

## CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

GURDIAL SINGH BAWA,—Petitioner.

versus

THE DIRECTOR OF INDUSTRIES, HARYANA, ETC.,—Respondents.

Civil Writ No. 3686 of 1968

February 24, 1971.

*Punjab Civil Service Rules, Volume II—Rule 5.32—Punjab Industries Department (State Service Class III) Rules (1956)—Rule 7(2)—Person appointed Inspector Weights and Measures by Director of Industries in 1951—After the enforcement of the 1956 Rules, his appointing authority becomes Chief Inspector of Weights and Measures—Notice of retirement on attaining age of 55 under Rule 5.32 issued by Director of Industries—Such notice—Whether valid as having been issued by the appointing authority.*

Held, that a notice of three months issued under Rule 5.32 of the Punjab Civil Services Rules, Volume II, retiring a government official on attaining the age of 55 years has to be by the appointing authority. Where a person is appointed Inspector Weights and Measures by Director of Industries in 1951, but on the enforcement of Punjab Industries Department (State Service Class III) Rules, 1956, his appointing authority becomes Chief Inspector of Weights and Measures, the notice of retirement issued by the Director of Industries is not valid as not having been issued by the appointing authority. The mere fact that under the rule 7(2) of the Rules the appointment of an Inspector, Weights and Measures, has to be made by the Controller, Weights and Measures, with the approval of the Director of Industries, does not make the Director of Industries the appointing authority of Inspectors, Weights and Measures. The appointing authority remains the Controller of Weights and Measures. (Para 4)

*Petition under Article 226 of the Constitution of India praying that a writ in the nature of Certiorari, Mandamus or any other appropriate, order, writ or direction be issued quashing memorandum No. F/73/14-V/41192-A, dated 19th August, 1968, issued in contravention of the provisions of Service Rules and Provisions of Article 311 of the Constitution.*

K. P. BRANDARI AND I. B. BHANDARI, ADVOCATES, for the petitioners.

C. D. DEWAN, ADDITIONAL ADVOCATE-GENERAL, HARYANA WITH S. P. JAIN, ADVOCATE, for the respondents.

JUDGMENT

TULI, J.—(1) The petitioner joined service as Store Keeper in the Government Dyeing and Colico Printing Institute, Shahdara, Lahore, in December, 1940. In June, 1942, he was appointed Junior

Clerk in the Store Purchase Office, Lahore, and in June, 1944, he was promoted as Inspector of Shops. After partition of the country, he was appointed Inspector, Weights and Measures, at Jullundur, by an order of the Director of Industries, Punjab, in 1951. He continued to serve in that post and was issued a notice dated August 19, 1968, by the Director of Industries, Haryana, to which State he had been allocated as a result of the reorganisation of the erstwhile State of Punjab, informing him that he would retire from service on attaining the age of 55 years with effect from December 31, 1968. This notice has been challenged in the present petition.

(2) Written statement has been filed by the Deputy Director (Administration), Industries Department of the State of Haryana.

(3) The first submission made on behalf of the petitioner is that he was no doubt appointed as Inspector, Weights and Measures, by the Director of Industries in 1951, but, after the enforcement of the Punjab Industries Department (State Service Class III) Rules, 1956 (hereinafter called the Rules), his appointing authority was the Chief Inspector of Weights and Measures, and the notice retiring him from service on attaining the age of 55 years under rule 532 of the Punjab Civil Services Rules, Volume, II, could be issued by the appointing authority under the Rules or by the State Government who has been authorised to appoint Inspector of Weights and Measures, under section 15 of the Punjab Weights and Measures Enforcement Act, 1958 (hereinafter called the Act). It is not disputed by the respondents that the petitioner is governed by the said rules under which the appointing authority of an Inspector of Weights and Measures is the Chief Inspector of Weights and Measures. Such an appointment has, however, to be made with the approval of the Director of Industries, as has been prescribed in rule 7(2) of the Rules. The learned counsel for the petitioner is correct in so far as he submits that the notice of three months retiring the petitioner on attaining the age of 55 years was to be given by the appointing authority, but the point for determination is — who is to be considered as the appointing authority, the officer who appointed him in fact in 1951 or the appointing authority mentioned in the Service Rules? After bestowing my careful consideration on this question I am of the opinion that the appointing authority mentioned in the Service Rules or in the Act has to issue the notice under rule

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5.32 of the Punjab Civil Services Rules, Volume II, and not the authority who originally appointed the Government official concerned. This is particularly so in the case of reorganised States, and I am supported in this view by a judgment of a Division Bench of this Court in *The State of Punjab and others v. Sant Singh Dewa Singh* (1). The notice had, therefore, to be issued by the Chief Inspector of Weights and Measures, whose designation has now been changed to Controller of Weights and Measures, and not by the Director of Industries.

(4) The mere fact that under the rule 7(2) of the Rules the appointment of an Inspector, Weights and Measures, has to be made by the Controller, Weights and Measures, with the approval of the Director of Industries, does not make the Director of Industries the appointing authority of Inspectors, Weights and Measures. The appointing authority remains the Controller of Weights and Measures. This view has been expressed by their Lordships of the Supreme Court in *State of Assam v. Kripanath Sarma and others* (2).

(5) I find no substance in the submission made by the learned counsel for the respondents that the Director of Industries is an authority higher in rank than the Controller, Weights and Measures, and, therefore, the notice issued by the Director of Industries was in order. Rule 5.32 *ibid* only talks of an appointing authority and not of an "authority not below the rank of appointing authority". I am, therefore, of the opinion that the notice could be issued either by the Controller, Weights and Measures, or by the State Government, and not by the Director of Industries.

(6) The second point argued by the learned counsel for the petitioner is that while passing an order retiring the petitioner from service on attaining the age of 55 years, the Director of Industries took into consideration extraneous matters, that is, the charges levelled against the petitioner of which he had been exonerated after a proper enquiry. I find no substance in this argument. The notice issued to the petitioner does not mention any misconduct on his part and under rule 5.32, the power of retiring a Government official on attaining the age of 55 years is absolute in the appointing authority and it is not obligatory to record reasons for issuing such a notice.

(1) A.I.R. 1964 Pb. 480.

(2) A.I.R. 1967 S.C. 459.

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Nor can the notice issued to the petitioner be called *mala fide* on this ground. The appointing authority has to make up its mind whether to retain the public servant in service or not after attaining the age of 55 years and it was open to the Director of Industries, if he was the competent authority, to take into consideration the service record including the reputation for honesty and integrity of the petitioner. Even if the petitioner was exonerated of all the charges levelled against him, it did not mean that his service record was such that he could not be asked to retire before attaining the age of 58 years.

(7) For the reasons given above with regard to the first point urged on behalf of the petitioner, this petition is accepted and the notice dated August 19, 1968, issued by the Director of Industries, Haryana, to the petitioner retiring him from service with effect from December 31, 1968, on attaining the age of 55 years, is hereby quashed. The petitioner will be entitled to his costs. Counsel's fee Rs. 100.00.

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**K.S.K.**