

(6) In *Dhanalakshmi Vilas Cashew Company's case* decided by the Kerala High Court, the word 'judgment' has been given the same interpretation so as to mean that it must finally dispose of a dispute between the parties as contrasted with an interlocutory judgment or order. It is not understood how this judgment can possibly be of any assistance to the learned counsel for the petitioner.

(7) For the foregoing reasons, it must be held that our judgment remanding the case for trial on merits cannot be said to be a final judgment within the meaning of Article 133(1) of the Constitution of India. The application for leave to appeal has, therefore, no merit and stands dismissed with costs.

S. B. CAPOOR, J.—I agree.

K. S. K.

CIVIL MISCELLANEOUS

*Before Bal Raj Tuli, J.*

BHIM CHAND,—*Petitioner*

*versus*

THE DEPUTY COMMISSIONER, DISTRICT ROHTAK AND OTHERS,—  
*Respondents*

**Civil Writ No. 1295 of 1967**

September 18, 1968

*Punjab Civil Services Rules, Volume II—Rule 5.32—Order of retirement under—Such order not passed by appointing authority—Whether bad in law.*

*Held*, that under Rule 5.32 of the Punjab Civil Services Rules, Volume II, the decision to retain a Government employee in service or to retire him by giving him three months' notice after he attains the age of 55 years, is with the appointing authority. If that decision is not arrived at by the appointing authority himself but is made on the dictation of some other authority, the order is bad in law.

(Para 3)

*Bhim Chand v. The Deputy Commissioner, District Rohtak, etc.* (Tuli, J.)

*Petition under Articles 226 and 227 of the Constitution of India, praying that a writ in the nature of certiorari or any other appropriate writ order or direction be issued quashing the order of the Deputy Commissioner, Rohtak, dated 12th May, 1967.*

U. D. GAUR, ADVOCATE, for the Petitioner.

NEMO, for the Respondent.

#### JUDGMENT

TULI, J.—Bhim Chand petitioner was a permanent clerk in the office of the Deputy Commissioner, Rohtak, whose date of birth is 15th April, 1912. Under rule 3.26 of the Punjab Civil Services Rules, Volume I, Part I, his date of superannuation was 15th April, 1967, till the amendment of this rule in 1963 when the age of superannuation was raised from 55 to 58 years.

(2) The respondents have not cared to file any return to the writ petition. I am, therefore, left with no alternative but to accept as correct what is stated in the petition. According to the petitioner, his character-roll contains 12 entries, out of which two are good, eight satisfactory and two poor. His latest reports for the years 1964-65 and 1965-66 say that his work was found satisfactory. He was allowed to cross the efficiency bar on 2nd August, 1966. The petitioner states that he is energetic and physically fit to discharge his duties satisfactorily.

(3) Under rule 5.32 of the Punjab Civil Services Rules, Volume II, as amended, the appointing authority can require a Government employee to retire after he attains the age of 55 years by giving him three months' notice without assigning any reason. The appointing authority of the petitioner is the Deputy Commissioner and not the Deputy Secretary or the Financial Commissioner. The Financial Commissioner, Haryana State, issued instructions to all the Deputy Commissioners on 24th January, 1967, regarding the retirement of Government servants on their attaining the age of 55 years. It was pointed out in these instructions that nobody should be allowed the extension beyond 55 years without showing the case to the Financial Commissioner. It has been stated by the petitioner that the Deputy Commissioner recommended the retention of the petitioners in service up to 58 years in view of his service record and the Commissioner,

Ambala Division, agreed with that recommendation. The case was forwarded to the Financial Commissioner as per his instructions mentioned above and in para 10 of the petition, it is stated, "that the Deputy Secretary, respondent, issued a letter communicating decision of the Government without giving any reasons, that the petitioner should be retired and further action should be taken immediately." In paragraph 11, it is stated "that acting in compliance, the Deputy Commissioner, respondent has served on the petitioner on the 12th May, 1967, his order (Annexure 'A'). The order Annexure 'A' is in these terms:—

"Shri. Bhim Chand, a permanent Clerk of this office, has attained the age of 55 years on 15th April, 1967, forenoon according to his date of birth as 15th April, 1912. According to the Government instructions contained in para 6 of letter No. 5410-3GS-63/11925, dated 28th March, 1963, the appointing authority may require a Government servant to retire after he attains the age of 55 years on three months' notice. In the light of above instructions Shri Bhim Chand is hereby given three months' notice that he will retire from 15th July, 1967, forenoon, under rule 5.32 of the Punjab Civil Services Rules, Volume II."

It is thus clear that under the rules, the decision to retain a Government employee in service or to retire him by giving him three months' notice after he attains the age of 55 years, is with the appointing authority. If that decision is not arrived at by the appointing authority himself but is made on the dictation of some other authority, the order is bad in law. In a similar case of a permanent Assistant serving in the office of the Deputy Commissioner, Hissar, who was also retired from service before he attained the age of 55 years, Gurdev Singh, J., in *Roshan Lal Gogia v. Financial Commissioner and others* (1), quashed the order of retirement on the ground that the decision had been made by the Government and not by the Deputy Commissioner who is the appointing authority. I am in respectful agreement with the law laid down by the learned Judge in that case.

(4) The result is that this petition is allowed with costs and the order (Annexure 'A' to the writ petition) is quashed.

K.S.K.

(1) C.W. No. 747 of 1968 decided on July 12, 1968.