

(1954) 12 P&H CK 0003

In the Punjab And Haryana At Chandigarh

Case No : Civil Miscellaneous Petition No. 221 of 1953

Nitmochinder Singh Gurdial Singh

APPELLANT

Vs

State of Patiala and East Punjab States Union

RESPONDENT

Date of Decision : 23-12-1954

Acts Referred:

Constitution of India, 1950 — Article 226, 309, 310, 311, 311(2)
Government of India Act, 1935 — Section 240, 240(3)

Citation : (1954) 12 P&H CK 0003

Hon'ble Judges : Passey, C.J.;Chopra, J

Bench : Division Bench

Advocate : S. Karam Singh Nagra, for the Appellant; Lachhman Das, Advocate General, for the Respondent

Final Decision : Dismissed

Judgement

Chopra, J.—This is a petition under Art. 226 of the Constitution praying for a writ or other appropriate direction quashing the respondent's order prematurely retiring the petitioner from service. The petitioner was appointed an A.D.C. to His Highness the Maharajadhiraj of the erstwhile Patiala State on 1-7-1991 BK. By Farama-i-Shahi No. 1, dated 29-4-1946. His Highness decided to constitute and define the Ruler's Civil List and demarcate it from the administrative budget. In addition to several other items the expenditure on personal Staff the Military Secretary & the A.D.Cs. - was, subject to certain reservations, included in the Civil List. Another order dated 8-6-1948, commanded that all employees who were or were to be included in the "civil list" shall be treated as State servants for all intents and purposes and that their service in the Civil List shall be counted as State service for all provisions of the Patiala State Regulations. As agreed in a Covenant entered into by Rulers of the Various States, including Patiala, the Patiala & East Punjab States Union was formed on 20-8-1948. Clause (1) of article XVI of this Covenant provides:

The Union hereby guarantees either the continuance in service of the permanent

members of the public services of each of the Covenanted States on conditions which will be not less advantageous than those on which they were serving on the 1st of February, 1948 or the payment of reasonable compensation or retirement on proportionate pension.

The petitioner continued in service and remained posted as A.D.C. to the Rajpramukh even after the formation of the Union. On 28-4-1951, vide Home Department Notification No. 167, the petitioner was posted as Military Secretary to His Highness the Rajpramukh. On 8-9-1953, the petitioner along with five other officers, who like him were on deputation to the "Civil List" of His Highness the Rajpramukh, was made to retire by an order issued by the Home Department. The operative part of the order preceding the names of the six officers to whom it related, says:

The following officers who are on deputation to the civil list of His Highness the Rajpramukh are retired from service in terms of clause 1 of article 16 of the Covenant, as there is no suitable post in which they can be absorbed.

2. It is this order that is questioned in the petition. The grounds urged are-

(1) that the petitioner was in permanent service of the respondent and was holding a civil post,

(2) that as such he was entitled to continue in service till he attained the age of 55 or completed the qualifying service of 25 years,

(3) that his premature compulsory retirement amounted to "removal" & was, therefore, hit by Art. 311(2) of the Constitution, and

(4) that the petitioner was afforded no opportunity whatsoever of showing cause against the action proposed to be taken in regard to him. It is, therefore contended that the order is illegal and hence liable to be quashed.

3. On the first point; the parties are not an issue. It is conceded by learned Advocate General that the petitioner was an employee of the erstwhile Patiala State and also that he continued in service of the Union on its formation. It is also not disputed that the petitioner was holding a civil post. Position of the respondent on the rest of the points is-

(1) that the petitioner had no legally enforceable right to continue in State service for any particular period or till the age of superannuation.

(2) that not only under article XVI of the Covenant but also under the Service Regulations of the erstwhile Patiala State, in force at the time the petitioner was appointed, and those of the Union, the Government had the right to make the order in question, and

(3) that in no case the retirement amounted to "removal" under Art. 311(2) of the Constitution.

Article XVI of the Covenant has already been reproduced. The Rules on which

reliance is placed are Nos. 3(2) and 5(10) (Vol. III) of Pepsu Service Regulations, 1952.

4. It may be mentioned that on the day the Union came into existence viz. 20-8-1948, the Rajpramukh, promulgated an Ordinance (No. 1 of 2005), S. 3 of which provides that all laws, rules, regulations etc. in force in Patiala State shall henceforth apply, *mutatis mutandis*, to the territories of the Union. The section with slight variations, immaterial for the purpose of this case, was repeated in the later Ordinance No. XVI of 2005 which repealed the Ordinance No. 1. The Patiala State Regulations (1931) relating to services (as partly revised and reprinted in 1915 and 1947) thus remained in force in the Union till they were revised and republished (in three volumes instead of one) in the years 1951 and 1952. These are entitled as Pepsu Service Regulations. The petitioner was retired after the Rules were so revised and published. It is not disputed that these rules, framed or adapted under Art. 309 of the Constitution apply equally to the persons who were appointed before or after their enforcement.

Moreover, it is of no consequence as to which of the two Regulations, the old or the new ones, apply to this case. The simple reason for this is that the petitioner was an employee of the erstwhile Patiala State and the Rules (1931) of that State, so far as they are relevant for the purposes of this case, were identically the same as they appear in the amended Regulations of 1952. Rule 336 of (1931) Regulations which was re-numerated and repeated as 3(2) (Vol. III) of the Pepsu Regulations 1952, reads:

Compensation pension is to be granted to a Government servant made to retire from service before he has completed 30 year's service or before he has attained 55 years of age, on account of abolition of appointment or any other administrative reason.

The second rule No. 278 appearing as 5(10) (Vol. III) of the Pepsu Regulations is to the effect:

For all classes of pensions the person who desires to obtain the pension is required to submit his application before any pension be granted to him.

The Government reserves to itself the right to retire any of its employees on pension on political or any other reasons.

5. On behalf of the respondent, learned Advocate General contends that besides Cl. XVI of the Covenant, reference to which alone is made in the order, these rules as well authorized the Government to order the petitioner's retirement for administrative, political or other reasons.

6. Another rule to which reference need be made and on which reliance to some extent is placed by the petitioner, is No. 9(1) (Vol. I) of the Pepsu Regulations. This rule appears in Chapter IX which bears the caption "Compulsory retirement". The only relevant part of this rule is its Cl. (1) and it is as follows:

Every Government servant shall on attaining the age of 55 years retire on such pension as may be admissible to him under the rules for the time being in force:

Provided that the Government may without giving any reason retire any Government servant on pension after such Government servant has completed a qualifying service of 25 years.

Except for the proviso, which has been subsequently added, the above clause, with slight immaterial variation in language, is the same as Rule 125 of P.S.R. (1931). The petitioner had neither reached the age of superannuation, nor had he completed 25 years' service. The action in his case could not and has not, therefore, been taken under this rule. S. Karam Singh, Learned Counsel for the petitioner, however, contends that the rule leaves no right with the Government to retire any of its employees so long as he has not attained the age of 55 or served for a period of 25 years. It is further urged that rule 3(2) (Vol. III) only makes a provision for the payment of a compensatory pension to a Government servant when and if he retires under the circumstance mentioned therein, and that the rule by itself does not authorize the Government to make the order of his retirement under those circumstances.

Stress in this connection is laid on the fact that the Chapter and its sub-head under which the rule appears, bear the heading "Conditions of Grant of Pension" and "Compensation Pension" respectively. It is, therefore, maintained that the rule relates only to the mode or manner in which the Government servant may be entitled to claim a compensatory pension and that it is not meant to provide the circumstances under which retirement may be ordered. As regards R. 5(10) (Vol. III) the contention is that the first part of it only lays down a procedure inasmuch as it requires the person desiring to obtain pension to submit an application for the same and that the second part of it is to go and has to be read with the first. It is, therefore, argued that this rule too has no application and does not help the respondents case.

7. What I am inclined to think is that the second part of R. 5(10) has little or no connection with its first part and that it has not been rightly placed. It ought to have found its place in Chapter IX of Vol. I along with or after R. 9(1) thereof. Even if for any reason it was to be placed in the Chapter of "miscellaneous Rules" in Volume JII it should have been separately numbered and should not have been unnecessarily yoked with the first part of the rule. All the same, I am of opinion that the unhappy setting or intermingling of the two unconnected provisions does not in any way belittle the generality or force of the sub-rule.

Whatever placed, it reserves to the Government the absolute right to retire any of its employees on pension for political or other reasons. Further, the sub-rule totally negatives the inference, sought to be drawn from R. 9(1) of Vol. I, that a Government servant can claim as of right to continue in service till he attains the age of 55 or completes the qualifying service of 25 years. Even in spite of this reservation clause, I do not think R. 9(1) (Vol. I) is susceptible of any such

interpretation. The converse of what has been said therein is not meant to be provided. In other words, the rule cannot be regarded as providing that, whatever may be the circumstances, a Government employee shall be entitled to continue in service till the age of superannuation of so long as he has not completed a service for 25 years.

8. As regards R. 3(2) (Vol. III) I am inclined to agree with S. Karam Singh that it may only be meant to provide the consequences which flow, in the matter of pension to which the employee may be entitled, on his retirement under the circumstances mentioned therein. Chapter III deals with "Conditions of Grant of Pension" and divides pension into six classes, each of which is dealt with under a separate head. of them, the first specifies the circumstances under which a Government servant is entitled to claim "Compensation Pension" and regulates the scale thereof. Rule 3(2) falls under this sub-head. The rule as it is placed and drafted does not appear to provide by itself the circumstances under which the Government may order the compulsory retirement of its servants. Provision for that is found to be made in Chapter IX (Vol. I) and the reservation clause of Rule 5(10) (Vol. III).

9. It is next contended that the proviso appended to clause (1) of rule 9(1) (Vol. I) becomes redundant if the reservation clause in R. 5(10) (Vol. III) is to be interpreted in the manner suggested by the respondent. I do not see any force in the contention. The two provisions are easily reconcilable and can go together. The latter of them reserves to the Government the right to retire its employee at any time it likes, but that can be done for political or other reasons. In case of the former, the Government can, without assigning any reason, retire any of its servants on pension after he has served for 25 years. In one case the Government has to give reasons, while in the other 25 years qualifying service is by itself, a reason for retirement.

10. Reading the three rules together it follows: (1) that a Government servant must necessarily retire on attaining the age of 55,(2) that the Government may order his retirement, without giving any reason, on his completing 25 years service, (3) that the Government may at any time retire him for political or other reasons and (4) that the Government servant shall be paid compensator pension if he is made to retire on the abolition of appointment or on any other administrative ground.

11. The reason that the order gives for the petitioners and his fellow Civil List Officers retirement is that "there is no suitable post in which they can be absorbed". The action is stated, in the order, to be, taken under clause 1 of Article 16 of the Covenant. In addition to the above rules, learned Advocate General supports the Government's action on the basis of the solution provided in the Covenant for such contingencies, and stresses that in the peculiar circumstances with which the Government was confronted the order of retirement was fully justified and within its competency. It is pointed out that the formation of the Union in 1948 brought in its wake the tedious task of integration

& absorption of a large body of officers of the eight Covenanting States. In the scheme of reorganization, it could hardly be expected that all of them would be assimilated and that too at once. Article 16 of the Covenant, therefore, provided for two alternative courses viz, (1) their Continuance in service on condition not less advantageous than those on which they were serving on 1st February 1948 or (2) termination of their service on payment to them of reasonable compensation or proportionate retiring pension.

For a satisfactory completion of the stupendous task, the Government at once appointed a by and Cadre Committee to advise the Government to determine the Cadres necessary for the efficient administration of the Union and their minimum qualifications and salaries, and also to make recommendations for the fixation of personnel in those Cadres. A list of the officers interpreted into the Pepsu Administrative Service Class 1 Grades I and II prepared with the consultation of the Public Service Commission, was published in the Government Gazette on 19th December, 1948. The petitioner's name did not appear in this list as he could not be integrated in that Cadre. Notification No. 145 dated 10-3-1949 prescribed the procedure for regulating integration of services in the various departments of the Union.

The matter of integration of officers on the Civil List of the various States remained under consideration of the Government for some time. Some of them were integrated. With respect to others, the Council of Ministers decided that they should be treated as surplus to the requirements of the Government. The Government finally arrived at the decision that the petitioner, who was on deputation to the Civil List of His Highness the Rajpramukh and was acting as his Military Secretary could not be suitably absorbed in the state service, as the number of officers in administrative service was already in excess of the actual requirement. Consequently on 3-9-1953 the petitioner was ordered to retire under Cl. (1) of Article 16 of the Covenant.

12. On behalf of the petitioner it is contended that as he was continued in service on the formation of the Union he should have been continued in service thereafter as well, and that the alternative option could not be exercised by the Government several years after the Covenant. Reliance in this connection is placed on S. 4 of Ordinance No. 1 of 2005 promulgated by the Rajpramukh, in exercise of the powers conferred on him by Art. X of the Covenant, on 20-8-1948. This section was repealed as S. 4 in Ordinance No. 16 of 2005 Bk, which repealed Ordinance No. 1. The slight variation in the language of the two sections is not material for the purpose of this case. The section *inter alia* provides that all appointments made and powers conferred on any officer under any law, rule or regulation of the Covenanting States shall be deemed to have been made and conferred by a competent authority of the Government of the Union, and that all such officers shall continue to exercise all powers and jurisdiction and discharge all functions and duties which they were exercising before the date of taking over the administration of those states.

S. Karam Singh contends that the Government while enacting this provision elected to exercise only the first of the two options given by Cl. (1) of Art. XVI of the Covenant. In any case, it is urged, the option was exercised when the Government by its Notification No. 167 dated 28-4-1951 appointed the petitioner as Military Secretary to His Highness the Rajpramukh. I see no force in any of these contentions. It shall be remembered that Ordinance No. 1 of 2005 Bk. was promulgated on 20-8-1948, the first day on which the Covenant was to take effect. The provision regarding option in the Covenant would have been useless if the petitioner's argument were to be accepted. The option was not, nor could it be, exercised on the very day, the Union was formed and the Covenant became effective. The powers to dispense with the employees of the Covenanting States on payment of reasonable compensation or by retirement on proportionate pension was reserved in the Government for the purpose of proper integration of services. It was meant to provide for the contingency of over-crowding and surplus age.

The integration could not be expected to have been completed forthwith. The matter required lot of scrutiny and screening, and, therefore, should have taken good deal of time. Section 4 was only a stopgap arrangement. The extinction, as separate entities, of the Covenanting States and the change-over necessitated some such law for the purpose of carrying on the administration. The section legalized the appointments and functions of the services and declared them to be deemed to have been made and conferred by a competent authority of the Union. It did not mean to guarantee the continuance of service, nor did it amount to the exercise of only one of the options of article XVI. Moreover, the section has two riders placed on its operation. The arrangement was to continue "save as otherwise provided by any competent authority" or "unless otherwise directed by the Government of the Union."

13. The fact that in the petitioner's case the Government took an unreasonably long time to decide if he could be absorbed or should be made to retire, did not take away the authority that the Government ultimately had. The petitioner was allowed to continue on the Civil List the Government being compensated for his salary by the Rajpramukh. The Government thus did not incur any extra expenditure so long as the petitioner remained on deputation in the Civil List. That probably may have been the reason why the Government was not anxious to take an early decision. In the meantime, efforts were made to fix him somewhere. As stated in the reply and also in the affidavit of the Deputy Secretary (Home) the Government ultimately found that the petitioner could not be fitted on any Government post, and consequently he was ordered to retire.

14. The foregoing discussion leads to the conclusion that neither under the Regulations of service nor because of anything in the Covenant the petitioner acquires an unqualified or indefeasible right to continue in service till he reaches a particular age or completes a particular period of service. Both under the Regulations and Cl. (1) of Art. XVI of the Covenant, the Government had the

right and authority to order the petitioner's retirement. It is not disputed that in the erstwhile Patiala State the services of all its employees were at the pleasure of the Ruler. The Ruler had the uncontrolled authority to dispense with the services of any one of his employees (the petitioner it may be remembered was one of them) at any time he liked. No action could be brought or taken against any order so made by the Ruler. The petitioner's position, with respect to the tenure of his service, did not materially improve on the formation of the Union or on the enforcement of the Constitution.

As regards the tenure of office of persons serving a State, Art. 310 of the Constitution lays down that:

every person who is a member of the civil service of a State or holds any civil post under a State, holds office during the pleasure of the Governor or, as the case may be, the Rajpramukh of the state.

The language of the Article makes it obvious that this pleasure of the Governor or Rajpramukh is circumscribed by nothing but what is provided by the Constitution itself. The Constitutional inhibitions, so far as the present case is concerned, are only those contained in Art. 311. These are (1) that no person who holds a civil post in a State shall be dismissed or removed by any authority subordinate to that by which he was appointed, and (2) that no such person shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

There is no dispute as regards the first of them. It is, however, contended that the order of petitioner's retirement amounts to "removal" and therefore, he should have been given an opportunity to show cause against the proposed action & since nothing of the sort was done the order is illegal & liable to be quashed. It is not disputed that no such opportunity was ever afforded to the petitioner. The only point that remains to be considered is whether the petitioner's retirement amounts to "removal" under Art. 311(2) of the Constitution. On behalf of the petitioner it is stressed that the retirement of a person against his will and before he attains the age of superannuation amounts to "removal" within the meaning of the article. It is correct that in a loose or ordinary sense the termination of one's service against his will amounts to his removal, and the same is the effect of a premature and compulsory retirement.

In its technical sense, however, the word "removal" applies only to those cases of termination of services, which is due to some fault or misconduct of a civil servant and not to those where the termination has no connection with the conduct or the efficiency of the person concerned. The question then arises: In which sense has the word "removal" been used in the article? this Court, in some of its decisions, has held the view that it is used in the former sense. In the first of them - *Ishar Dass Mehta v. State of Pepsu*", AIR 1952 Pepsu 148 (A), Teja Singh C.J., sitting in single Bench, quoted a passage from a Bench decision of the

Allahabad High Court Jayanti Prasad Vs. The State of Uttar Pradesh, and himself observed as follows:

As regards the applicability of Art. 311 to the cases where a man's services are terminated on the expiry of the term for which he was employed or on the expiry of the notice given to him in accordance with the terms of service I am in respectful agreement with the above observation but the dictum of the learned Judges that Art. 311 comes into operation only when a man is dismissed or removed from service for misconduct, if I may say so with respect, unduly restricts its scope because as I read the words of the article it appears to me that it is meant to cover all kinds of cases irrespective of the fact whether a man's services are terminated because of his misconduct or otherwise.

and again as:

My own opinion is that terms "dismissal" and "removal" are used in article 311 in their ordinary sense. Dismissal though not confined to cases of misconduct generally implies that the person dismissed is blameworthy i.e. either he has done something which is objectionable or improper or he lacks the ability or capacity or the will to discharge his duties as he should. Removal of a man from service on the other hand need not be for any fault on his part. Unlike dismissal, it involves no ignominy, nor does it carry any stigma. It merely means that a man's services are no longer required or it is not possible to retain him in service.

15. "Shambhu Dayal v. The Pepsu", AIR 1952 Pepsu 152 (C) is a Bench decision of this Court, in which the judgment, with which Gurnam Singh J. agreed, was written by Teja Singh C.J. The petitioner in this case was retired under Rule 9(1) (Vol. I) of Pepsu Regulations on completion of 25 years service. Counsel for the petitioner contended that though his client was made to retire, the order amounted to one of removal. The learned Advocate General on the other hand urged that the terms "dismissal" and "removal" in Art. 311, were used in a technical sense and applied only to those cases where a person's services are dispensed with for some fault of his. Besides - "Jayanti Prasad's case (B) Kewal Mal Singhi Vs. Heta Ram and Others, was also cited in support of the argument. With respect to the first, learned Chief Justice simply stated that it was already discussed and dissented from in - "Shambhu Dayal's case (C)", and added that it was distinguishable on facts as well. The learned Chief justice then quoted the following remarks from the Rajas than decision.:

We feel that the word "removal" applies to a removal which is due to some fault of the civil servant concerned. It seems to us that there would be no point in giving a reasonable opportunity of showing cause to a public servant if the removal is unconnected altogether with his conduct.....

Though, therefore, in a loose sense it may be said that the applicant was removed from public service when he was retired before the age of superannuation this is not the kind of removal contemplated under Article 311.

and proceeded to observe:

With all deference, I find myself unable to follow this dictum. As I held in AIR 1952 Pepsu 148.(A), the term "removed" appears to me to have been used in article 311 in the ordinary tense and the retirement of a person before he attains the age of superannuation with all the consequences that it involves is not only "removal" in the loose sense but in the real sense.

"Anup Singh v. State", AIR 1953 Pepsu 24 (E) is another case decided by this very Bench on the same day. The judgment in this case also, with which Gurnam Singh J. agreed, was written by Teja Singh C.J. The facts being identical, the learned Chief Justice disposed of it by simply reiterating his views in - "Shambhu Dayal"s case (C)", and held that the compulsory retirement of the petitioner under Rule 9(1) of the Pepsu Regulations fell within the ambit of Art. 311(2) of the Constitution and that before it could be made it was incumbent upon the Government to give him an opportunity of showing cause against it.

16. The view of this Court as expressed in the above noted cases is not shared by the other High Courts in India. The generally accepted view now is that the terms "dismissed" and "removed" in Art. 311(2) have been used in their technical sense. The word "removal" has a technical meaning given to it in the appropriate Civil Service Regulations dealing with penalties that may be imposed on a civil servant for misconduct or indiscipline. The term "removed" having been placed in the article in between the words "dismissed" and "reduced in rank" implies that it has been used in that technical sense and that "removal" like "dismissal" implies that the officer is regarded as, in some manner, blameworthy on some ground personal to the officer.

There is no such element of imputation or charge in the case of compulsory retirement brought about in accordance with the terms of service or on administrative grounds. In a case like this, there is no purpose in giving him an opportunity of showing cause as the termination of his service is unconnected altogether with his conduct. Removal from service in its technical sense is a lesser penalty than dismissal. All the same it is a penalty for some fault or misconduct of the public servant, the only deference between the two being that while the one does not and the other ordinarily does disqualify the public servant from future employment. In the light of the context in which the terms are used in the article they are to be regarded as almost synonymous.

An order of retirement made not by way of penalty but in accordance with the rules of service and on administrative grounds would not, therefore, fall under the article, although it amounts to and results in the termination of services. Some of the decisions on the point are: Shyam Lal Vs. State of U.P. and Another, ; Raj Kishore Vs. State of Uttar Pradesh and Another, ; "Mrs. Lilawati Mutatkar v. State of Madh. B." AIR 1952 MP 105 (H); "Prem Biharilal v. State of Madh. B.", AIR 1954 MP 49 (I); Munshiram Vs. State of Madhya Bharat, "Baburam v. Ochhalal", AIR 1954 MP 117 (K); "Varadaraja Iyer v. State of Trav.

Co." AIR 1953 Trav. Co. 140 (L) and - "Bijoy Chandra v. State of Assam", AIR 1954 Ass 12 (M).

In all these cases, the expressions "dismissal" and "removal" in Article 311 are described as technical words. But as already observed, this Court had held that they were used in the ordinary sense. In view of this conflict we would have considered the desirability of referring the matter to a larger bench, but since the conflict, as will be presently seen, has been set at rest by later pronouncements of their Lordships of the Supreme Court that course no longer appears to be necessary.

17. In - Satish Chandra Anand Vs. The Union of India (UOI), , the petitioner was employed by the Government of India on contractual basis for five years and his services were terminated as provided by the Temporary Service Rules. On behalf of the petitioner, it was urged that he had either been dismissed or removed from service without the safeguards which Art. 311(2) of the Constitution conferred. Dealing with this contention, their Lordships observed:

The services in India have long been afforded certain statutory guarantees and safeguards against arbitrary dismissal or reduction in rank. Under S. 240 Government of India Act, 1935, the safeguards were limited to those two cases. Under the present Constitution, a third was added, namely removal from service. In order to understand the difference between "dismissal" and "removal" from service it will be necessary to turn, to the Rules which governed, and with modifications still govern, the "services" in India-because of Art. 313 of the Constitution.

Part 12 of the Civil Services (Classification, Control and Appeal) Rules relating to Conduct and Discipline includes R. 49 which sets out the various penalties to which a member of the services can be subjected for indiscipline and misconduct. They are seven in number and include censure, suspension, reduction in rank, removal from service and dismissal from service. The Act of 1935 selected only two of these possible penalties as serious enough to merit statutory safeguards namely reduction in rank & dismissal from service. The Constitution has added a third to the list. The distinction which is drawn between the two is explained in R. 49. There is first removal from service "which does not disqualify from future employment" and there is next dismissal from service which ordinarily disqualifies from future employment.

Then follows an Explanation:

The discharge:

** **

(c) of a person engaged under contract, in accordance with the terms of his contract, does not amount to removal or dismissal within the meaning of this rule.

These terms are used in the same sense in Art. 311. It follows that the Article

has no application here and so no question of discrimination arises, for the "law" whose protection the petitioner seeks has no application to him.

18. The view taken in *Jayanti Prasad Vs. The State of Uttar Pradesh*, was approved by a Division Bench of the same Court in *Shyam Lal Vs. State of U.P. and Another*, . This latter decision of theirs was not only upheld on appeal but the view expressed therein was approved by their Lordships of the Supreme Court in - *Shyam Lal Vs. The State of Uttar Pradesh and The Union of India (UOI)*, . In this case, the petitioner appellant was appointed by the Secretary of State for India in Council to the India Service of Engineers as an Assistant Executive Engineer in 1923. In 1944 he was promoted to the rank of the officiating Superintending Engineer. After the attainment of independence he continued in service on the basis of a fresh agreement confirming the terms of his appointment as before. In 1953 certain charges leveled against the appellant were found by the Union Public Service Commission to have been proved and they submitted their report accordingly.

The President of India, after considering the case and the recommendations of the Commission, decided that the appellant should retire forthwith from service under Note 1 to Art. 465(1) of the Civil Service Regulations. The relevant part of Art. 465(a) quoted in the judgment provides that a retiring pension is also granted to an officer who is required by Government to retire after completing 25 years" qualifying service or more. and Note (1) appended to it is to the following effect:

Government retains an absolute right to retire any officer after he has completed twenty-five years" qualifying service without giving any reasons, and no claim to special compensation on this account will be entertained. This right will not be exercised except when it is in the public interest to dispense with the further services of an officer.

On behalf of the appellant it) was inter alia urged that compulsory retirement is nothing but a removal from service and the provisions of Art. 311(2) of the Constitution apply to the case of a compulsory retirement, and also that Note (1) to Art. 465(a) of the Civil service Regulations, in so far as it confers on the Government an absolute right to retire an officer who has completed 25 years" qualifying service without giving any reasons, is repugnant to Art. 311 of the Constitution. Dealing with those points together their Lordships, on a brief study of the history and development of the rule now embodied in Art. 311 and a consideration of the language of the article and the relevant rules, arrived at the conclusion that there was no force in either of the contentions and that the view taken by the Allahabad High Court was correct. In the unanimous judgment of the Court, Das J. observed:

Removal, like dismissal, no doubt brings about termination of service but every termination of service does not amount to a dismissal or removal. A reference to the Explanation to rule 49 quoted above will show that several kinds of

termination of service do not amount to removal or dismissal. Our recent decision in *Satish Chandra Anand Vs. The Union of India (UOI)*, fully supports the conclusion that Art. 311 does not apply to all cases of termination of service.

That was a case of a contract for temporary service being terminated by notice under one of the clauses of the contract itself and fell within Cl. (c) of the Explanation to rule 49 and Art. 311 was held by this Court not to have any application to the case. The question then is whether a termination of service brought about by compulsory retirement is tantamount to a dismissal or removal from service so as to attract the provisions of Art. 311 of the Constitution the answer to the question will depend on whether the dismissal or removal are to be found in the action of compulsory retirement.

There can be no doubt that removal - I am using this term synonymously with dismissal - generally implies that the officer is regarded as in some manner blameworthy or deficient, that is to say, that he has been guilty of some misconduct or is lacking in ability or capacity or the will to discharge his duties as he should do. The action of removal taken against him in such circumstances is thus founded and justified on some ground personal to the officer. Such grounds, therefore, involve the leveling of some imputation or charge against the officer which may conceivably be controverted or explained by the officer.

There is no such element of charge or imputation in the case of compulsory retirement.....

And the learned Judge concluded as follows:

The foregoing discussion necessarily leads us to the conclusion that a compulsory retirement does not amount to dismissal or removal and, therefore, does not attract the provisions of Art. 311 of the Constitution or of Rule 55 and that therefore, the order of the President cannot be challenged on the ground that the appellant had not been afforded full opportunity, of showing cause against the action sought to be taken in regard to him. Both the questions under consideration must also be answered against the appellant.

19. Another decision of the Supreme Court - *Jai Ram Vs. Union of India (UOI)*, which has been referred to by counsel for the parties, is not very much relevant and does not advance the case of either of them. The rule under which the appellant before the Supreme Court in this case was made to retire, provides that a ministerial servant may be required to retire at the age of 55 but should ordinarily be retained in service if he continues efficient, till the age of 60 years. On facts it was found that the appellant was ordered to retire on his own repeated and persistent requests submitted on the grounds that he had already completed 33 years service and that his peculiar family circumstances did not permit him to serve any longer. Three times the prayer was refused. The fourth application for the same purpose and on the very same grounds, however, met with a favourable response, and the appellant was allowed to retire on his attaining the age 55 years.

His suit thereafter for a declaration that the order passed by the Government of India retiring him from service was wrongful, void and inoperative & that he should be deemed to continue still in the service of the defendant was finally dismissed, on a Letters Patent Appeal, by a Bench of the Punjab High Court. In his further appeal to the Supreme Court, it was urged that the rule no doubt gives the Government the right to retire a ministerial servant at the age of 55, but that can be done only on the ground of his inefficiency. Consequently, before a servant coming within that category is required to retire at 55, it is incumbent upon the Government to give him an opportunity to say what he has to say against his premature retirement in accordance with the provisions of S. 240(3), Government of India Act, 1935 (now Art. 311 of the Constitution) and unless this is done, the order terminating his services cannot be held to be valid.

In view of their Lordships decision that when a servant has attained the age of 55 years and for some reason or the others himself confesses his inability to continue in service any longer and seeks permission for retirement it is only a useless formality to ask him to show cause as to why his service should not be terminated, the above contention was held to have no force. As regards the interpretation that according to the appellant's counsel could be placed on the particular rule under which the action was taken, Mukherjea J. in the course of his judgment observed:

We think that it is a possible view to take upon the language of this rule that a ministerial servant coming within its purview has normally the right to be retained in service till he reaches the age of 60. This is conditional undoubtedly upon his continuing to be efficient, we may assume, therefore, for purposes of this case that the plaintiff had the right to continue in service till 60 and could not be retired before that except on the ground of inefficacy. But that by itself affords no solution of the question that requires consideration in the present case.

20. It is on this observation that stress is being laid by S. Karam Singh in support of his contention that the petitioner before us has the right to be retained in service till he attains the age of 55 years. In the first instance, the rule under consideration in that case was totally different from the rules which are relied upon in the present case. It has to be remembered that here the Government, under the rules, expressly retains to itself the absolute right to retire on pension any of its employees on grounds which have no connection with the ability or capability of the person concerned. Secondly, the plaintiffs' right to continue in service till a particular age was only assumed by their Lordships for the purposes of that case and not finally decided. Obviously, therefore, the observation is of no help to the petitioner, nor does it in any way advance the case of the respondent.

21. I have not been able to appreciate the learned Advocate General's contention that Art. 363(1) of the Constitution ousts the jurisdiction of this Court to entertain the petition or to grant any relief thereon. The petitioner does not pray for enforcement of anything contained in the Covenant, nor does the dispute arise out of any of its provisions,, The mere fact that the respondent, in

addition to the rules of services, also relies upon one of the articles of the Covenant to justify its action does not amount to saying that the dispute arises out of the Covenant.

22. I do not also see any force in S. Karam Singh's contention that since no mention of any rules of Service Regulations was made in the order of retirement or even in the written reply submitted by the respondent, no reliance on them, in support of the action, can be placed at the stage of arguments. As a matter of fact, the respondent relies upon the Regulations simply to meet the petitioner's contention that he, under one of those very rules, has the right to continue in service for a particular period or till he attains a particular age. To be more precise, the petitioner content's that R. 9(1) (Vol. I) of the Pepsu Service Regulations entitles him to continue in service till he attains the age of 55 or completes a qualifying service of 25 years. It is in reply to this argument that the learned Advocate General relies upon Rr. 3(2) and 5(10) (Vol. III) of the same Regulations and urges that the petitioner has no such indefeasible right and that the Government's action in his case was fully justified. The contention is therefore, overruled.

23. The petitioner, as already observed, was retired because he could not be assimilated on any suitable post in the Union. The action outwardly or even below the surface, did not cast any reflection on his conduct or efficiency, nor was it taken because of any personal fault of the petitioner. The order, therefore, does not amount to "removal" and is not hit by Art. 311(2) of the Constitution. It is the breach of some statutory obligation or guarantee that affords a cause of action to a person adversely affected to complain that his services have been wrongly terminated. But nothing of the kind has been shown to exist in the present case.

24. In the result, the petition fails and is hereby dismissed. In view of the peculiar circumstances of the case, the parties are left to bear their own costs.

Kesho Ram Passey C.J

25. I agree.