

(1999) 12 PAT CK 0103

Patna High Court

Case No: C.W.J.C. No"s. 9989 and 11689 of 1997

Krishna Mohan Srivastava

APPELLANT

Vs

The High Court of Judicature at
Patna and Others
 Basudeo
Sharan Vs State of Bihar and
Others

RESPONDENT

Date of Decision: Dec. 17, 1999

Acts Referred:

- Industrial Disputes Act, 1947 - Section 25F

Citation: (2000) 1 PLJR 649

Hon'ble Judges: Shiva Kirti Singh, J; Aftab Alam, J

Bench: Division Bench

Advocate: Tej Bahadur Singh, Ram Kishore Singh, Binod Kumar in 9989, M/s. Ashok Kumar Sinha and Ravi Bhushan Prasad Sinha in 11689, for the Appellant; Shivendra Kishore for the High Court in 9989 and Resp. 2 in 11689 and M/s. Azfar Hasan, Shakeel Ahmad for the State in 9989 and Mr. Ashok Kumar Singh in 11689, for the Respondent

Final Decision: Dismissed

Judgement

Aftab Alam, J.

The question that arises for consideration in these two cases is whether the action of the State Government in retiring the two petitioners from service, compulsorily in terms of rule 74(b) (ii) of the Bihar Service Code, remains void and inoperative because payment of three month's pay and allowance in lieu of the notice was made to the petitioners long after the dates of their retirement as specified in their respective notices. The petitioner in C.W.J.C. No. 9989/97 assails the order of his compulsory retirement from service solely on the ground that the payment of three month's pay and allowance was made to him after the date of his retirement as specified in the retirement order. The petitioner in C.W.J.C. No. 11689/97 assails his order of retirement, apart from the above ground, on some other additional

grounds as well but the additional grounds are mostly decorative and the fate of the two writ petitions would ultimately depend on the answer to the question as framed above.

2. The two petitioners (one each in these two writ petitions) were members of the Subordinate Judicial Service of this State. Shri Krishna Mohan Srivastava, petitioner in C.W.J.C. No. 9989/97 was posted at the material time as Subordinate Judge. Shri Basudeo Sharan, petitioner in C.W.J.C. No. 11689/97 was posted at the material time as Additional Munsif. On a consideration of their entire service records the High Court took the decision that it would not be in public interest to retain them in service beyond the age of 50 years. The Registrar General of this Court by his letter, dated 10.12.1996 forwarded the decision of the High Court to the Secretary to the Government in the department of Personnel and Administrative Reforms and made the recommendation that the two petitioners, along with two others, be made to retire compulsorily, in public interest, under rule 74(b) (ii) of the Bihar Service Code on giving them three months" salary in lieu of three months notice.

3. On the basis of the decision of the High Court, retirement orders, dated 2.8.1997 were issued in respect of the two petitioners. In these orders (Annexure-1 in C.W.J.C. No. 9989/97 and Annexure-4 in C.W.J.C. No. 11689/97) issued in the name of the Governor of Bihar it was stated that as the petitioners had completed 50 years of age and further as in the opinion of the Governor it was in public interest to do so, the petitioners were being made to retire compulsorily in exercise of powers under rule 74(b) (ii) of the Bihar Service Code w.e.f. the forenoon of August 16, 1997 or the date of service of the order on them, whichever being earlier, and that they will be paid the amount equal to three months" pay and allowance in lieu of three months" previous notice.

4. The retirement order of Shri Krishna Mohan Srivastava was served upon him on 16.8.1997 and the retirement order of Basudeo Sharan was served upon him on 14.8.1997.

5. It is, however, an admitted position that neither of the two petitioners were given three months pay and allowance either before or at the time of service of their respective retirement orders. Shri Srivastava was finally paid a sum of Rs. 32,737.50 paise on 18.7.1997 that is slightly over a month after the specified date of his retirement.

6. Learned counsel for the petitioner stated that on the basis of the pay last drawn by Shri Srivastava, the amount equal to three months" salary and allowance would be Rs. 33,397.50 paise and thus the amount paid to him was slightly lesser than his three months" salary. We are not inclined to entertain this plea, based on the difference of computation, being raised for the first time before this writ court.

7. But the admitted position remains that the three months salary and allowance in lieu of three months previous notice was paid to Shri Srivastava a month after the

date of his retirement as specified in the order.

8. Mr. Tej Bahadur Singh, learned counsel for the petitioner repeatedly stated that he did not propose to question the High Court's recommendation for making Shri Srivastava compulsorily retire from service on completing 50 years of age but according to him the failure of the government to make payment of the three months salary and allowance to him in lieu of three months previous notice as provided under rule 74(b) (ii) was a fatal lacuna which rendered his retirement order void, ineffective and inoperative.

9. In the case of Shri Sharan the payment was delayed even further. He was paid his three months" pay and allowance on 9.1.1998, that is, over four months after the date of his retirement as specified in the retirement order.

10. Mr. Ashok Kumar Sinha, Sr. Advocate appearing for Mr. Sharan, petitioner in C.W.J.C. No. 11689/97 adopted all the arguments advanced in connection with the non-payment of three months" pay and allowance till the time of service of the retirement order. Apart from this he also tried to assail the compulsory retirement of Shri Sharan on some other grounds.

11. Before advertiring to the main question concerning the true import and meaning of rule 74(b) (ii) it will be, therefore, necessary to consider and dispose of the additional grounds raised by Mr. Sinha.

12. Mr. Sinha submitted that under rule 74(b) (ii) a government servant could be retired on attaining 50 years of age but not thereafter. According to him if the concerned employee was not made to retire immediately on attaining 50 years of age he could not be retired thereafter until he attained the age of 58 years, the normal age of retirement. He made reference to some government instructions advising the different departments to maintain the service records of each employee and to review those records just before the concerned employees attained the age of 50 years. The submission is simply to be noted before it is rejected. From a plain reading of the rule it is evident that a government servant can be made to retire compulsorily, in public interest, on his attaining 50 years of age or on any date thereafter.

13. Mr. Sinha then tried to question the High Court's decision to compulsorily retire Shri Sharan. He submitted that the High Court had failed to consider properly the service records of Shri Sharan and the records pertaining to the period 1990-93 were not considered at all. The submission regarding non-consideration of the records for the period 1990-93 were advanced on the basis of the statements made in the counter affidavit filed on behalf of the High Court and a reference in that regard was made to sub-paragraphs c, d and e of paragraph 8 of the High Court's counter affidavit. The submission is wholly unfounded. The various subparagraphs of paragraph 8 enumerate the large number of adverse entries, for different years, found in the service record of Shri Sharan. In so far as the" period 1990-93 is

concerned, the only remark is that several transfer petitions were received on the ground of petitioner's integrity; that, however, is not to say, that the service record of Shri Sharan for the period 1990-93 was very good and that was not taken into consideration.

14. An idea of the service record of Shri Sharan can be had from the simple fact that he joined the service on 2.6.1975 as Judicial Magistrate and at the time of his compulsory retirement from service in August, 1997 he was still working as Additional Munsif. On a careful perusal of the materials brought before us we are satisfied that the High Court was perfectly justified in taking the decision to make Shri Sharan retire from service compulsorily in terms of rule 74(b) (ii) and there was absolutely no error in that decision.

15. This brings us to consider the petitioners' challenge to their retirement on the technical ground of non-compliance with the provisions of rule 74(b) (ii).

16. At this stage it would be best to examine the rule which is as follows:

(ii) The appointing authority concerned may after giving a Government Servant at least three months' previous notice in writing, or an amount equal to three months' pay and allowance in lieu of such notice, require him in public interest to retire from service on the date on which a Government Servant completes thirty years of quantifying (sic♦qualifying) service or attains fifty years of age or on any date thereafter to be specified in the notice.

(emphasis added)

17. The submission of Mr. Tej Bahadur Singh and Mr. Sinha appearing for the two petitioners was simple. They pointed out that the rule empowered the appointing authority to require a government servant to retire from service after giving him either three months previous notice or three months pay and allowance in lieu of such notice. In other words, three months previous notice or payment of three months pay and allowance in lieu of notice was a condition precedent for making a government servant retire compulsorily in terms of that rule.

18. There appears to be substance in the submissions made on behalf of the petitioners.

19. Mr. Azfar Hasan, learned S.C. 7 appearing for the State in C.W.J.C. No. 9989/97 strenuously tried to save the situation for the State. He first submitted that though the giving of three months previous notice in writing or an amount equal to three months pay and allowance in lieu of such notice may be held to be mandatory requirement of the rule, the point of time at which payment of three months pay and allowance was to be made must be held to be directory. According to him, therefore, the retirement of the Government servant would be completely unaffected and would take effect from the date specified in the retirement order regardless of the fact whether the payment of three months pay and allowance was

made before or after the date of retirement. Mr. Hasan contended that all that the government servant, being made to retire, was entitled to was an amount equal to three months, pay and allowance and as long as that amount was paid to him he could not challenge the order of retirement on the ground that the payment was made after the date of retirement. In other words, what was the mandatory requirement of the rule was the payment of the amount and the point of time at which payment was to be made was only directory and any delay in payment, therefore, will not affect (sic♦affect ?) the order of retirement.

20. I am unable to accept the submission and in my view there is an obvious fallacy in it. From the rule it is evident that the appointing authority proceeding to retire a government servant has two courses open to it, either to give three months previous notice in writing or an amount equal to three months pay and allowance in lieu of such notice. These are the two alternative courses to be exercised by the appointing authority at its sole discretion. Now, it is undeniable that the first alternative is absolutely mandatory, that is to say, in case the appointing authority opted to take the first course, the government servant concerned could only be retired from a date falling at least three months after the date on which he was given the notice of his retirement in writing. In order to illustrate the point, if on January 1, a government servant is given a notice that he would retire w.e.f. February 1, of that year such a notice would be totally ineffective and inoperative. The Government servant would not retire from February 1 as the notice would not be in accordance with the rule. He would also not retire from April 1 of that year (three months after the service of the notice) as that date was not specified in the notice given to him. It is thus clear that three month's previous notice in writing is a mandatory requirement for making a government servant retire under that rule. Now, if one of the two alternatives is held to be mandatory it does not stand to reason that the other alternative to be taken recourse to at the sole discretion of the appointing authority would not be equally mandatory.

21. It must, therefore, be held that the order of retirement can take effect only in case payment of three months pay and allowance is made to the concerned government servant before or in any event, on the specified date of his retirement.

22. Mr. Hasan then submitted that even if the payment of three months pay and allowance was held to be mandatory requirement for making a government servant compulsorily retire from service in terms of rule 74(b) (ii), the two petitioners must be deemed to have retired from service on the respective dates on which payments were made to them. It is noted above, that payment of three months pay and allowance was made to Shri Srivastava on 18.7.1997 and to Shri Sharan on 9.1.1998. According to Mr. Hasan the two petitioners must, therefore, be deemed to have retired from the aforesaid two dates respectively, conceding grudgingly that in that event they might be entitled to their salary upto their respective dates of retirement. He proposed that the Government should pay to Shri Shrivastava his salary upto

17.7.1997 and to Shri Sharan upto 8.1.1998 and that would be the end of the matter.

23. Even this submission made by Mr. Hasan is quite unacceptable and there are more reasons than one for not accepting it. First, it is held above that payment of three months salary and allowance is a mandatory pre-condition for requiring a government servant to retire from the date specified in the notice. That being the position, the failure to comply with the requirement would render the action incurably vitiated. Nonpayment of three months" salary will make the action of the appointing authority in requiring a government servant to retire from service void and honest and payment of salary for the period between the date of his retirement as specified in the notice and the date on which he was later paid the three months salary and allowance will not cure the irregularity and will not validate an action which was invalid in its origin. Secondly, the concerned employees cannot be deemed to have retired from the later date on which he was given three months salary and allowance simply because that is not the date of his retirement specified in the notice. It may be noted that the rule requires the date of retirement to be specified in the notice. Otherwise also, a government servant whose appointment according to the service rules can only be made by a written instrument cannot be made to retire from service by a verbal order in the absence of a date of retirement specified in a notice in writing. It is incomprehensible that a government servant should one day find on his desk an envelope containing his three months pay and allowance and be told verbally that he was being made to retire from the following date. This would be the position in practice if the date of retirement as specified in the notice is not a definite and firm date and retirement could take effect from a later date on payment of three months pay as submitted by Mr. Hasan.

24. Thirdly, if the submission of Mr. Hasan were to be accepted it would lead to many uncertainties and would make the whole situation practically unworkable. Let us take a case where a government servant is given a notice in writing on January 1, that he was being made to retire compulsorily from the following date. He is not given three months pay and allowance along with the notice. Now, what will be his position on the following date and the days following that date? Admittedly, he cannot be deemed to have retired because of non-payment of three months pay and allowance. He is neither under suspension. In that situation will it be open to him to come to the office normally and proceed with the files and cases which he was dealing with on the previous day when he was given the notice of his retirement? And in this state how long can he be continued by the appointing authority? Can he be continued in this state for weeks (as Shri Srivastava) or for months(as Shri Sharan) or even for years before the three months pay and allowance as promised in the retirement order is finally given to him. To my mind this would be highly anomalous situation and it can never be the intention of the makers of the rule.

25. For the foregoing reasons, I am unable to accept even the second submission made by Mr. Hasan.

26. To my mind the requirements of rule 74(b) (ii) are plain and simple. The Appointing Authority proceeding to require a government servant to retire in terms of the rule is obliged to give him a notice in writing, specifying the date of his retirement. In case the Appointing Authority opts to take the alternative of three months notice, the specified date of retirement must fall at least three months after the date of service of notice on the concerned government servant. In the other case the payment of three months pay and allowance in lieu of three months notice must be made to the concerned government servant either before or along with the service of retirement notice, failing which the purported retirement would be honest and a nullity in the eyes of law.

27. Acceptance of three months pay and allowance by the concerned government servant on a date later than the one specified in the retirement order would also not alter the legal position and would not validate an action which was initially void.

28. I am supported in my view by a bench decision of the Delhi High Court in L.C. Bawa vs. V.K. Kapoor and another, 1987 LIC 1878. In that case the concerned government servant was given a cheque for his three months pay and allowance at the time of his compulsory retirement. The cheque being undated was not honoured by the Bank on its presentation. The concerned authority later rectified the cheque by putting a date thereon but the court held that the cheque being dishonoured on its presentation was tantamount to the concerned government servant not being paid three months salary and allowance at the time of his retirement and the non-payment rendered his retirement invalid.

29. At this stage it must be noted that Mr. Shivendra Kishore counsel appearing for the High Court brought to our notice a decision of the Supreme Court in State of U.P. and another vs. Raj Kishore Bhargava, 1992 (2) SCC 92. It is a very brief order in a case arising from the U.P. rules. We do not know the exact language of the relevant rule in U.P. and the Supreme Court order unfortunately does not give all the facts. The two relevant paragraphs from the order are as follows :

2. The respondent was compulsorily retired from service on February 3, 1990. The High Court has set aside that compulsory retirement on two grounds, namely (1) that three months" salary in lieu of notice has not been paid simultaneously along with the order of Compulsory retirement, and (2) in the Screeing Committee which considered the case of the respondent the participation of Shri R.P. Goyal who had given an adverse entry in one year against the respondent has vitiated the order of compulsory retirement.

3. The High Court seems to be too technical. Three months salary in lieu of notice was sent by cheque to the respondent. The cheque was sent on April 5, 1990. There is no reason to disbelieve this fact. In the affidavit on behalf of the government it

has been stated that the cheque was sent to the respondent but it was returned. It is not in dispute that the cheque was drawn, and there is no reason why it should be disbelieved merely on the ground that some other letter has not been produced.

30. On the basis of this decision I am unable to hold that rule 74(b) (ii) of the Bihar Service Code does not have the mandatory requirement of payment of three months pay and allowance either before or at least simultaneously along with the order of compulsory retirement, or that the requirements of the rule were duly complied with in the case of these two petitioners.

31. On the basis of the discussions made above it must be held that the action of the State Government in purporting to retire the two petitioners from service from the dates specified in the retirement orders, dated 2.8.1997 was ineffective and inoperative. The two petitioners, therefore, continue to be in service in the eyes of law and are entitled to receive their salary and allowance till they are made to retire afresh in accordance with law.

32. Shri Srivastava petitioner in C.W.J.C. No. 9989/97 does not even question the High Court's decision to retire him from service. The challenge raised by Shri Sharan in that regard has absolutely no merit. Therefore the High Court's decision to compulsorily retire them from service in terms of rule 74(b) (ii) remains completely unaffected and undisturbed and now it is for the government to execute that decision in accordance with rules and in the light of this judgment. The State officials, particularly the Secretary Personnel and Administrative Reforms Department is therefore directed to take steps, without any loss of time for, issuance of fresh orders requiring the two petitioners to retire in accordance with rule 74(b) (ii) after complying with the requirements of the rule and the directions given in this judgment.

33. In the result, these two writ petitions are allowed to the extent indicated above but with no order as to costs.

Shiva Kirti Singh, J.

34. I had the privilege of going through the judgment in these cases proposed by learned brother Aftab Alam, J. since the facts necessary for disposal of these cases have been most lucidly mentioned in his judgment hence, I find no necessity to mention the same again. However, after noticing the provisions of Rule 74(b) (ii) of the Bihar Service Code which have already been quoted in paragraph 17 of the judgment, a doubt has arisen in my mind as to whether the provisions requiring giving of at least three months previous notice in writing or an amount equal to three months pay and allowance in lieu of such notice before requiring the government servant concerned to retire from service in public interest can have such mandatory force as to render an order of compulsory retirement issued in public interest but not exactly in the manner prescribed, void ab initio or such order will remain voidable, though admittedly not being in conformity with the

requirement of the rule.

35. The answer to the aforesaid question poses a complex problem and for resolving the same it is necessary to examine the object of the Rule in question and the duties and rights sought to be created. The rules contained in the Bihar Service Code, 1952 (hereinafter called as the Code) apply to all government servants under the rule making control of the State Government and they also apply to the staff attached to the Patna High Court and to the Secretariat staff of the Assembly and Council. Rule 74(a) provides that the State Government may require any government servant who has completed 21 years of duty and 25 years of total service from the date of his first appointment to retire from government service, if the State Government considers that his efficiency or conduct is not such as to justify his retention in service. It further provides that for such compulsory retirement no claim to any special compensation shall be entertained. Rule 74(b) (i) gives power to a government servant to give at least three months previous notice and retire from service on or after completing 30 years of qualifying service or attaining 50 years of age and thereafter, Rule 74(b) (ii) again contains provisions, as noticed earlier, for compulsory retirement of a government servant by the appointing authority concerned on the ground of public interest on and after a government servant has completed 30 years of qualifying service or has attained 50 years of age. Considering the aforesaid provisions in totality it is manifest that the State Government or the appointing authority concerned has been given powers to effect premature retirement of a government servant in given circumstances either on the ground that the efficiency or conduct of the concerned government servant is not such as to justify his retention in service or the public interest requires the concerned government servant to be retired from service. To my mind, these enabling provisions clearly have, as their object the advancement of public interest. While exercising such a power the State Government or the appointing authority concerned must be deemed to be performing a public duty by ordering for compulsory retirement of a government servant whose efficiency or conduct is not such as to justify his retention in service or whose compulsory retirement is found to be in public interest.

36. Viewed from this angle, the enabling provision under Rule 74(b) (ii) appears to be for the benefit of general public and the condition imposed such as requirement of a three months notice or three months pay and allowance in lieu of such notice prior to order for compulsory retirement have been prescribed only for the benefit and protection of the individual government servant in his private capacity. In such circumstances, in my view, it appears doubtful as to whether the requirement of prior notice or prior payment of requisite pay and allowance in lieu of such notice should be held to be mandatory, more so when the provision is not couched in negative words so as to prohibit use of the given power without complying with the prescribed condition and no consequence has been mentioned in the Code for any deviation or non-compliance.

Thus, *prima facie* the time factor indicated by use of the word "after" in rule 74(b) (ii) does not appear to be mandatory. This view also finds support from text of the book "Legislation and Interpretation" by Sri Jagdish Swaroop at pages 392 to 394 (1989 edition). One such principle is♦

Where the prescription of an Act relates to the performance of a duty by a public officer, the breach of such prescription, when it does not cause any real injustice, does not invalidate the act done under the Act and, therefore, such prescriptions are merely directory.

37. The reason underlying this principle is that third parties like the public in general have no control over such breach and hence they cannot be made to suffer by holding the prescriptions mandatory.

38. The other relevant and applicable principle stated in the aforesaid treatise is♦

Where a public officer is directed by a statute to perform a duty within a specified time, the provisions as to time are only directory and in deciding whether a provision is mandatory or directory, the possibility of justice suffering from a too rigid application of time limit should be taken into account.

However, in the facts of these cases I do not find it essential to decide the aforesaid question finally because in my view, these writ applications have to be decided against the petitioners on the ground of waiver and also on the ground that no mandamus should be issued for allowing a demand which was not raised by the petitioners before the authorities.

39. So far as waiver is concerned, it is well established in law that personal rights, may by contract or voluntary renunciation be parted with or waived. Everyone has a right to waive the advantage of a law made for the benefit or protection of an individual and which may be dispensed with without infringing any public right or public policy. This aspect of the matter finds support from the judgment of the Supreme Court in the case of [Shri Lachoo Mal Vs. Shri Radhey Shyam,](#)

40. Since the argument of learned counsel for the petitioners is that the relevant provision in Rule 74(b) (ii) is mandatory and the breach thereof has rendered the order of compulsory retirement of petitioners a nullity, and since instead of finally deciding the question of the provisions being mandatory I have assumed them to be mandatory, the question falling for determination is whether an act done in breach of a mandatory provision is per force a nullity. On this issue the judgment of the Apex Court in the case of [Dhirendra Nath Gorai and Subal Chandra Shaw and Others Vs. Sudhir Chandra Ghosh and Others,](#) is of considerable help. In paragraph 6 of the said judgment, the Apex Court presumed the relevant provisions to be mandatory and thereafter came to a conclusion that even in case of violation of a mandatory provision proper tests have to be applied to find out whether the deviation from law has taken away the foundation or authority for the proceedings rendering it a nullity

or whether the deviation is merely an irregularity. The test was quoted thus♦

It is difficult sometimes to distinguish between an irregularity and a nullity; but the safest rule to determine what is an irregularity and what is a nullity is to see whether the party can waive the objection; if he can waive it, it amounts to an irregularity; if he cannot, it is a nullity.

41. So far as the provisions in rule 74(b) (ii) of the Code are concerned, as discussed earlier, the relevant part requiring notice or salary and allowances in lieu thereof have been inserted only for the benefit and protection of the individual government servant concerned who can dispense with the same without infringing any public right or public policy. So far as the relevant facts on this issue are concerned, it is clear that after service of impugned order of compulsory retirement the petitioners accepted the same without any protest to the concerned authorities; they never worked or attempted to work on their posts and subsequently accepted the pay and allowances in lieu of three months notice, again without any protest. In these facts, in my view, although the petitioners had a right in law to get the salary and allowances in lieu of notice prior to their compulsory retirement but the said right being a individual and private rights of the petitioners, has been relinquished by them by their conduct and hence, their prayer before this Court on the basis of aforesaid right cannot be allowed on account of waiver.

42. Even in a case of industrial employee invoking benefits of section 25F of the Industrial Disputes Act, a Bench of this Court in the case of Chandradeep Paswan v. Chairman and Managing Director of Allahabad Bank (1983 PLJR 161) refused to grant any benefit to the petitioner of that case by applying the principle of waiver which in that case was inferred on the basis of the fact that the petitioner of that case had accepted a fresh employment without any protest etc. In such circumstances, there does not appear to be any difficulty in applying the principle of waiver in the case of petitioners in these cases who happened to be government servant and in the matter of need for statutory protection in such matters cannot be placed higher than workmen in industrial establishments,

43. As indicated earlier there is one more ground on which the petitioners in these cases, in the facts and circumstances of the case, cannot be granted the relief sought for more so on the technical ground urged by them. It is settled that a writ application for issuance of a writ of mandamus must be preceded by a distinct demand for performance of the duly which is alleged to have been not performed by the respondents, in order to give the party an opportunity to consider whether he should comply or not. Such demand may be shown to have been met by a refusal either by words or conduct. For the aforesaid principle the judgment of the Supreme Court in the case of Saraswati Industrial Syndicate Ltd. and Others Vs. Union of India (UOI), specially paragraph 24 thereof may be usefully referred to. A perusal of the writ petitions shows that neither of the petitioners made any demand upon the concerned respondents for payment of three months salary and allowances prior to

or at least simultaneously with the order of compulsory retirement. No such demand was made either on receipt of the impugned order or ever thereafter. Such omission, in the facts of the case, is not at all a technical omission but in fact if such a notice of demand had been given, the respondent could have chosen to meet the said demand much earlier. If now the contention of the petitioners is accepted then they would be held entitled to salary for the entire intervening period without having worked or without having demanded to work and the respondents would be forced to once again pay the amount of three months salary and allowances although the same has already been paid to the petitioners and they received the same without any protest.

44. No doubt, the provisions of relevant Service Rules applicable in State of Uttar Pradesh in similar situation have not been brought before us but from the judgment of the Hon"ble Supreme Court in the case of State of UP and another vs. Raj Kishore Bhargava [1992 (2) SCC 92] this much is clear that in matter of compulsory retirement when the High Court interfered on account of non-payment of three months salary in lieu of notice, the Apex Court disapproved such interference and set aside the order of the High Court with an observation that the High Court seems to be too technical. In the aforesaid facts and circumstances, in my view, the petitioners in both these cases are not entitled for the relief that they have prayed for and accordingly, these writ applications are dismissed but without any order as to costs.