
(1974) 05 P&H CK 0005
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 3612 of 1973

Karnail Singh

APPELLANT

Vs

The State of Punjab and others

RESPONDENT

Date of Decision : 02-05-1974

Acts Referred:

Constitution of India, 1950 — Article 225

Citation : (1974) 05 P&H CK 0005

Hon'ble Judges : R.S. Narula, J;M.R. Sharma, J;Balraj Tuli, J

Bench : Full Bench

Advocate : H.L. Sibal, with Mr. A.K. Jaiswal, for the Appellant; I.S. Tiwana, Deputy Advocate-General, Punjab, for the Respondent

Final Decision : Dismissed

Judgement

M.R. Sharma, J.—The petitioner who was born on June 26, 1918, was appointed as an Excise Sub Inspector by the order of the Excise and Taxation Commissioner, Punjab dated July 12, 1947 (Annexure P/1) and having been promoted as Excise Inspector in January 1964, was confirmed as such with effect from April 1, 1966, by the order of the Excise and Taxation Commissioner, Punjab, dated May 8/15, 1959 (Annexure P/2). Three months" notice (Annexure P/3A) dated July 7, 1973, was served upon the petitioner (which was received by him on July 13, 1973) under Rule 5.32 of the Punjab Civil Services Rules, Volume II. The notice was sent to the petitioner as an enclosure memorandum dated July II, 1973, (Annexure P/3) from the Deputy Excise and Taxation Commissioner, Patiala Division, Patiala, wherein it was stated that the original memorandum of the Deputy Secretary to Government Punjab, Excise and Taxation Department, received through Excise and Taxation Commissioner Punjab, Patiala was being sent to the petitioner. The notice itself (Annexure P 3/A) addressed to the petitioner purported to have been issued under the signatures of the Deputy Secretary to Government Punjab, in the Excise and Taxation Department, The body of the notice was in the following words:--

As require by Rule 5.32 of the Punjab Civil Service Rules, Volume II, as amended from time to time the Governor of Punjab is pleased to serve upon you three months notice of retirement from the date of receipt of this communication, and you will be deemed to have retired from service on the expiry of the aforesaid period.

2. The representations of the petitioner against his retirement at the age of 55 years in pursuance of the above-quoted notice not having borne any fruit, the petitioner came to this Court under Article 225 of the Constitution of India for quashing the said notice R.N. Mittal, J. and myself admitted this case to a Division Bench on October 31, 1973, as the petitioner placed reliance on two different Single Bench Judgments of this Court in support of the proposition that the notice of retirement (Annexure P 3/A) was illegal and ineffective as it had emanated from the Punjab Government instead of having been issued by the Excise and Taxation Commissioner, who was his appointing authority, and we thought that the said two Single Bench judgments needed reconsideration. Status quo was ordered by the Motion Bench to be maintained regarding the petitioner and that order has remained in force till now.

3. Though another minor point is mentioned in the writ petition, the Learned Counsel for the petitioner has confined his, arguments to the abovementioned legal ground only in the affidavit of Shri L.C. Kapur, P.C.S. Administrative Officer, Excise and Taxation Commissioner's Officer Punjab, Patiala, filed by way of return on behalf of the respondents, it has been admitted that the petitioner was appointed by the Excise and Taxation Commissioner, Punjab and his services are governed by the Punjab Excise Subordinate Services Rules, 1943, and also by the Punjab Civil Services Rules It has, however, been pointed out that though the order of retirement has been conveyed by the Deputy Secretary to Government Punjab, Excise and Taxation Department, the said order was passed on the recommendation of the Excise and Taxation Commissioner, Punjab, himself. It has been reiterated in the return that the petitioner has been retired from service by the Government on the recommendation of the Excise and Taxation Commissioner, Punjab, and the order of retirement was merely conveyed by the Deputy Secretary to Government Punjab, Excise and Taxation Department. On that basis, it has been urged that the contention about the notice of retirement being illegal is not tenable.

4. In support of the above mentioned averment made in the return, Mr. Iqbal Singh Tiwana. Deputy Advocate General for the State of Punjab, has produced before us the original relevant file of the Punjab Government. The relevant portions of the file have been "read over in Court in the presence of the counsel for the petitioner. The correspondence has even been shown to Mr. M.R. Agnihotri. This file shows that the Government was considering the question of certain promotions in connection with which the Character Roll of the petitioner had also gone to the Government, but was returned to the Excise and Taxation Commissioner with the Government's letter dated March 27, 1973. Thereafter on

April 16, 1973, the Excise and Taxation Commissioner wrote to the Deputy Secretary to Government Punjab, Excise and Taxation Department in his memorandum No. 1101/E. 1 as below:--

Shri Karnail Singh, Excise Inspector is attaining the age of 55 years on 25th June, 1973, his date of birth being 26th June, 1918. His appointing authority is Government.

2. Attention is invited to Punjab Government letter No. 4776-3-GS(1) 64/15823, dated the 19th May, 1974 and No. 2018-SII (2) 71/16458, dated the 30th June, 1971 wherein it is laid down that the Appointing Authority may retire a Government Servant after he attains the age of 55 years on 3 months Notice without assigning any reason keeping in view the service record of the official It has further been laid down in these instructions that even a single adverse remark on integrity of a Government employee should be sufficient for retiring him prematurely on attaining the age of 55 years.

3. A summary of service record of Shri Karnail Singh Excise Inspector, is enclosed He has earned two adverse remarks on integrity during the year 1957-68 and 1971 -72. Besides two charge sheets (one under rule 3 Major penalty and second under rule 10 minor penalty) are pending against him.

4. In view of the above, it is recommended that Shri Karnail Singh, Excise Inspector may be retired from service at the age of 55 years on 25th June, 1973 (A N).

5. The service book and confidential personal file of Shri Karnail Singh, Excise Inspector are enclosed.

5. The contents of the above-quoted memorandum clearly show that it was the Excise and Taxation Commissioner who applied his mind to the question of the retirement of the petitioner at the age of 55 years as or alternatively the question of his retention in service beyond that age. Under a mis apprehension that the Punjab Government was the appointing authority of the petitioner, he however, left the formality of the notice being issued nay the Government to the petitioner. In reply to the abovementioned communication of the Excise and Taxation Commissioner, the Deputy Secretary to Government, Punjab, stated in his memorandum dated July 7, 1973, as below:--

In the circumstances explained, Government have decided that Shri Karnail Singh, Excise Inspector should be retired from service by giving him three months notice. Necessary notice duly signed, along with one spare copy is sent here with for service on the official immediately. The date of the service may be intimated to this Department.

2. The confidential file along with service book of Shri Karnail Singh is returned here with which may be acknowledged.

It was in pursuance of the above-quoted exchange of correspondence between

the Excise and Taxation Commissioner on the one hand and the Punjab Government on the other that the notice (Annexure 13/A) was served upon the petitioner by the Deputy Excise and Taxation Commissioner, Patiala Division Patiala, as an enclosure to his memorandum (Annexure P/3)

6. On the facts of this case, we are of the opinion that even if the notice could be served only by the Excise and Taxation Commissioner, the said rule has been substantially complied with. Mr. Agnihotri, however, contends that the requirements of Rule 5.32 of the Punjab Service rules are mandatory and must be complied with not only in spirit but also in letter.

7. Lengthy arguments have been addressed to us by the Learned Counsel the parties on the main question whether the pleasure of the Governor under Article 310 of the Constitution to terminate the services of any of the employees of his State otherwise than by way of punishment is in any manner impinged upon by Rule 5.32. In other words, the question is whether a notice of retirement after attaining the age of 55 years issued by the State Government itself, that is, by the Governor, is non est because of the requirements of Rule 5.32 being that such a notice should be issued by the appointing authority. Reliance has been placed by Mr. Agnihotri in support of the proposition that the notice issued even by the State Government is invalid if the appointing authority is not the State Government but some lower Officer, on the judgment of Gurdev Singh, J. (as he then was) in *Roshan Lal Gogia Assistant Office of Sub Divisional Officer, (c) Sirsa v. Financial Commissioner, Haryana* 1968 (11) S.L.R. 650. The decision of the learned Judge no doubt supports the petitioner's proposition but it appears that the judgment was mainly based on the law laid down by their Lordships of the Supreme Court in *The State of Punjab and Another Vs. Hari Krishan Sharma*, . What was held by the Supreme Court in that case was that the State Government was not justified in assuming jurisdiction which had been conferred on the licensing authority by section 5 (1) and (2) of the Punjab Cinemas (Regulation) Act. That decision was expressly based on three specified considerations, namely, (i) the scheme of the Cinemas Act showed that the application for a licence had to be considered by the licensing authority as the same had to be dealt with u/s 5(1) and (2) of the Act; (ii) that of the State Government directly entertains such an application it converts itself into the original authority, though section 5 (3) clearly allows an appeal to the State Government to be preferred by a person who is aggrieved by the rejection of his application for a licence by the licensing authority ; and (iii) however wide the statutory control of the State Government in the matter of issuing cinema licence may be, it cannot justify the State Government to completely oust the licensing authority and itself usurp its functions. None of these three considerations appear to us to arise in the case of a notice of retirement required to be served under Rule 5.32. It also appears to us that the function of the licensing authority under the Cinemas Act is more or less a quasi judicial function but a notice of retirement under Rule 5.32 is served by the appropriate authority in exercise of its administrative or executive powers.

8. The other Single Bench judgment was given by Tuli J. in Bhim Chand Clerk, Deputy Commissioner's Office, District Rohtak v. The Deputy Commissioner, District Rohtak 1968 (11) S.L.R. 798. This case does not appear to us to advance the matter any further because the learned Judge merely followed the earlier judgment in Roshan Lal Gogia's case (supra) and did not base his decision on any additional ground. Mr. Agnihotri has next placed reliance on an order passed by R.N. Mittal, J. and myself on September 14, 1973, in Civil Writ 3151 of 1973 at the motion stage. In that case, the Learned Counsel appearing for the State conceded that in view of the judgment of this Court in Roshan Lal Gogia's case (supra) the petition had to be and might be allowed as the appointing authority of the writ-petitioner in that case was the Superintendent of Police but the notice had been given by the Deputy Inspector General of Police. We accordingly allowed that petition on the above-mentioned ground and quashed the notice which had been impugned in that petition, The order passed by the Motion Bench in that case is no authority for the proposition which is sought to be canvassed by Mr. Agnihotri as the order was expressly passed on the basis of the concession made by the counsel for the State.

9. The last case to which Mr. Agnihotri has referred is the judgment of the Allahabad High Court (Lucknow Bench) in Nanak Saran Srivastava v. State of U.P. 1971 (1) S.L.R. 168 it was held in that case that if a thing is required to be done in a particular manner it must be done in that manner alone and, therefore, a notice of retirement required by Fundamental Rule 56 must be issued by the appointing authority himself and not by anyone else.

10. Mr. Tiwana has on the other hand referred to the law laid down by their Lordships of the Supreme Court in The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya, After referring to the distinction between the provisions of Article 309 and Article 310 of the Constitution their Lordships held that the Constitution has not made the tenure at pleasure (under Article 310) subject to any law made by the appropriate legislature and on the other hand Article 309 is expressly made subject to the pleasure doctrine contained in Article 310. It was also observed by the Supreme Court in that case that the power to terminate the service of a Government employee under Article 310 is a part of the executive power of the Government under Article 154 (2) (b) of the Constitution

11. Before the conclusion of Mr. Tiwana's arguments it has been pointed out to us by Mr. Agnihotri that the Judgments of the learned Single Judges in Roshan Lal Gogia and Shim Chand's cases were upheld by the Division Benches which heard and dismissed in limine the Letters Patent Appeals filed by the State against those judgments. In this situation, it does not appear to us to be appointee to hear this case any further in a Division Bench as prima facie we are of the view that the earlier judgments on this point need a serious led consideration and the said judgments have been upheld by some other Division Benches. We accordingly direct that the papers of this case may be laid before my lord, the Chief Justice for constituting a larger Bench for hearing and

disposing of this petition.

12. As a stay order has been granted in favour of the petitioner, it is in the interest of justice that the case may be directed to be placed before the Full Bench (which may be constituted by the learned Chief Justice) as early as possible, preferably before the commencement of the approaching summer vacation.

ORDER OF THE FULL BENCH

R.S. Narula, C.J.

13. The relevant facts which necessitated this reference to out Full Bench have been set out in the requisite detail in the order of reference passed by my learned brother Sharma, J. and myself on May 2, 194, which may be read as a part of this judgment. In exercise of the powers conferred on the appointing authority by the note under rule 5.32(c) of the Punjab Civil Service Rules, Volume II, notice Annexure P3/4, dated July 7, 1973, reading as follows, was served on the petitioner, with the covering letter of the Deputy Excise and Taxation Commissioner, patiala, dated July 11, 1973 Annexure P/3), wherein it had been stated that the original notice (Annexure P3/A) had been received through the Excise and Taxation Commissioner, Punjab :--

As required by rule 5.32 of the Punjab Civil Service Rules, Volume II, as amended from time to time, the Governor of Punjab is pleased to serve upon you three months" notice of retirement from the date of receipt of this communication, and you will be deemed to have retired from service on the expiry of the aforesaid period.

The validity of the above-quoted notice of retirement of the petitioner who was a permanent Excise Inspector (appointed as such by the Excise and Taxation Commissioner, Punjab) has been called in question on the solitary ground that the notice emanated from "the Governor of Punjab", and not from the Excise and Taxation Commissioner, who alone was the appointing authority of the petitioner. The question that calls for decision in these circumstances is whether the notice of retirement after attaining the age of 55 years issued by the State Government itself in the name of the Governor is non est because the relevant portion of rule 5.32(c) confers the absolute right to retire any Government servant at or above the age of 55 years on the appointing authority alone, and not on the State Government or the Governor. In other words, we have to decide as to what is the meaning of the express on "appointing authority" in rule 5.32(c) which is reproduced below :--

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 three months" notice; and

(ii) who retires on or after attaining the age of 55 years by giving not less than three month's notice of his intention to retire to the appointing authority:

Provided that where the notice is given before the age of fifty-five years is attained, it shall be given effect to, from a date not earlier than the date on which the age of fifty-five years is attained.

Note.--Appointing authority retains an absolute right to retire any Government servant, except a Class IV Government servant, on or after he has attained the age of 50 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.

14. The relevant part of Article 310 (1) of the Constitution states that except as expressly provided by the Constitution every person who holds any civil post under a State holds office during the pleasure of the Governor of the State. As the opening words of the first clause of Article 310 denote, the provision contained therein is subject to the other provisions of the Constitution Those other provisions are contained in Articles 309 and 311 The pleasure of the Governor is, therefore, subject to the constitutional safeguards provided in article 311 and has to be exercised in accordance with such Acts of the appropriate Legislature referred to in the purview of Article 309 and such rules framed under the proviso to that Article by the Governor, which may regulate the recruitment and conditions of service of persons appointed to the relevant public service. It may be noticed that even under Article 311(1) the passing of an order of dismissal, removal or reversion by only an authority subordinate to that by which the official was appointed is prohibited, and that there is no bar to such major punishment being inflicted by an authority superior to that by which the Government servant was appointed. This view is supported by two Division Benches of the Court in *Gurmukh Singh v. Union of India* (1963) 65 P.L.R. 964 and in *the State of Haryana v. Baldev Krishan Sharma* 1970 S.L.R. 500 and is settled by the authoritative pronouncement of the Supreme Court in *The State of Madras Vs. G. Sundaram*, The over-all power of the State Government in matters covered by rule 5.32 is also borne out from the requirements of rule 5.35 that rule reads as follows:--

Heads of Departments should report to Government once a month the action taken by them on the competent authorities orders of the appellate authority where there has been an appeal against the orders of the competent authority, the report to Government should state briefly the grounds on which a Government servant has been required to retire and should be addressed to the Chief Secretary.

It is therefore, clear that in the absence of any compelling reasons, there would be nothing abhorrent in an authority superior to the appointing one to give notice of retirement when such an authority is permitted to pass even an order of dismissal or removal from service. It has also to be borne in mind that terms and

conditions of service of a Government servant can be altered unilaterally by the Government and no vested contractual right inheres in a Government servant. *Roshan Lal Tandon Vs. Union of India (UOI)*, . It cannot be argued on behalf of the petitioner that even independently of the relevant rule, it is only the authority which appointed him that can terminate his employment. Another broad feature which has to be kept in view while answering the question posed before us is that as against the expression "authority by which he was appointed" used in Article 311(1), the expression employee in rule 5.32(c) is "appointing authority". The authority which has appointed a particular Government servant may be a question of fact in each case, but the expression "appointing authority" merely means an authority competent to appoint the concerned Government servant. This necessarily leads to the question whether the Governor of Punjab or in other words the State Government was or was not competent to appoint the petitioner as an Excise Inspector though in fact he was appointed as such by the Excise and Taxation Commissioner. To us it appears that there is no escape from answering this question in the affirmative. The appointing authority of a State Government servant is ordinarily and necessarily the State Government which is the same thing as the Governor of the State. Merely because by rules of business or by the rules framed under the proviso to Article 309 of the Constitution or even by an executive order (in the absence of any legislative enactment or statutory rules), the State Government empowers one of its officers to appoint Government servants of a particular rank in a particular Department does not in our opinion, divest the State Government itself of its own power to appoint. It is well-known that the delegation of the principal's authority to his agent does not by itself result in the abdication of the principal's power in favour of the agent. Even after a principal delegates his power to an agent, he can nevertheless exercise the same himself unless the agent has already exhausted the power by virtue of the authority vested in him by the principal. A handy illustration is available in the case of a house-owner who executes a power of attorney in favour of his agent to sell his house. So long as the house is not sold out, the house-owner himself can dispose of the same notwithstanding the delegation made in favour of his agent. Similarly an authority competent to appoint a person (which is the meaning I gave to the expression "appointing authority") does not cease to be the appointing authority by merely authorising a lower officer to make the appointment.

16. Reference can with advantage be made in this connection to the observations of Willis, J. in *Huth v. Clarke* L.R. (1890) 25 Q.B. 391.

Delegation, as the word is generally used, does, not imply a parting with power by the person who grants the delegation, but points rather to the conferring of an authority to do things which otherwise that person would have to do himself. It is never used by legal writers, so far as I am aware, as implying that the delegating person parts with his power in such a manner as to denude himself of his rights.

The above-quoted passage from the judgment of the House of Lords in Huths case (supra) has been approved by their Lordships of the Supreme Court in Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. Vs. The Asstt. Commissioner of Sales Tax and Others, (in paragraph 37 at page 1673 of the AIR report) in the following word :--

Delegation is not the complete handing over or transference of a power from one person or body of persons to another. Delegation may be defined as the entrusting, by a person or body of persons, of the exercise of a power residing in that person or body of persons, to another person or body of persons, with complete power of revocation or amendment remaining in the grantor or delegator. It is important to grasp the implications of this, for, much confusion of thought has unfortunately resulted from assuming that delegation involves, or may involve, the complete abdication or abrogation of a power. This is precluded by the definition. Delegation often involves the granting of discretionary authority to another, but such authority is purely derivative. The ultimate power always remains in the delegator and is never renounced.

It is, therefore, clear that the State Government does not denude itself of its power to appoint an Excise Inspector by merely delegating the same to the Excise and Taxation Commissioner.

16. The next contention of the Learned Counsel for the petitioner was that once the Governor has in exercise of his legislative power under the proviso to Article 309 laid down the conditions of service of a Government servant, by framing any rules, any action taken against against a Government servant has thereafter to be strictly in accordance with those rules, and that this would apply both to the person taking the action as well as the mode and manner of taking the action. There is no quarrel with the broad principles of law enunciated by the Learned Counsel The purpose for which this argument has been addressed is not, however, advanced by this submission as the whole argument is based on the assumption that the expression "appointing authority" in the relevant rule is synonymous with the words "the officer who appointed the Government servant." It has already been pointed out by me that there is a clear distinction between the two expressions, and the one on which the petitioner relies has not been used in rule 5.32 (c)

17. Counsel for the petitioner placed reliance on the Judgment of a learned Single Judge of this Court in Roshan Lal Gogia v. Financial Commissioner, Haryana 1968 (11) S.L.R. 650. We need not however, deal with that judgment at all as the view taken therein was overruled by the Division Bench in the State of Haryana v. Baldev Krishan Sharma and others (supra). Gurdev Singh, J., had in Roshan Lal Gogia's case (supra) struck down the notice of retirement served on Roshan Lal Gogia by the Financial Commissioner on the ground that the Financial Commissioner was an authority superior to the one which had appointed him Reliance was placed on the judgment of the learned Single Judge in Roshan Lal Gogia's case before the Division Bench which heard the case of Baldev Krishan

Sharma and others (supra), as Tuli, J. had allowed Baldev Krishan Sharma's writ petition on the authority of the earlier judgment of the learned Single Judge in Roshan Lal Gogia's case. The Division Bench did not agree with that view because of the authoritative pronouncement of the Supreme Court in Jagannath Prasad Sharma Vs. State of Uttar Pradesh and Others, and in The State of Madras Vs. G. Sundaram, and the judgment of the Kerala High Court in K.C. Chandrasekharan Vs. State of Kerala, with which the Division Bench agreed. The judgment of the learned Single Judge in Roshan Lal Gogia's case was based on the judgment of Supreme Court in the State of Punjab and Another Vs. Hari Krishan Sharma, . The distinction between Hari Kishan Sharma's case, which was that of a cinema licence, and the case of termination of the service of Government servant was clearly brought out by the Division Bench in the case of Baldev Knshan Sharma and others (supra).

18. The next judgment on which counsel for the petitioner has placed reliance in support of his proposition is of my learned brother, Tuli, J., in Bhim Chand v. The Deputy Commissioner, District Rohtak 1968 (11) S.L.R. 798. The notice of retirement given under rule 32 by the Deputy Secretary or the Financial Commissioner to the Government was struck down by the learned Judge in that case (on the ground "hat the appointing authority of Bhim Chand was the Deputy Commissioner and not the Financial Commissioner), following the judgment of Gurdev Singh, J., in Roshan Lal Gogia's case. The view taken in Roshan Lal Gogia's case having been reversed by the Division Bench, the judgment of the learned Single Judge in Shim Chand's case cannot advance the petitioner's case any further. Moreover, in that case the notice had not been given by the State Government or in the name of the Governor, but by the Deputy Secretary to the Government. The appointing authority of Bhim Chand was the Deputy Commissioner or the State Government, but not the Deputy Secretary or the Financial Commissioner who had served the notice. Bhim Chand's case is, therefore, even otherwise distinguishable on facts as the State Government or the Governor is the appointing authority of every State employee, but it cannot be said that any other authority above the appointing authority below the State Government must also be considered to be the appointing authority of the concerned government servant.

19. It is noteworthy that in Shri Dev Dutt Gupta v. State of Haryana 1973 (1) S.L.R. 30, the same learned Judge (Tuli, J.) dismissed the writ petition of Dev Dutt Gupta against the termination of his service after attaining the age of 55 years in spite of the fact that the notice had in that case been issued in the name of the Governor of Haryana, though the precise question about the competence of the authority which had issued the notice had not been raised in that case.

20. The expression "appointing authority" was construed by my learned brother, Tuli, J., in Radhev Shiam Khanna v. The State of Haryana 1973 (2) S.L.R. 555, to mean the authority which appointed the Government servant to the post from which he was sought to be retired, because the State Government was

admittedly the appointing authority of Radhey Shiam Khanna but the notice of retirement had been given to him by the Chief Engineer. This was because Khanna had been appointed in the erstwhile State of Pepsu by the Maharaja of Patiala who was the Rajpramukh of the Patiala and East Punjab States" Union, and not by the Chief Engineer. The notice having thus been given by an authority lower than the one who appointed Khanna, the petitioner cannot possibly draw any strength from ray learned brother's judgment in that case,

21. Counsel than relied on the Division Bench judgment of the Allahabad High Court in Nanak Saran Srivastava v. State of U.P. 1971 (1) S.L.R. 168. The admitted facts of the case were that Nanak Saran Srivastava had been appointed and confirmed as Superintendent by the Secretary of the Legislative Council and the Chairman of the Legislative Council, who had served the notice of retirement on him under Rule 56 of the Fundamental Rules, was not his appointing authority. In that case again, the notice had not been issued by the State Government or by the Governor of U.P. but by some other officer who could neither be equated to the State Government nor was the appointing authority of Nanak Saran Srivastava according to the relevant rules. Nanak Saran Srivastava's case is therefore, distinguishable from one in hand on the same ground on which Bhim Chand case has already been distinguished by me. It is noteworthy that the Secretary U.P. Legislative Council was a member of the U.P. Judicial Service whose services had been lent to the Government on deputation. On the other hand the Chairman of the Legislative Council was not a Government servant, but an elected member of the Legislature. The Governor of UP had (in consultation with the Chairman) directed in writing that it was the Secretary who had to exercise the powers of the Head of the Department in respect of the Legislative Council Secretariat subject to the over-all control of the Chairman. It was in that context that the Allahabad High Court held that the Chairman or the Speaker of the Council (both of which officers were higher than the Secretary of the Legislature) were not competent to issue the notice of retirement as they could be said to be the appointing authorities of Nanak Saran Srivastava.

22. Great emphasis was laid by Mr. Sibal, learned Senior Counsel for the petitioner, on the argument that framing of the rules under the proviso to Article 300 of the Constitution was a legislative function, and that such a function could not be delegated. The fallacy in this argument of the Learned Counsel lies in the fact that whereas the rules may indeed be framed in exercise of the powers of delegated legislation, the actual order terminating a Government servant's employment after attaining the age of 55 years under any such rule is not a quasi judicial or judicial order, but a purely executive one.

23. Nor does the case of the petitioner advance further by referring to rule 6 of the Punjab Excise Subordinate Service Rules, 1943 which provides that all appointments to the posts enumerated in Appendix "A" to those rules shall be made by the Excise and Taxation Commissioner, though the post of an Excise Inspector is no doubt included in the said Appendix. On the contrary it is clear

from the said rule that the power to appoint an Excise Inspector has been conferred on the Excise and Taxation Commissioner by the Governor of the State in exercise of his powers u/s 241 of the Government of India Act, 1935 (corresponding to the proviso to Article 309 of the Constitution) It is also significant that in rule 2 of the above-mentioned 1943 Rules, the Excise and Taxation Commissioner is defined to be the person for the time being appointed in charge of the Excise and Taxation Department by the State Government, and that "Government" is defined in the same rule to mean the Punjab Government. Mr. Sibal's next submission in support of his argument in this regard was that the order terminating the services of a Government servant after attaining the age of 53 years is quasi judicial one as an appeal lies against the same under the Punjab Civil Services (Punishment and Appeal) Rules, 1952. The 1952 Rules were repealed by the Punjab Civil Services (Punishment and Appeal) Rules, 1970, and the present case is governed by the 1970 Rules. It is significant that no appeal against an order retiring a Government servant after attaining the age of 55 years has been provided in these rules. Even the appeal that had been provided in the 1952 Rules did not relate to an order of this type, but to an order of compulsory retirement before attaining the age of superannuation which was 35 years fit that time.

24. The argument of Mr. Sibal based on certain observations of their Lordships of the Supreme Court in the The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyas, has lost all force in view of the latest pronouncement of their Lordships in Ishwar Chand Agarwal v. State of Punjab C.A. 632 of 1971. Civil Appeal 632 of 1971, decided on August 23, 1974, wherein it has been held That the Jaw laid down in Babu Ram Upadhyas case (to the extent to which Mr. Sibal wanted to utilise it) is not correct. Great emphasis was laid by counsel on the following observations in the judgment of the Supreme Court in Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc., :--

In the context, it would be clear that this latter observation is not intended to lay down that a law cannot be made under Article 309 or a Rule cannot be framed under the proviso to the said Article prescribing the procedure by which, and the authority by whom, the said pleasure can be exercised.

Counsel contended that the requirement of the authority by whom the notice is to be served is as much legislative requirement as the procedure by which the pleasure to terminate a Government servant's employment is to be exercised. That may indeed be true, but if the Governor is the principal appointing authority (besides the subordinate or delegated appointing authority), a notice served by him is competent from both the points of view referred to in the above-quoted passage extracted from the judgment of their Lordships in Moti Ram Deka's case.

25. As a net result of this discussion, it appears to me that :--

(i) in the absence of anything to the contrary stated in any relevant statute or statutory rule, the State Government or the Governor is the appointing authority

of a State Government servant;

(ii) inasmuch as the Governor's power to appoint has also been delegated by him to the Excise and Taxation Commissioner, the Governor as well as the Excise and Taxation Commissioner could validly and effectively issue to the petitioner, the notice of retirement under rule 5.32(c);

(iii) the Excise and Taxation Commissioner, while issuing the notice of retirement, is exercising the State Government's power which is delegated to him by the relevant rules ;

(iv) any authority other than the Excise and Taxation Commissioner or the Governor (the State Government) could not issue such a notice, as such authority would not be the appointing authority of an Excise Inspector ; and

(v) likewise, a notice served by an Excise Inspector on the State Government (or the Governor) in exercise of his corresponding right under rule 5.32(c) to retire any time after attaining the age of 55 years would be as valid and effective as a notice served by him on the Excise and Taxation Commissioner, who had actually appointed him.

26. There is no force at all in the second contention advanced by the counsel for the petitioner, somewhat half-heartedly, to the effect that if the Governor as well as the Excise and Taxation Commissioner are considered to be the appointing authorities for purposes of rule 5.32(c), the said rule would become liable to be struck down under Article 14 of the Constitution as the circumstances in which one or the other or the two authorities can exercise the power under that rule have not at all been specified or indicated anywhere. No such point has been specifically taken in the writ petition. Even otherwise there is no force in this argument for the simple reason that the mere conferment of the same power on more than one authority of the same Government cannot by itself be held to infringe the guarantee of equal protection of laws enshrined in Article 14 of the Constitution.

27. On the facts of this case we further hold (as has been observed in the order of reference, and for the reasons assigned in the said order) that the decision to retire the present petitioner after he attained the age of 55 years was taken by the Excise and Taxation Commissioner, and that he merely asked the Government to issue the formal notice of retirement on the misapprehension that he could not, and the State Government alone could serve the said notice on the petitioner. Therefore, even if the interpretation of the expression "appointing authority" adopted by us is found to be incorrect, it would make no difference to the case of the present petitioner in whose case substantial compliance has been made with the said rule even if it is interpreted in the manner desired by the counsel for the petitioner.

28. For all these reasons this petition must fail, and is accordingly dismissed though without any order as to costs,

B.R. Tuli, J.

29. I entirely agree.

M.R. Sharma, J.

30. I agree.