rendered.' It thus becomes crystal clear that the certificate issued by Rajpramukh under the PEPSU Civil Services (Temporary Service) Rules, 1955 condoning break in service was for the limited purpose of issuing quasi-permanent capacity certificate. Not only that the condonation was for this limited purpose but the negative is clearly spell out when it is specifically provided that the condonation will not enable a person in whose favour the certificate is issued to claim any pension or gratuity etc. In other words, the condonation will not render the earlier service if it is otherwise not includible in the computation of qualifying service to so claim it. Therefore, there is no substance in the submission made on behalf of the respondents and which unfortunately found favour with the High Court that because the Rajpramukh of PEPSU had condoned break in service, the appellant was in continuous uninterrupted service from September 2, 1949. For the purpose of computing qualifying

A service for pension the period for which there was interruption will remain a break in service and as the earliar service as provided by para 4.23, condition No. 2, was for a period less than five years, the same cannot be taken into account for computing qualifying service. Thus the conclusion is inescapable that the qualifying service which the appellant is shown to have rendered commenced B from February 22, 1954. Inevitably, therefore on August 20, 1975 he had not completed 25 years of qualifying service and therefore, the primary pre-requisite for exercise of power is not satisfied and the appellant could not have been compulsory retired from service. The High Court unfortunately overlooked the basic requirement C for exercise of power namely completing 25 years of qualifying service and proceded on the basis that rendering 25 years of service will permit exercise of power. There is a marked and noteworthy distinction between service and qualifying service.

Incidentally, it may be pointed out that the concession made by the respondents before the High Court that the memo issued by D the Accountant General shall not be given effect to is hardly of any legal consequence. It is the duty of the Accountant General to compute the qualifying service for pension. He was satisfied that under the relevant rules the appellant had not completed 25 years of qualifying service on the date of the impugned order. He clearly pointed out that condonation in break in service is of no E legal consequence as far as computation of qualifying service is concerned. Therefore, that concession has to be ignored as of no consequence.

Mr. Garg next urged that the impugned order made by the competent authority suffers from the vice of non-application of mind F inasmuch as it has not been stated in the impugned order that the power was exercised in public interest. There is substance in this contention. The impugned order merely recites that as the appellant has completed more than 25 years of service, he is retired from the service from the date of the order. Silence about recital of public interest is both conspicuous and glaring probably as the power was G exercised by an officer of the rank of Deputy Commissioner who was blissfully unaware of it. The return is also filed by the same officer. In the return filed in this court, the only contention worthnoting is that as the High Court Judgment is clear, convincing and unassailable, this Court should not interfere in exercise of its extraordinary jurisdiction because no case of injustice is made out. H In para 5 (c) of the return filed in the High Court, it has been stated

that the impugued order is legal and the appellant was retired on completion of his 25 years of service. In para (d) it is stated that the order retiring the petitioner prematurely was passed in public interest. The attempt seems to be to merely reproduce the language of the rule without any attempt at bringing the case within the parameters of the relevant rule. If the power was exercised in public interest, one would have expected some whisper about it in the impugned order, However when a specific contention was taken that the power was not exercised in public interest, a routine averment was made that it was exercised in public interest. When this contention was canvassed before this Court, the respondents tried to repel it by saying that in the annual confidential report for the year 1971-72, an entry has been made that the conduct of the appellant was unsatisfactory and his integrity was found doubtful. This is the only entry relied upon to substantiate the charge that as the appellant had rendered himself undesirable for further continuance in service and therefore power to compulsorily retire him was exercised in public interest, We remain unconvinced for two reasons : (1) that no record was placed before us to show as to whether the adverse entry was ever communicated to the appellant and (2) his record previous and subsequent to the year 1971-72 was not placed before us. Thus there remains a stray entry only. The material for making the entry 3 years prior to the date of the impugned order has not been placed before us. And the more disturbing part is that the entries in the subsequent years have not been shown to us. It therefore, appears that reference to public interest in the return was an attempt at paying lip sympathy to the provision of the relevant rule rather than a serious application of mind while dealing with the career and the consequent starvation heaped upon the appellant by the impugned order. We are therefore, satisfied that the order also suffers from the vice of non-application of mind.

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However, we propose to rest this judgment on the finding that the pre-requisite for the exercise of power was not satisfied inasmuch as the appellant was not shown to have completed 25 years of qualifying service on the date of the impugned order. Therefore, the impugned order compulsorily retiring the appellant from service is illegal and invalid and must be quashed and set aside. In this view of the matter, we find it difficult to agree with the view taken by the High Court.

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A Accordingly, this appeal succeeds and is allowed and the judgment of the High Court is quashed and set aside and it is hereby declared that the impugned order dated August 20, 1975 compulsorily retiring the appellant from service of the Punjab Government
B is illegal and invalid and is hereby quashed. A necessary declaration must follow that the appellant continues in service uninterruptedly and is entitled to all the benefits to which he would have been entitled, had he continued in service. The respondents shall pay the
C costs of the appellant.

M.L.A. *Appeal allowed.*