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**(1978) 04 AHC CK 0052**  
**In the Allahabad High Court**  
**Case No : Special Appeal No. 5 of 1976**

Udai Narain

APPELLANT

Vs

State of U.P.

RESPONDENT

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**Date of Decision :** 22-04-1978

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Factories Act, 1948 — Section 112, 49, 50  
Fundamental Rules, 1963 — Rule 56(a)(1)  
Uttar Pradesh Factories Welfare Officers Rules, 1955 — Rule 21, 4, 5, 6, 7

**Citation :** (1978) 04 AHC CK 0052

**Hon'ble Judges :** Hari Swarup, J and D.N.Jha, J

**Final Decision :** Allowed

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## Judgement

Hari Swarup, J.

This appeal arises out of a judgment of a learned single Judge dismissing the appellant's writ petition. The petitioner had filed the petition for the issue of a writ to quash Annexure I, the order dated 21.2.1975 passed under rule 56 (a) (i) of the U.P. Fundamental Rules compulsorily retiring the appellant from service by giving three months' pay in lieu of notice.

The appellant was working as a Welfare Officer in the Government Press at Aishbough, Lucknow. On the date the order was passed the appellant had not completed 58 years of age. According to the appellant the State Government had no jurisdiction to pass the order of compulsory retirement as his services were not governed by the U. P. Fundamental Rules. The learned single Judge, who heard the writ petition, did not accept the contention and on the finding that the services of the appellant were governed by rule 56 (a) (i) of the U. P. Fundamental Rules dismissed the writ petition.

In the appeal the same contention has been repeated. The appellant was employed as a Welfare Officer in the factory known as the Government Press. Section 49 of the Factories Act provides for appointment of Welfare Officer. It

reads:

"49. Welfare Officers.(I) In every factory wherein five hundred or more workers are ordinarily employed the occupier shall employ in the factory such number of Welfare Officers as may be prescribed.

(2) The State Government may prescribe the duties, qualification and conditions of service of Officers employed under subsection (1).

Section 50 of the said Act gives to the State Government the power to make rules to supplement section 5 of the Act. Section 112 contains the general power of the State Government to make rules which runs as under:

"112. General power to make rules.The State Government may make rules providing for any matter which, under any of the provisions of this Act, is to be or may be prescribed or which may be considered expedient in order to give effect to the purposes of this Act."

As section 49 of the Factories Act (hereinafter to be referred to as the Act) required the appointment of Welfare Officers in every factory the State Government framed the U. P. Factories Welfare Officers" Rules, 1955. The petitioner's services are governed by these rules. Rule 3 deals with appointment, grades and emoluments of Welfare Officers. Rules 4, 5 and 6 also deal with appointment. Rule 7 makes the Welfare Officers subordinate to the General Manager of the factory. Rule 8 determines the status of the Welfare Officer and gives him the status of an officer of the factory and is made to be governed by similar rules regarding dearness allowance, bonus, provident fund, leave, housing, medical and other facilities. Rule 8A deal with gratuity. Other rules also deal with service conditions. Rule 15 deals with punishment and rule 21 deals with the retirement of the Welfare Officer. It reads as under;

"21. RetirementThe age of superannuation of a Welfare Officer shall be 58 years. Extension of service may, in deserving cases, be granted with the approval of the Labour Commissioner for a person of one year at a time, but not for a period beyond the age of 60 years."

The U. P. Factories Welfare Officers" Rules thus provide a complete code about the appointment, service conditions, punishment and retirement of the Welfare Officers. These rules govern the Welfare Officers in all factories whether owned by the State Government or by private persons. The appointing authority is the occupier of the factory. The occupier of the factory has been defined under section 2 (n) of the Act as under;

"2 (n) "occupier" of a factory means the person who has ultimate control over the affairs of entrusted to a managing agent, such agent shall be deemed to be the occupier of the factory;"

Rule 2 of Chapter I of the Uttar Pradesh Fundamental Rules provides:

"2. These rules apply to all Government servants the conditions of whose service

have been or may be prescribed by the Governor under subsection (2) (b) of section 241 of the Act.

The Act here means the Government of India Act, 1935 which will now be equivalent to Article 309 of the Constitution. The U.P. Welfare Officers' Rules have been framed not under these provisions but under the Factories Act, 1948. The appellant is thus a person whose appointment is not governed by the rules framed under constitution Act but by statutory rules that apply equally to Welfare Officers in every factory owned or not owned by the Government. The appointing authority of the appellant is the occupier of the factory (the Government Press) like the occupier of any other factory the appellant, cannot therefore be, deemed to be a Government servant the conditions of whose service have been or may be prescribed by the Governor under Article 309 of the Constitution. Accordingly, the U. P. Fundamental Rules do not apply to conditions of appellant's service. We are, therefore, with great respect to the learned single Judge, unable to agree with him.

The Fundamental Rules provide for general conditions applicable to Government servants regarding every matter including punishment of employees and their retirement. As these Rules do not apply to the appellant's employment and his conditions of service are controlled by the special rules, viz, the U. P. Fundamental Rules, which deals with compulsory retirement, cannot be made applicable to him. This provision related to the retirement of Government servants whose conditions of service are controlled by the U. P. Fundamental Rules and not to employees of factories appointed under the U. P. Welfare Officers' Rules. The State Government had thus no jurisdiction to compulsorily retire the appellant as his services were not controlled by the rules applicable to Government servants whose conditions of service are governed by the U. P. Fundamental Rules. The order of the State Government under Fundamental Rule 56 (a) (i) was thus passed without authority of law.

As the appellant has already crossed the age of 58 years there is no question of granting any consequential relief of reinstatement. He can be entitled only to arrears of salary for the period he could have remained in service i. e. till the age of superannuation was reached. As the material before us is not sufficient for determining the amount the appellant may be entitled to, on the basis of quashing of the impugned, order, no writ can be issued in this respect. The appellant will have to seek his remedy in proper proceedings.

In the result the special appeal succeeds. The judgment of the learned single Judge is set aside and the writ petition is allowed and a writ is issued in the nature purporting to be passed under Rule 56 (a) (i) of the U.P. Fundamental Rules dated 21. 2. 1975 compulsorily retiring the appellant from service as Welfare Officer in the Government Press at Aishbagh, Lucknow. The parties will bear their own costs.