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hereby allowed and the judgments of the two Courts below are set aside. The case would now go back to the trial Court for an expeditious disposal. The parties will bear their own costs.

Prem Chand Jain, Judge.—I agree.

Man Mohan Singh Gujral, Judge.—I agree.

N. K. S.

FULL BENCH

CIVIL MISCELLANEOUS

*Before A. D. Koshal, Acting Chief Justice, P. S. Pattar and
Surinder Singh, JJ.*

RAM NATH,—*Petitioner.*

versus

THE STATE OF PUNJAB AND ANOTHER,—*Respondent.*

Civil Writ No. 6576 of 1976.

April 30, 1976.

The Punjab Municipal Act (III of 1911)—Section 45(1)—One month's notice before discharge—Municipal Committee—Whether can pay salary in lieu of such notice—Salary in lieu of notice—Whether to be tendered simultaneously with the notice of discharge.

Held, that a Municipal Committee can pay to an employee one month's salary in lieu of notice before discharging him under section 45(1) of The Punjab Municipal Act, 1911.

(Paras 5, 6 and 7)

Held, that the issue of one month's notice or tender of one month's salary in lieu of notice is a pre-requisite to the discharge of an employee under section 45(1) of the Act. Thus for termination of service to be valid, one month's salary in lieu of notice has to be tendered simultaneously with the letter of discharge.

Note.—Rule 5 of the Central Civil Services (Temporary Service) Rules 1965 which was interpreted in Senior Superintendent R. M. S., Cochin v. K. V. Gopinath, AIR 1972 S.C. 1487, has since been amended, as noticed by the Supreme Court in Raj Kumar v. Union of India, A.I.R. 1975 S.C. 1116.

—Editor.

Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of Mandamus or any other appropriate writ, order or direction be issued quashing the impugned order dated 24th July, 1975 (Annexure P/2) and commanding the respondents to reinstate the petitioner in service with effect from the date of discharge, i.e., 24th of July, 1975, and grant to the petitioner the arrears of salary and all the benefits to which the petitioner should have been entitled had he not been discharged from service and further praying that the filing of certified/original copies of the documents appened to the writ petition be dispensed with.

M. R. Agnihotri, Advocate, with V. K. Sharma, Advocate, for the Petitioner.

H. S. Brar, Senior Deputy Advocate-General (Punjab), for the Respondent No. 1.

J. L. Gupta, Advocate, with G. C. Gupta, Advocate.

JUDGMENT

Surinder Singh, J.—(1) Civil Writ Petitions Nos. 6576, 6572, 6572 to 6575, 6577 and 6580 of 1975 project common questions of law and fact. All these writ petitions shall be disposed of by this judgment. The petitioners in all these writ petitions are employees of the Municipal Committee, Bhatinda, respondent No. 2 (hereinafter referred to as the Committee). On July 24, 1975 (in Civil Writ Petition No. 6575 of 1975 on July 26, 1975) the Committee served notice of discharge on the petitioners purporting to be under section 45 (1) of the Punjab Municipal Act, 1911 (hereinafter called the Act). The wording of the notice (Annexure P2 in all the petitions) is the same. For facility of reference the notice issued in the case of Ram Nath petitioner (Civil Writ Petition No. 6576 of 1975) is reproduced below:

“To

Ram Nath,
Tax Superintendent,
Municipal Committee,
Bhatinda.

No. 2274/0, dated 24th July, 1975.

Notice of Discharge under section 45(1) of the Punjab Municipal Act, 1911.

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Your Services are no more required by the Municipal Committee, Bhatinda. You are hereby served with this notice under section 45(1) of the Punjab Municipal Act, 1911 to this effect that you are discharged with immediate effect from the service of the Municipal Committee.

In accordance with the provisions your wages for one month are tendered herewith which you can collect on any working day during office hours.

Sd/- Administrator,
Municipal Committee,
Bhatinda."

(2) According to the averments in the writ petitions the petitioners in each case were working on their respective posts efficiently, honestly and to the satisfaction of the Authorities. In spite of this, the abovementioned notices were served upon them in consequence of which the petitioners had been discharged with immediate effect from the services of the Committee as the same were no more required by the Committee. The petitioners filed appeals/representations to the Government but no action on the same had been taken. The petitioners, therefore, challenged the legality of these notices on various grounds as mentioned in their petitions.

(3) All the grounds of attack embodied in the petitions need not, however, be recapitulated as the learned counsel for the petitioners has confined his arguments solely to the point contained in ground No. (vii). The crux of the arguments in this behalf is that even if the impugned notice is treated as a notice under section 45 (1) of the Act, the said notice did not comply with the mandatory provisions of that section. A two-pronged objection has been raised in this connection. The contention firstly is that the section envisaged issue of one month's notice, and not a tender of one month's salary in lieu of notice, and secondly the tender of one month's salary was in any case not a legal or valid tender, as the amount representing one month's salary was not actually offered to the petitioners at the time of the service of the notices upon them. Let us examine these contentions.

(4) Before focussing attention on the points in controversy it would be beneficial to notice the relevant provision of the Act, i.e., section 45(1) as extracted hereinafter :—

"45. NOTICE BEFORE DISCHARGE. (1) In the absence of a written contract to the contrary, every officer or servant

employed by a committee shall be entitled to one month's notice before discharge, unless he is discharged during a period of probation or for misconduct or was engaged for a specified term and discharged at the end of it.

(2) * * * *

(5) Mr. M. R. Agnihotri, learned counsel for the petitioners has resourcefully urged that the words "or to one month's wages in lieu thereof" occurring in section 45(1) as it stood before amendment had been expressly excluded which indicated an intention on the part of the Legislature to make the issuance of one month's notice as mandatory. The contention is further stretched that the idea of issuing one month's notice to an employee is to afford him opportunity to file a representation within the period of notice. The argument is, however, not based on sound footing. The omission of the words "or to one month's wages in lieu thereof" is nothing but avoidance of an unnecessary reference to something which, as will be shortly noticed, is well established by law. As regards the opportunity to file representation, the same is always available to an employee even in the case of his discharge with immediate effect. Mr. Agnihotri while pressing this point has adopted the observations made by Tek Chand, J. in *Mohan Singh, ex-Deputy Ranger v. The State of Haryana* (1). In that case, Rule 5.32 of the Punjab Civil Services Rules was the subject of scrutiny. This Rule envisaged the giving of not less than three months' notice before retirement to a Government servant but there was no provision in regard to the tendering or offering of payment of three months salary in lieu of notice. The learned Judge while holding that the impugned notice did not have the requisite legal sanction, observed that in the absence of an alternative provision in the Rule for the payment of three months salary, the issue of three months' notice of retirement was essential. This point, however, came up for consideration before a Full Bench of this Court in *Punjab State v. Mohan Singh Mahli, formerly Director of Animal Husbandry, Punjab* (2). The specific question which was referred to the Full Bench for decision was as to whether under Rule 5.32(c) of the Punjab Civil Services Rules, Volume II, the Government can retire an employee on or after he attains the age of fifty-five years, by giving him three months salary and allowances in lieu of three months' notice. The reference was necessitated in the absence of specific

(1) 1968 S.L.R. 461.

(2) 1970 S.L.R. 194.

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provision in the Rule concerned in this behalf. After a resume of the entire case law on the subject, the Full Bench returned an answer to the question referred to it in the affirmative. It may be mentioned here that the opinion expressed by Tek Chand, J. in *Mohan Singh's case* (supra) did not meet favour with the Full Bench. The observations of P. C. Pandit, J., in this behalf may be extracted with advantage as below :—

“It is now to be seen as to what is the correct interpretation of Rule 5.32 (c). This undoubtedly is a statutory rule having been made under Article 309 of the Constitution and must be given due effect. Under it, as is apparent from the note appended thereto, the appointing authority has got an absolute right to retire any government servant, except, of course, one belonging to Class IV, on or after he has attained the age of 55 years without assigning any reason. Similarly, the Government servant is also entitled to seek retirement on or after reaching that age. It follows, therefore, that the only right that the Government servant possesses is that he cannot be retired before he reaches the age of 55 years and if that happens, the order would attract the applicability of Article 311 of the Constitution. But that would occur only in the case of permanent employees. So far as temporary hands are concerned, they would be governed by the terms of their employment. Under this rule, the Government servant has no inherent right to stick to the job after he has attained the age of 55 years. All that he can claim is three months notice. Now the question is—cannot the Government give him three months salary and allowances in lieu of the said notice? I do not see any reason as to why it cannot do so. Learned counsel appearing for Government employee was not able to point out any material prejudice that will occur to his client, if, instead of being given three months notice, he is paid three months salary. Undoubtedly, the employee will not suffer any loss or injury if he is paid three months salary in lieu of notice, because it is needless to point out that for computing pension, gratuity, leave benefit and other allowances etc. his service will be counted up to the end of the notice period for which salary had been paid to him. The main idea of giving three months notice, in my

view, is to enable the Government servant to make arrangements for his re-employment elsewhere or some other programme for his future. After he had served the Government for such a long period he should not be suddenly thrown on the street. The notice period can be utilised by him for settling his affairs and deciding his future course of action. If instead of being given notice, he was paid three months salary, in my view, he would, in a way, be in a better position. He will have more leisure at his disposal for doing all those things which he would have done during the notice period because he will have the additional advantage that he will not have to spend time in the office doing his duty. The giving of not less than three months notice mentioned in the rule is, in my opinion, not such a condition the non-compliance of which would result in the retirement order becoming void."

(6) D. K. Mahajan, J., had also the occasion to make observations in the Full Bench case on this subject which are these :

"There is no provision in the Constitution or the rules made thereunder which enjoins on the Government to give work to the Government servant. No Government servant can say that he must be given work. What is protected, so far as he is concerned, is his tenure and his emoluments and a provision has been made that his service tenure cannot be terminated except in accordance with the provisions of Article 311 of the Constitution. It will, therefore, appear that it is open to the master to give work to the servant or not.

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* * * *

Inasmuch as under rule 5.32 the Government has the absolute right to terminate the services of its employees who have attained the age of 55 years and the only requirement is that before termination the employee should be given three months' notice; it clearly follows that there would be no breach of the rule if instead of notice, three months' wages are given. In my opinion, rule 5.32 is

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merely an enabling rule. The effect of notice under the rule or payment of salary and allowances in lieu of notice merely fix the period which will be taken "into account in reckoning his total service."

(7) In face of these clear observations there is no room for further debate and the argument of Mr. Agnihotri that one month's notice was mandatory, must be repelled.

(8) Mr. Agnihotri has, however, carried the torch further and it is the second contention which turns the scale in his favour. The submission is that even though the right of the employer to pay salary in lieu of notice is deemed to be implicit in section 45 of the Act, it was incumbent upon the Committee to offer the salary in lieu of notice, simultaneously with the notice of discharge, but this had not been done. The fact that the amount representing one month's salary was never offered along with the notice is obvious even from the wording of the notice itself wherein it was stated that the petitioners could collect their one month's wages on any working day during office hours. In fact, in Civil Writ Petition No. 6576 of 1975, the petitioner filed a supplementary affidavit that the amount representing the salary was never enclosed with the order of discharge, nor was the same paid to him upto date. The question to be considered is whether in such circumstances the impugned notice issued can be deemed to be a valid notice. In *Mohan Singh Mahli's case* (supra) certain observations were indeed made by P. C. Pandit, J. to the effect that even if the salary and allowances in lieu of notice were not paid, the retirement order would not become illegal, but this matter has since been agitated and scrutinised by the Supreme Court in some later cases. In *Senior Superintendent R.M.S. Cochin and another v. K. V. Gopinath, Sorter*, (3), the provisions of Rule 5 of the Central Civil Services (Temporary Service) Rules (1965) in regard to termination of service of temporary Government servants by issue of one month's notice or by payment to him of a sum equivalent to the amount of his pay plus allowances for the period of notice, was interpreted in the following observations :

"Apart from the authorities which were cited at the Bar, it appears to us that the rule is capable of the only interpretation that the order of termination can be upheld if the

(3) A.I.R. 1972 S.C. 1487.

requisite amount in terms of the rule was paid into the hands of the employee or made available to him at the same time as he was served with the order. Rule 5(1) (a) gives the Government as well as the employee a right to put an end to the service by a notice in writing. Under Rule 1 (b) the period prescribed for such notice is one month. The proviso to sub-rule (b) however gives the Government an additional right in that it gives an option to the Government not to retain the service of the employee till the expiry of the period of the notice, if it so chooses to terminate the service at any time it can do so forthwith "by payment to him of a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rate at which he was drawing them immediately before the termination of his services, or, as the case may be, for the period by which such notice falls short of one month." At the risk of repetition, we may note that the operative words of the proviso are "the services of any such Government servant may be terminated forthwith by payment". To put the matter in a nutshell, to be effective the termination of service has to be simultaneous with the payment to the employee of whatever is due to him."

(9) The question as to whether it is necessary that the salary in lieu of notice is to be paid along with the letter of termination of service came up for consideration in a case nearer home, i.e. *Kulwant Kaur v. District Education Officer, Amritsar and others* (4). In this case the requisite notice was not issued to the employee and she was merely told that she would be paid one month's salary in lieu thereof. The salary was not paid to her along with the letter of termination of service. It was held by Tuli, J., that in these circumstances the termination of the service of the employee by virtue of such an intimation could not be sustained. The learned Judge further observed that if the employer Department wanted to pay her the salary for the period of notice, the amount should have been tendered to her simultaneously with the letter of discharge. The termination of service of the petitioner was, therefore, quashed.

(10) There is another important feature of this case. Section 45(1) of the Punjab Municipal Act, 1911 contemplates the issue of one

(4) 1974 (1) S.L.R. 77.

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month's notice *before* discharge. The emphasis is on the word "before", which means that the issue of one month's notice or tender of one month's salary in lieu of notice is a pre-requisite to the discharge of the employee. In *Gopi Nath's case (supra)* the Supreme Court had strictly construed the words "by payment to him of a sum equivalent to the amount of his pay plus allowances for the period of the notice—" to mean that the termination of the service to be effective, must be simultaneous with the payment of dues to the employee. The wording of section 45(1) of the Act goes a step further inasmuch as the words used in this section are "before discharge". As such, the amount representing one month's salary, in lieu of one month's notice, not having been paid or tendered along with the impugned notices of discharge, these notices have to be struck down being invalid and it is ordered accordingly. There will, however, be nothing to debar the respondents from taking any action under the law after complying with the necessary requirements thereof. The petitioners having succeeded, more on a technical ground, there shall be no order as to costs in all these writ petitions.

A. D. Koshal, Acting Chief Justice.—I agree.

Pritam Singh Pattar, Judge.—I agree.

N. K. S.

FULL BENCH
CRIMINAL MISCELLANEOUS

Before S. C. Mital, Pritam Singh Pattar and Gurnam Singh, JJ.

SURINDER KUMAR, ETC.,—*Petitioners.*

versus

THE STATE OF PUNJAB,—*Respondent.*

Criminal Misc. No. 4453-M of 1975.

May 13, 1976.

Defence and Internal Security of India Rules, 1971—Rules 43 and 184—Defence and Internal Security of India Act (49 of 1971)—Section 37—Code of Criminal Procedure (2 of 1974)—Sections 4, 5 and proviso (a) to section 167(2)—Accused arrested under the rules and detained in custody beyond sixty days—Whether to be released on