of the sale by auction was *ultra vires* the powers of the Municipal Committee and cannot be enforced. On behalf of the petitioners it is stated that the Municipal Committee has the power under section 188(g) of the Act to fix limits for the purpose of collecting octroi and in exercise of that power, the Municipal Committee fixed such limits by excluding Fateh Mandi and the Municipal Committee should be compelled to keep Fateh Mandi out of octroi limits because of term No. 14 of the auction-sales. All these matters involve complicated questions of law and fact and, as we have said above, for lack of material on the record cannot be determined in these writ petitions. Numerous judgments have been brought to our notice by the learned counsel on both sides in support of their respective contentions but we find no necessity to refer to them as we are not deciding these pleas on merits and prefer to dismiss these petitions on the first two grounds referred to above.

(11) For the reasons given above, these petitions are dismissed but without any order as to costs because of the difficult nature of the questions canvassed in the writ petitions.

Mehar Singh, C.P.—I agree.

D. K. Mahajan, J.—So do I.

R.N.M.

FULL BENCH

Before D. K. Mahajan, P. C. Pandit and C. G. Suri, JJ.

PUNJAB STATE,—*Appellant*

versus

MOHAN SINGH MAHLI,—*Respondent*

Letters Patent Appeal No. 552 of 1968

December 18, 1969.

Constitution of India (1950)—*Article* 309—*Punjab Civil Services Rules (Vol. II)—Rule* 5.32—*Government employee liable to be retired after attaining age of 55 years by three months notice—Government—Whether can retire such employee by paying him three months salary and allowances—Order of retirement passed without notice and without payment of salary and allowances—Such order—Whether illegal.*

Held (by majority Mahajan and Pandit, JJ., Suri, J., Contra.), that under rule 5.32(c) of the Punjab Civil Services Rules Vol. II, the appointing authority has got an absolute right to retire any government servant, except, one belonging

to Class IV, on or after he has attained the age of 55 years without assigning any reason. Similarly, the Government servant is also entitled to seek retirement on or after reaching that age. Under this rule, the government servant has no inherent right to stick to the job after he has attained the age of 55 years. All that he can claim is three months' notice. The Government can give the employee three months' salary and allowance in lieu of the said notice. There will occur no material prejudice if instead of giving three months' notice, an employee is paid three months salary as his service will be counted up to the end of notice period for which salary had been paid to him. The giving of not less than three months' notice mentioned in the rule is not such a condition, the non-compliance of which will result in the retirement order becoming void. If the required notice is not given or even if the three months' salary and allowances are not paid, the retirement order will not become illegal, because that is not a condition precedent for retiring a government servant after he has attained the age of 55 years. The employee, undoubtedly, will be entitled to get three months' salary and allowances, if he is retired forthwith. That right cannot be denied to him. But this is the only right that he possesses under this rule, because the appointing authority has the undisputed right to retire on or after he has attained the age of 55 years without assigning any reason whatsoever. The retirement order will come into operation immediately after it is passed and conveyed, even if the required notice of three months is not given or three months' salary and allowances in lieu thereof are not paid. The employee is, however, entitled to get the salary and allowances for that period from the Government. (Para 22)

Held (*per Mahajan, J.*) that the Government under Rule 5.32 has the absolute right to terminate the services of its employees who had attained the age of 55 years and the only requirement is that before termination the employee should be given three months' wages. Rule 5.32 is merely an enabling rule. The effect of notice under the rule or payment of salary and allowances in lieu of notice is merely to fix the period which will be taken into account in reckoning his total service. The rule is not mandatory. The Government servant has no right at the age of 55 years and what is there which is going to be protected. The pleasure of the master is absolute and, therefore, on no principle the rule can be held to be mandatory. (Paras 28 and 29)

Held, (per Suri, J. Contra.) that if a government servant can tag on the notice period of three months to the length of service actually put in by him when he is served with notice of premature retirement, the advantage accruing to him can far out-weigh the pleasure of free time and leisure and the un-earned emoluments for the notice period. As a government servant nears superannuation, every month of service put in by him means an increase in his gratuity and pension and also in the average pay on the basis of which these pensionary or other benefits are calculated. If the notice under rule 5.32 deprives a person benefits like gratuity, pension, Government accommodation, house rent allowance, free medical aid, etc., the notice conforms neither to the letter nor to the spirit of Rule 5.32(c)(ii). Hence under this rule Government cannot retire an employee

on or before he attains the age of 55 years by giving him three months' salary and allowances in lieu of three months' notice unless in addition to the offer of three months' salary and allowances in lieu of notice, it is further made clear that the gratuity, pension and other like benefits of the prematurely retiring Government employee would be safeguarded as if he had continued in service for the notice period and that he would be entitled to tag on the notice period of three months to his length of service for the purposes of calculation of these benefits.

(Paras 30, 33 and 42)

Case referred by the Hon'ble Mr. Justice Prem Chand Pandit and the Hon'ble Mr. Justice C. G. Suri on 12th November, 1969 to Full Bench for decision of an important question of law involved in the case...The case was sent back by the Full Bench consisting of the Hon'ble Mr. Justice D. K. Mahajan, the Hon'ble Mr. Justice Prem Chand Pandit and the Hon'ble Mr. Justice C. G. Suri, on 18th December, 1969 after decision of the law point to the Division Bench for final orders.

Letters Patent Appeal under Clause X of the Letters Patent against the judgment of Hon'ble Mr. Justice Prem Chand Jain passed Civil Writ No. 1037 of 1968.

MELA RAM SHARMA, DEPUTY ADVOCATE-GENERAL I(PUNJAB) WITH M. P. SINGH GILL, ASSISTANT ADVOCATE-GENERAL (PUNJAB), for the Appellant.

ANAND SWARUP, SENIOR ADVOCATE, WITH G. S. CHAWLA, ADVOCATE, for the Respondent.

ORDER OF DIVISION BENCH

PANDIT, J.—This is an appeal under Clause X of the Letters Patent filed by the State of Punjab against the decision of P. C. Jain J. by which he accepted a petition under Articles 226 and 227 of the Constitution filed by Mohan Singh Malhi, respondent.

(2) The respondent joined service in the United Punjab as a Veterinary Assistant Surgeon on 1st December, 1933. Later, on 4th July, 1939, he was taken in the Punjab Veternary Service, Clase II, by direct recruitment by the Public Service Commission and posted as Deputy Superintendent (Civil), Veterinary Department. He was confirmed on 4th July, 1941. He was then promoted to the Punjab Veternary Service, Class I with effect from 5th August, 1942, and confirmed as such on 5th August, 1944. Subsequently, he held the post of the Director of Animal Husbandry and Warden of Fisheries, Pujab, from 16th March, 1957 to 14th August, 1959. Thereafter,

Pritam Singh Brar was appointed Director in his place. When the said Pritam Singh Brar completed the age of 56 years, the respondent was again appointed Director, Animal Husbandry, and he took over charge of this post on 4th August, 1965. He continued as such, when on 2nd September, 1967, he received the impugned order for his retirement on payment of three months' salary and allowances in lieu of the notice required under rule 5.32 (c) of the Punjab Civil Services Rules, Volume II. That led to the filing of the writ petition in this Court in March, 1968.

(3) The impugned order was attacked on the ground that no notice, as required by the relevant rule, had been served on the respondent. According to him, he could be retired by the appointing authority on or after he attained the age of 55 years of giving him not less than three months' notice and under the law, he could not be paid three months' salary and allowances in lieu thereof. He was born on 6th August, 1911, and was to attain the age of supernnuation on 5th August, 1969, when he would have been 58 years old.

(4) The reply of the Government was that the respondent had been retired in accordance with the relevant rule and he was entitled either to three months' notice or three months' salary and allowances in lieu thereof.

(5) The learned Single Judge came to the conclusion that the requirement of the relevant rule was giving of not less than three months' notice. Under the said rule, there was no provision for the tender or the offer of payment of three months' pay in lieu of the notice. According to the impugned order, the respondent had not received notice in terms of rule 5.32 (c). That being so, the order of his retirement was contrary to law. The said order was, consequently, quashed. Against this decision, the present appeal has been filed by the State of Punjab.

The relevant rule reads thus——

"5.32(c) 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 months' 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 55 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."

(6) The sole point for determination in this case is whether under this rule the Government can retire an employee on or after he attains the age of 55 years by giving him three months' salary and allowances in lieu of three months' notice.

(7) The contention of the learned counsel for the appellant was that the Government had got an absolute right to retire its employee on or after he had attained the age of 55 years without assigning any reason. All that the employee was entitled to was either three months' notice or three months' salary and allowances in lieu there-of. In support of this contention, the learned counsel relied on a Bench decision of this Court, consisting of Harbans Singh and J. N. Kaushal JJ., in *Union of India* v. *Lachhmi Narain* (1). *In Lachhmi Narain's case*, reliance was placed on another Bench decision in (*The State of Punjab* v. *Ved Parkash Vohra*) (2). In the latter authority, the service of Ved Parkash Vohra, who was a temporary Engineer, were terminated with immediate effect. The case of the employee was that the said termination was penal and the safeguards provided by Article 311 of the Constitution were attracted which had not been satisfied. The case of the Government, on the other hand, was that the employee being a temporary hand, his services were terminated strictly in accordance with the terms of his employment. He would, however, be given three months' pay in lieu of notice. The Bench came to the conclusion that the termination of service did not im-

(1) I.L.R. (1967) 2 Pb. & Hry. 533=1967 S.L.R. 286.

(2) L.P.A. No. 345 of 1964 decided on 16th July, 1965.

pose any punishment on the employee and he was, therefore, not entitled to the protection of Article 311 of the Constitution. No service rule was, however, being interpreted in that case.

(8) Counsel for the respondent, on the other hand, argued that according to the relevant rule, a notice for a period of not less than three months was necessary before an employee could be retired on or after his attaining the age of 55 years. In support of this submission, he referred to two decisions of Tek Chand, J., in *Chaman Lal Kapur* v. *The State of Punjab* (3), and *Mohan Singh Ex-Deputy Ranger* v. *The State of Haryana* (4). It was also contended that the decision in *Lachhmi Narain's case* (1), was cited before Tek Chand, J., in *Mohan Singh's case* (4), and the same was distinguished by the learned Judge on the ground that the language of the rule, which was being interpreted in that case, was different from rule 5.32 (c). It might be mentioned that P. C. Jain, J., agreed with Tek Chand, J., and on that ground he accepted the writ petition

(9) The point involved in the present appeal is, undoubtedly, going to have far-reaching consequences and affect a large number of cases. It is, therefore, desirable that the law on the subject may be settled by a larger Bench to set at rest any controversy that might arise on the interpretation of rule 5.38 (c).

We, therefore, direct that the following question of law be settled by a Full Bench:—

> "Whether under rule 5.32 (c) of the Punjab Civil Services Rules, Volume II, the Government can retire an employee on or after he attains the age of 55 years by giving him three months' salary and allowance in lieu of three months' notice."

Let the papers of this case be placed before my Lord the Chief Justice for necessary orders in this respect at a very early date.

ORDER

PANDIT, J.—The following question of law has been referred to us for decision:—

> "Whether under rule 1.32 (c) of the Punjab Civil Services Rules, Volume II, the Government can retire an employee

(3) 1967 S.L.R. 924.
(4) I.L.R. (1968) 2 Pb. & Hry. 434=1968 S.L.R. 461.

on or after he attains the age of 55 years by giving him three months' salary and allowances in lieu of three months' notice."

(11) The facts giving rise to this reference have been stated in the referring order dated 12th November, 1969, prepared by me, and it should be read as a part of this judgment.

(12) The respective contentions of the learned counsel for the parties have already been mentioned in the order of reference. Nothing substantial was added to them before us. Counsel for the respondent, however, has put his case like this. He argued that his client had an absolute right to continue in service up to 58 years under rule 3.26 of the Punjab Civil Services Rules, Volume I, and if the Government wanted to retire him on his attaining the age of 55 years under rule 5.32 (c) of the Punjab Civil Services Rules, Volume II, then that rule had to be literally complied with. That rule, according to the learned counsel, was mandatory in nature. Counsel also pointed out that where the intention was that the Government could give its servant a sum equivalent to the amount of his pay plus allowances in lieu of notice, the rule making authority specifically said so in the rule itself, as was done in rule 5 of the Central Civil Services (Temporary Services) Rules, 1949. No such power is given to the Government under rule 5.32(c) and it meant that the rule making authority did not want the Government to have this discretion. Main reliance for this submission was, however, placed on the authorities already quoted in the order of reference.

(13) Before dealing with the contentions of the learned counsel for the respondent reference may be made to the relevant part of rule 3.26, which is as under:—

"3.26. (a) Except as provided in other clauses of this rule, the date of compulsory retirement of a Government servant other than a Class IV Government servant, is the date on which he attains the age of 58 years. He must not be retained in service after the age of compulsory retirement, except in exceptional circumstances with the sanction of competent authority on public grounds, which must be recorded in writing."

As regards the argument based on this rule, it might be stated that the respondent never took up this position in the writ petition.

This point was neither argued before the learned Single Judge nor before the Letters Patent Bench. Larned counsel conceded that on attaining th age of 55 years, a Government servant could be retired without assigning any reason whatsoever. That means that he has a right to continue in service up to 55 and not 58 years and thereafter, he can be made to retire after complying with rule 5.32 (c). It might also be mentioned that this precise contention was raised before a Full Bench of this Court in *Pritam Singh Brar* v. *The State of Punjab and others* (5). There it was urged that: "The petitioner has an absolute right to continue in service up to the age of 58 years under rule 3.26. Rule 5.32 relates to grant of pension and cannot control or limit the content and the amplitude of the provisions contained in rule 3.26". This contention was repelled and it was observed that it had hardly any merit and could not be acceded to. There is, however, no doubt that before a Government servant could be retired on his attaining the age of 55 years, compliance with the provisions of rule 5.38 (c) had to be made and a valid notice given thereunder. It is also true that whether rule 5.32 (c) is mandatory or directory, it has to be complied with. We are again left with the question that if the Government, in lieu of three months' notice mentioned in rule 5.32 (c), gives three months' salary and allowances to its employee, will it be a compliance wifh the rule or not? This is the precise question which has been referred to us for determination.

(14) Now let us examine the various authorities cited by the parties. In *Chaman Lal Kapur* v. *The State of Punjab* (3), the order received by the employee was that he was made to retire with effect from the date of communication to him of the said order on payment of three months' pay and allowances in lieu of notice as required by rule 5.32(c) of the Punjab Civil Services Rules, Volume II. Two contentions were raised by the employee before Tek Chand, J. The first was that the provisions of rule 5.32(c) had not been complied with in so far as a notice for a period of three months was essential, when the Government wanted to retire a person before the age of superannuation, i.e., 58 years. Secondly, the employee had not even been paid three months' pay and allowances, though the same were payable on the date of the receipt of the order. The learned Judge relied on my decision in *Khazan Chand Dhamija* v. *The State of Punjab* (6), for holding that the petitioner had not reveived a

(5) I.L.R. (1967 2 Pb. & Hry. 448 (F.B.)=1967 S.L.R. 668;

(6) 1964 P.L.R. 818.

notice as provided by rule 5.32. He also came to the conclusior that the non-payment of three months' pay and allowances to the petitioner at the time of serving the notice on him made the order of his retirement contrary to law. On these two ground, the writ petition was accepted by Tek Chand, J.

(15) In *Khazan Chand Dhamija's case* (6), I had held that the appointing authority had an absolute right to retire an employee after he had reached the age of 55 years without assigning any reason subject to the condition that he would be given three months' notice. In that case, three months' notice had not been given and, therefore, I had quashed the impugned order. It may, however, be stated that the precise point which arises for decision in this case, namely, as to whether the Government is entitled to give three months' salary and allowances in lieu of three months' notice; did not come up for discussion.

(16) In *Union of India* v. *Lachhmi Narain* (1), rule 5 of the Central Civil Services (Temporary Services) Rules came up for consideration. The relevant part of that rule was in the following terms:—

"5. (a) The service of a temporary government servant who is not in quasi-permanent service shall be liable to termination at any time by notice in writing given either by the government servant to the appointing authority, or bv the appointing authority to the government servant.

(b) the period of such notice shall be one month, unless otherwise agreed to by the Government and by the government servant:

Provided that the service of any such government servant may be terminated forthwith by payment to him of a sum equivalent to the amount of his pay plus allowances for the period of the notice or as the case may be, for the period by which such notice falls short of one month or any agreed longer period.

Provided * * * * * * *

* * * * * *."

(17) It would be seen that in the first proviso to the rule it had been specifically provided that the service of any government servant could be terminated forthwith by payment to him of a sum equivalent to the amount of his pay plus allowances for the period of the notice or for the period by which such notice fell short of one month. In rule 5.32(c), no such proviso has been added and according to that rule, the employee has to be given not less than three months' notice. Thus the language of the two rules is different. Strictly speaking, the decision in *Lachhmi Narain's case* (1), would, therefore, not apply to the instant case. Besides, the impugned order in that case was challenged on a number of other grounds as well. It is true that one of the contentions raised was that rule 5 contemplated giving of one month's notice or pay in lieu thereof and since the employee was paid a sum equivalent to the amount of his pay and allowances for 15 days only instead of one month, the order in dispute was not in accordance with the rule and thus it could not be sustained. This contention was, however, repelled by J. N. Kaushal, J., who prepared the judgment in that case, by observing that the order could not be set aside on that ground, because the employee was only entitled to claim pay and allowances for 15 days which were not paid to him. Reliance was placed by the learned Judge on the decision in (*The State of Punjab* v. *Ved Parkash Vohra*) (2), already referred to in the order of reference.

(18) In *Mohan Singh Ex-Deputy Ranger* v. *The State of Haryana* (4), rule 5.32 came up for consideration by Tek Chand, J., The Government servant was served with a notice dated 19th June, 1967, informing him that on his attaining the age of 55 years on 15th July, 1967, he would be retired from service. He was further told that in case the notice fell short of three months, he would be paid pay and allowances for such period as fell short to complete three months. The argument raised by the employee was that since notice required by the relevant rule had not been served on him, he should be deemed not to have been retired. This contention prevailed with the learned Judge who was of the view that the relevant rule required giving of not less than three months' notice and there was no provisions as to the tendering or offering of payment of three months' pay in lieu thereof. As it was only 26 days' notice, it was, according to the learned Judge, manifestly defective and could not be considered a notice according to law. During the course of the judgment, the learned Judge observed—

> "The requirements of the statutory rules are that not less than three months' notice shall be given. There is no alterna-

tive provision that in lieu of notice, three months' pay can be given. The notice cannot be saved on the basis of the argument that the intention underlying the principle requiring the giving of notice is that the Government servant if he is given three months' pay including the period when he does not serve the Government, his services can be lawfully terminated. This Court has to see the language of the statutory rule which is clear, and does not admit of any equivocation, and does not equate the payment of three months' pay to giving of inadequate notice or to none whatever."

Further on the learned Judge again observed—

"The service of notice made in the way and manner recognised and sanctioned by the law is an essential requisite of it. Unless the notice is given as the law directs or allows, the party to whom it is given is not bound to recognise or act upon it nor, indeed, is it a notice. What gives the notice life and efficiency is the legal sanction. The impugned notice in this case did not have the requisite legal sanction."

It might be mentioned that *Lachhmi Narain's case* (1), was relied on by the State before the learned Judge. But it was distinguished by him on the ground that the language of rule 5 of the Central Civil Services (Temporary Services) Rules, which was being construed by the Division Bench, was dissimilar to rule 5.32 and contemplated a more flexible interpretation. The learned Judge, however, relied on his own decision in *Chaman Lal Kapur* (3), and my decision in *Khazan Chand Dhamija's case* (6). Both these authorities have already been discussed by me above.

(19) There is another decision of mine in *Union of India* v. *Kartar Singh and another* (7), to which reference was made during the course of arguments. In that ruling, rule 5 of the Central Civil Services (Temporary Services) Rules came up for consideration. While interpreting that rule, I held—

"A plain reading of this rule would show that the appointing authority was fully empowered to terminate the services

(7) A.I.R. 1968 Pb. & Hry. 106.

of a temporary government servant who had not been made quasi-permanent, by giving him one month's notice in writing. According to the proviso, the services of such a government servant could also be terminated forthwith, if he was paid a sum equivalent to the amount of his pay plus allowances for the period of the notice, i.e., one month. In other words, if the appointing authority decides to terminate the services of the government servant forthwith, it has to give him one month's salary. That does not, however, mean that if the said pay or allowance is not given, the order would not be effective or would become invalid. The rule does not say that the payment of the salary and the allowances is a condition precedent for making the order effective. The rule also does not say that the salary and the allowances have to be paid along with the passing of the order terminating the services. It cannot be said that if the salary is not paid simultaneously, the government servant is entitled to come back to service. The order will come into force on the day it is passed and all that the government servant is entitled to the salary and allowances for the notice period. He can ask for them and if the government refuses to pay the same, he can institute a suit for their recovery. The order, however, cannot be kept in abeyance or rendered invalid, because the said payment has not been made in the first instance. Under this rule, the appointing authority is vested with the right of terminating the services of the government servant forthwith and correspondingly the government servant has a right to demand salary and allowances for the notice period from the government. In my view, therefore, the trial Judge was in error in holding that simply because the salary and the allowances for the notice period were not paid to the plaintiff when the impugned order was passed, the same became invalid and without jurisdiction."

The view that I have taken above finds support in a recent decision of the Supreme Court in *The State of Uttar Pradesh* v. *Dinanath Rai* (8).

(20) As I have already said, we are concerned with the interpretation of rule 5.32(c) and there are only two decisions in *Chaman Lal*

(8) 1969 S.L.R. 646.

Kapur's case (3), and that of *Mohan Singh* (4), both by Tek Chand, J., where this rule was the subject-matter of discussion. In *Chaman Lal Kapur's case* (3), the government servant was made to retire on payment of three months' pay and allowances in lieu of notice required by rule 5.32(c). The learned Judge came to the conclusion that he had not received a valid notice, because under the relevant rule a notice for a period of three months was essential. The learned Judge, if I may say so with respect, had not given any reasons for coming to that conclusion. He merely relied on my decision in *Khazan Chand Dhamija's case* (6). But as I have already said, in that authority the point whether the Government was entitled to give three months' salary and allowances in lieu of three months' notice did not arise for consideration.

(21) We are then left with *Mohan Singh's case* (4), where Tek Chand, J., has given reasons, which I have mentioned *in extenso* above, for coming to the conclusion that there was no alternative provision that in lieu of notice, three months' pay could be given by the Government.

(22) It is now to be seen as to what is the correct interpretation of rule 5.32(c). This undoubtedly is a statutory rule having been made under Article 309 of the Constitution and must be given due effect. Under it, as is apparent from the note appended thereto, the appointing authority has got an absolute right to retire any government servant, except, of course, one belonging to Class IV, on or after he has attained the age of 55 years without assigning any reason. Similarly, the Government servant is also entitled to seek retirement on or after reaching that age. It follows, therefore, that the only right that the government servant possesses is that he cannot be retired before he reaches the age of 55 years and if that happens, the order would attract the applicability of Article 311 of the Constitution. But that would occur only in the case of permanent employees. So far as temporary hands are concerned, they would be governed by the terms of their employment. Under this rule, the government servant has no inherent right to stick to the job after he has attained the age of 55 years. All that he can claim is three months' notice. Now the question is—cannot the government give him three months' salary and allowance in lieu of the said notice? I do not see any reason as to why it cannot do so. Learned counsel appearing for the government employee was not able to point out any material prejudice that will occur to his client, if, instead of being given three

months' notice, he is paid three months' salary. Undoubtedly, the employee will not suffer any loss or injury if he is paid three months' salary in lieu of notice, because it is needless to point out that for computing pension, gratuity, leave benefit and other allowances, etc., his service will be counted up to the end of the notice period for which salary had been paid to him. The main idea of giving three months' notice, in my view, is to enable the government servant to make arrangements for his re-employment elsewhere or some other programme for his future. After he had served the government for such a long period, he should not be suddenly thrown on the street. The notice period can be utilised by him for setting his affairs and deciding his future course of action. If instead of being given notice, he was paid three months' salary, in my view, he would, in a way, be in a better position. He will have more leisure at his disposal for doing all those things which he would have done during the notice period, because he will have the additional advantage that he will not have to spend time in the office doing his duty. The giving of not less than three months' notice mentioned in the rule is, in my opinion, not such a condition, the non-compliance of which would result in the retirement order becoming void. If the required notice is not given or even if the three months' salary and allowances are not paid, the retirement order would not become illegal, because, in my opinion, that is not a condition precedent for retiring a government servant after he has attained the age of 55 years. The employee, undoubtedly, would be entitled to get three months' salary and allowances, if he is retired forthwith. That right cannot be denied to him. But this is the only right that he possesses under this rule, because, as I have said, the appointing authority has the undisputed right to retire him on or after he has attained the age of 55 years without assigning any reason whatsoever. The retirement order will come into operation immediately after it is passed and conveyed, even if the required notice of three months is not given or three months' salary and allowances in lieu thereof are not paid. The employee is, however, entitled to get the salary and allowances for that period from the government. This is what I had said in *Kartar Singh's case* (7). In *Khazan Chand Dhamija's case* (6), however, neither any notice was given nor did the government take the stand that the employee would be paid three months' salary and allowances in lieu thereof. It was under those circumstances that I had held that the impugned order was invalid.

(23) As regards the contention of the learned counsel for the respondent that no provision of giving salary and allowances in lieu

of notice was made in rule 5.42 (c) as was done in rule 5 of the Central Civil Services (Temporary Services) Rules, 1949, it is enough to say that this alternative power was implicit under rule 5.32(c) and it was a matter of abundant caution that it had been specifically mentioned in rule 5 of the Central Civil Services (Temporary Services) Rules.

(24) In view of what I have said above, the answer to the question referred to us would in my opinion, be in the affirmative.

MAHAJAN, J.—I entirely agree with the observations of my learned brother Pandit, J. I wish, however, to say a few words of my own.

(26) The reference to the Full Bench has been made for the purpose of interpreting rule 5.32 of the Punjab Civil Services Rules, Volume II. It is not disputed that if the notice is in terms of the rule, the Government servant has no right and he must, after the expiry of the notice, stand relieved of his job. What is disputed is that if instead of notice in terms of the rule, the Government servant is paid salary and allowances for the notice period, there would be no compliance with the rule. Therefore, in this eventuality, the Government servant would be still deemed to be in service-notice being invalid.

(27) To understand the problem, it will be proper to mention certain matters which admit of no two opinions. Normally the relationship between the master and a servant is that the servant holds office at the pleasure of the master. This of course is subject to any contract or usage or in case of Government servants to any rules governing such service. Reference in this connection for the purposes of this case may be made to Articles 309, 310 and 311 of the Constitution which are reproduced below:

> "309. Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the requirement, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Unoin or of any State:

(28) Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in

connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act.

310. (1) Except as expressly provided by this Constitution, every person who is a member of a defence service or of a civil service of the Union or of an all-India service or holds any post connected with defence or any civil post under the Union holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor of the State.

(2) Notwithstanding that a person holding a civil post under the Union or a State holds office during the pleasure of the President or, as the case may be, of the Governor of the State, any contract under which a person, not being a member of a defence service or of an all-India service or of a civil service of the Union or a State, is appointed under this Constitution to hold such a post may, if the President or the Governor, as the case may be, deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation if before the expiration of an agreed period that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate that post.

311. (1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those

charges and where it is proposed, after such inquiry, to impose on him any such penalty, until he has been given a reasonable opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during such inquiry:

Provided that this clause shall not apply—

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision there on of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final."

There is no provision in the Constitution or the rules made thereunder which enjoins on the Government to give work to the Government servant. No Government servant can say that he must be given work. What is protected, so far as he is concerned, is his tenure and his emoluments and a provision has been made that his service tenure cannot be terminated except in accordance with the provisions of Article 311 of the Constitution. It will, therefore, appear that it is open to the master to give work to the servant or not. Reference in this connection may usefully be made to the decision in *Turner* v. *Sawadon and Co.*, (9). In this case an action was brought by an employee asking the master that during the period of the contract they should find continuous, or at least some, employment for the plaintiff. While dealing with this claim, the learned Master of the Rolls observed as follows:—

"In my opinion such an action is unique—that is an action in which it is shown that the master is willing to pay the

(9) 1901 (2 K.B.) 653.

wages of his servant, but is sued for damages because the servant is not given employment. In *Turner* v. *Goldsmith* (10), the wages were to be paid in the form of commission, and that impliedly created a contract to find employment for the servant. This contract is different, being to employ for wages which are to be paid at a certain rate per year. I do not think this can be read otherwise than as a contract by the master to retain the servant, and during the time covered by the retainer to pay him wages under such a contract. It is within the province of the master to say that he will go on paying the wages, but that he is under no obligation to provide work. The obligation suggested is said to arise out of the undertaking to engage and employ the plaintiff as their representative salesman. It is said that if the salesman is not given employment which allows him to go on the market his hand is not kept in practice, and he will not be so efficient a salesman at the end of the term. To read in an obligation of that sort would be to convert the retainer at fixed wages into a contract to keep the servant in the service of his employer in such a manner as to enable the former to become *au fait* at his work. In my opinion, no such obligation arose under this contract, and it is a mistake to stretch the words of the contract so as to include in what is a mere retainer an obligation to employ the plaintiff continuously for the term of his service. I asked whether the employment must be *de die in diem*, and the answer was that this was not necessary, but I could not gather what, short of this, was the suggested obligation. It seems to me that the only argument open to the plaintiff was that his employment should be continuous, and I cannot find that obligation in the contract."

Lord Justice Vaughan Williams agreed with the Master of the Rolls and so did Lord Justice Stirling.

At page 112 of the Law of Master and Servant by Diamond (Second Edition), it is stated:—

"It would seem to follow that where there is an obligation to provide work, the master is not entitled, unless under express agreement, to put an end to the contract by paying

(10) 1891 (I.Q.B.) 544.

the agreed remuneration in lieu of notice. In the absence of an obligation to provide work he commits no breach of contract by paying wages in lieu of notice."

Inasmuch as under rule 5.32 the Government has the absolute right to terminate the services of its employees who have attained the age of 55 years and the only requirement is that before termination the employee should be given three months' notice; it clearly follows that there would be no breach of the rule if instead of notice, three months' wages are given. In my opinion, rule 5.32 is merely an enabling rule. The effect of notice under the rule or payment of salary and allowances in lieu of notice merely fix the period which will be taken into account in reckoning his total service.

(29) I am also not impressed with the contention that the rule is mandatory. I have not been able to appreciate to what right the Government servant has after the age of 55 years and what is there which he is going to protect. The pleasure of the master is absolute and, therefore, on no principle the rule, which I have already said, is merely an enabling rule, can be held to be mandatory. The position would have been different if the Government servant had a right to continue in service upto the age of 58 years. Some arguments were addressed on this part of the case but in view of the Full Bench decision of this Court in *Pritam Singh Brar* v. *The State of Punjab and others* (5), it is no longer open to argument that a Government servant, who has crossed the age of 55 years, has a right to continue upto the age of 58 years. As soon as he attains the age of 55 years, Government can retire him forthwith. It is only where Government decides to retain him that a provision is made that he may be asked to go after three months' notice is served on him. A corresponding right has also been given to the Government servant to quit after attaining the age of 55 years by serving three months' notice. I am, therefore, clearly of the view that the answer proposed by my learned brother to the question referred is the correct answer and I have no hesitation whatsoever in agreeing with the reasons for the same.

SURI, J.—(30) The question referred for the decision of the Full Bench has been drafted with some care but the answer, I am afraid, does not admit of being a simple 'Yes' or 'No'. By suitably wording a qualifying clause or rider, the answer to this question could easily be in any one of the two forms; negative or positive. For a

correct decision of the Letters Patent Appeal I feel that the answer to the question should be in the negative but with a rider attached, so as to read,—

> "No, not unless in addition to the offer of three months salary and allowances in lieu of notice, it is further made clear that the gratuity, pension and other like benefits of the prematurely retiring Government employee would be safeguarded as if he had continued in service for the notice period and that he would be entitled to tag on the notice period of three months to his length of service for the purposes of calculation of these benefits."

The importance of tagging on the notice period to the length of service of a Government employee to be prematurely retired may appear to have been realized by the Government itself in some cases. In the notice of pre-mature retirement served on the Government employee, Chaman Lal- Kapur in (1967 Services Law Reporter it was expressly mentioned that the President was further pleased to order that the employee would be entitled to the pensionary and other benefits which he would have got if he would have been allowed to continue in service for the said notice period. If in our case the notice had guaranteed these rights and benefits in the matters of pension and gratuity etc., to the respondent, there may not have been any difficulty in disposing of the appeal. The notice of compulsory retirement (Annexure C) served on Shri Mohan Singh Malhi, respondent, however, says that the Governor of Punjab is pleased to retire Shri Malhi with effect from the date of service of the notice. The decision in *Chaman Lal Kapur's* (3), case though more pertinent to the real point in controversy than most other rulings cited before us has not received due consideration.

(31) While construing a proviso of statute or a rule one has to keep in mind the class of persons to be governed by the rule, the purpose for which the rule has been framed, the context in which that rule is set and the phraseology employed, etc. Considerations that have prevailed in the construction of some other rule which is not in *pari material* should not be followed on mere analogy for the construction of the rule that we are called upon to interpret. The pertinent rules and the case law cited before us

have been mentioned in the order of reference and in the main judgment recorded by my learned brother, Pandit, J. Some of the rulings cited before us were under rule 5 of the Central Civil Services, (Temporary Service) Rule 1949, which governs the termination of services of temporary Government servants who had not even become quasi-permanent. The rule that is to be interpreted by us deals with a different class of Government servants who have some vested rights in view of the long service that they have put in over a term of years and who are nearing their retirement. The rule to be interpreted by us has been set in a different context with the object of securing to a permanent and retiring Government servants the grant of certain pensionary and other benefits.

(32) Rule 5 of the Central Civil Services (Temporary Service) Rules, 1949, governs the termination of service of a temporary Government servant who had not even become quasi-permanent. The rule provides that the appointing authority has two alternative courses available when it decides to terminate the services of such a temporary employee. The authority could either serve one month's notice or could in the alternative offer pay and allowances to the employee for the notice period or on proportionate basis for the period by which such notice fell short of one month. Some of the cited cases which govern the interpretation of this rule may not be a safe guide for construing rule 5.32 of the Punjab Civil Services Rules, Volume II. In this case we are called upon to interpret clause (c) (ii) of this rule. A retiring pension is granted according to this rule to a Government servant who is permitted to retire from service after completing qualifying service for 25 years of for such less time as may be prescribed in any special class of Government servants. The ordinary age of compulsory retirement for such Government servants is 58 years according to rule 3.26 of the Punjab Civil Services Rules, Volume I, Part I. Where a Government servant other than a class IV Government servant is to be pre-maturely retired on or after his attaining the age of 55 years, the rule requires that he has to be given not less than three months' notice of the appointing authority's intention to retire him. Whereas in the case of temporary Government servants the relevant rule makes two alternative courses available to the authority when the services are to be terminated, no such choice or option is given by the other rule where a Government servant who has qualified for retiring pension is sought to be prematurely retired. We are not entitled to read or import into the latter rule words which are not there or

to take it for granted that the omission was inadvertent. If the intention was to give the competent authority the other opinion the rule could have said so, as was done in Rule 5 of the Central Civil Services (Temporary Service) Rules, 1949. Where the framers of the rule choose to make a distinction it cannot be treated as a distinction without any material difference.

(33) I have every reason to believe that there was some purpose or object for this difference in the drafting of framing of these two sets of rules; one governing temporary Government employees and the other set governing the retirement of permanent Government employees who had qualified for pension after putting in service for a considerable length of years. A permanent Government servant cannot be placed on par with a temporary employee and considerations or rulings applicable in the case of the latter should not be extended by analogy to the case of a permanent Government servant who has qualified for retiring pension. The termination of the services of a temporary employee leads to a complete severance of the relationship so that neither party has any further claim against the other in respect of the period subsequent to the termination of service. This would not necessarily be true in the case of a permanent Government servant who is made to retire pre-maturely or on the attainment of the normal age of superannuation. The retiring employee would have claims against the Government in respect of pension, gratuity, etc., and the amount or quantum of these benefits would depend on the total length of his service. If he could tag on the notice period of three months to the service actually put in by him when he is served with a notice of premature retirement, the advantage accruing to him could far outweigh the pleasure of free time and leisure and the un-earned emoluments for the notice period. As a Government servant nears his superannuation, every month of service put in by him means an increase in his gratuity and pension and also in the average pay on the basis of which these pensionary or other benefits are calculated. If during the notice period of three months a Government servant could complete another half year he could have a quarter of his last pay drawn added to his gratuity. In case of an annual increment accruing due in the notice period, so many other advantages could flow permanent for the rest of his life and he may still have many more years to live. If he completes a full year of service during the notice period there could be an enhancement in

the monthly pension or in the average pay on which the monthly pension would depend. A dealing assistant in the office of the Accountant-General would be in a better position to work out accurately the pecuniary value of the pensionary or other benefits accruing from an extra three months of service. The perquisites of office like free medical aid, house-rent allowance, Government accommodation, etc., may also add up to a tidy sum during the notice period of three months. In *Chaman Lal Kapur* v. *The State of Punjab* (3), the notice served under rule 5.32(c) of Punjab Civil Services Rules, Volume II, was quashed by a Single Bench of this Court because it failed to give three months' notice even though there was an offer of payment of three months' pay and allowances in lieu of the notice. The notice served on Chaman Lal has been reproduced in the ruling and shows that he was to be given the pensionary and other benefits which he would have got if he had been allowed to continue in service for the notice period. In that case there was greater force in the argument that there was no material prejudice caused to Chaman Lal because of the offer of pay and allowances and also of the pensionary and other benefits, but in spite of all this the notice was quashed because it did not comply with the letter of the law or the rule having the force of law.

(34) Except for a few obiter remarks in some rulings which would be referred to by me a little further on in this dissenting note, I find that there is no direct authority in support of the proposition that the appointing authority could take recourse to the alternative of offering three months' pay and allowances in lieu of notice period to a Government servant who had qualified for retiring pension under rule 5.32(c) of the Punjab Civil Services, Volume II; if he was to be pre-maturely retired on or after he had attained the age of 55 years. On the other hand there are three Single Bench decisions of this Court which may justify our holding that the notice served on the respondent in this case is invalid because it does not strictly comply with the language of the rule under which it purports to have been issued. One of these decisions is by my learned brother in *Khazan Chand Dhamija* v. *The State of Punjab and another* (6). In view of the note under rule 5.32(c), the Government's absolute right to retire an employee after he had attained the age of 55 years without assigning any reason was recognized but this note was correctly found not to abrogate the rule with regard to the service of three months' notice. A retirement

without such a notice was, therefore, described as invalid. In this case there was no offer of pay and allowances in lieu of the period of notice or for the period by which the notice fell short. We have to read together rules 3.26 and 5.32 of the Punjab Civil Services Rules and also to read together and reconcile clause (c)(ii) and the note under the latter rule. The fact that the appointing authority retains an absolute right to retire any Government servant after he has attained the age of 55 years without assigning any reason does not abrogate the directions with regard to the service of a notice of not less than three months on a Government servant who has to be retired pre-maturely. There are detailed departmental instructions governing the discretion in the matter of the exercise of these absolute powers. Negligence, inefficiency, physical fitness, integrity and the conduct of the officer have to be kept in mind in the exercise of these absolute powers. If these instructions have not been incorporated in the rules it would only mean that they do not have the force of statute. Still the competent authority would be expected to exercise its discretion in a judicious manner and cases can be contemplated where the Courts may intervene to prevent any malicious or whimsical victimization of a Government officer. All that the note implies is that the Government need not assign any reasons in the notice of pre-mature retirement and would not be called upon to prove those grounds.

(35) In *Chaman Lal Kapur* v. *The State of Punjab* (3) 1967 Services Law Reporter 924, a notice of compulsory retirement was quashed by Tek Chand, J. in the exercise of his civil writ jurisdiction on the ground that a notice of 'not less than three months' had not been served. A pre-mature retirement without the notice prescribed by the rule was held invalid. In paragraph 7 of the judgment, another reason given for holding the notice of pre-mature retirement to be invalid was that even though the notice said that pay and allowances for three months would be paid, these dues had not been tendered to the employee in cash or by cheque at the time of the service of the notice. This objection to the validity of the notice may not however appear to have much force now in view of the ruling of the Supreme Court in *The State of Uttar Pradesh* v. *Dinanath Rai* (11) and *Union of India* v. *Kartar Singh and another* (7), decided by my learned brother. A similar view was also taken in *State of Punjab* v. *Ved Parkash Vohra* (2) whereby the Single Bench decision reported as

(11) 1961 S.L.R. 646.

Ved Parkash Vohra v. *The State of Punjab* (12), was set aside. This objection had been taken by the respondent in this writ petition also but was rightly not pressed in view of these rulings.

(36) The third Single Bench decision which could be cited in support of the Single Bench decision now under appeal is *Mohan Singh* v. *The State of Haryana and others* (4). In this case the notice of premature retirement was quashed as it fell short of the minimum period of three months provided in Rule 5.32 (c)(ii) of the Punjab Civil Services Rules, Volume II, even though there was an offer for the payment of salary and allowances for the period by which the notice fell short of the statutory period of three months. Tek Chand, J., who decided that case was pleased to observe as follows:—

> "The relevant rule requires giving of "not less than three months notice'. There is no provision as to tendering or offer of payment of three months' pay in lieu of notice. The notice (Annexure R. 1) does not comply with the requirements of the rule. It is dated 19th of June, 1967 and mentions "you are hereby served with three months' notice to the effect that on 15th of July, 1967 (F.N.) you will be retired from service." This language contradicts itself. It is not three months' notice but only 26 days' notice. The notice is manifestly defective and as such it cannot be considered as notice according to law. On this ground alone, the petition deserves to be allowed. Attempt has, however, been made to save the notice on the basis of what follows :—

'In case notice fall short of full three months, you shall be paid pay and allowances for such period as falls short to complete three months, by the Divisional Forest Officer, Karnal.'

(37) The notice obviously was for 26 days and there was no meaning in saying that in case it falls short of three months. It has been canvassed before me on behalf of the State that the above language should cover the lacuna in the notice. The requirements of the statutory rules are that no less than three months' notice shall be given. There is no alternative provision that in lieu of notice, three months' pay can be given. The notice cannot be saved on the basis of the

(12) 1964 P.L.R. 1224.

argument that the intention underlying the principle requiring the giving of notice is that the Government servant if he is given three months' pay including the period when he does not serve the Government, his services can be lawfully terminated. This Court has to see to the language of the Statutory rule which is clear, and does not admit of any equivocation, and does not equate the payment of three months' pay to giving of inadequate notice or to none whatsoever."

No better reasons could be advanced in support of the observations made or the conclusions drawn in the cases cited above. Some statements are such self-evident truths that they require no further elaboration or discussion.

(38) Some obiter remarks almost at the close of a Division Bench ruling in *Union of India* v. *Lachhmi Narain* were brought to the notice of Tek Chand, J. These remarks were distinguished by the learned Judge on the ground that the language of rule 5 which was under consideration in the Division Bench case of *Lachhmi Narain* was materially different and could admit of a more flexible interpretation. The learned Judge went on to observe as follows:—

> "The language of Rule 5.32 of the Junjab Civil Services Rules which is also the rule concerned in this case, differed in material particulars from the language of the rule which the Division Bench was called upon to construe. The service of notice made in the way and manner recognised and sanctioned by the law is an essential requisite of it. Unless the notice is given as the law directs or allows, the party to whom it is given is not bound to recognise or act upon it nor, indeed, is it a notice. What gives the notice life and efficiency is the legal sanction. The impugned notice in this case did not have the requisite legal sanction."

(39) In the circumstances, the order retiring the petitioner from service was quashed but it was left open to the appropriate authority to retire the petitioner by giving a fresh notice complying with the requirements of the rule.

(40) I may add that the obiter remarks in *Lachhmi Narain's case* cannot be taken to prejudice the case of permanent Government

servants nearing their retirement when there was no one to urge or to put forward their case before the Hon'ble Judges and the class of Government servants adversely affected by these obiter remarks had no opportunity of being heard. The case under consideration was of the termination of services of a temporary Government servant in terms of rule 5 of the Central Civil Services (Temporary Service) Rules, 1949, and there was therefore no occasion for making any observations with regard to the construction to be put on clause (c) (ii) of Rule 5.32 of the Punjab Civil Services Rules, Volume II. In *Moti Ram Deka etc.* v. *General Manager, North Eastern Railway* it has been laid down that even the observations in a judgment of the Supreme Court which are in the nature of *obiter dicta* cannot be relied upon solely for the purpose of showing that certain statutory rules should be held to be valid as a result of the said observations.

(41) It is no use arguing that the respondent would obviously get the benefit of tagging on three months' period of notice of compulsory retirement when he is being offered pay and allowances for that period. The order of the Governor of Punjab served on him definitely says that the respondent has been retired with effect from the date of communication to him of the order. It is not for the Courts to sit down with the draftsman in the office of the Directorate of Animal Husbandry and to try to rectify the mistakes by putting up a re-draft. We have to take the notice of compulsory retirement as it is and to judge whether it is good or bad. If this notice is bad it has to be struck down and a party cannot be allowed to patch up its mistakes of the part. No body, has argued that the respondent can insist on being put to work during the notice period or to have the feeling that he is not accepting anything which he has not earned by the sweat of his brow. The contention that three months pay and allowances should have been tendered to the respondent in cash or by cheque at the time of the service of the notice had not prevailed with the Single Judge in the impugned order. The offer of three months unearned emoluments or free time and leisure is not such as unmixed blessing that we are force a Government servant to be happy over it when he has valid reasons for doubting the magnanimity behind the offer. We have no reason to assume that if the employee who has earned pensionary and other

13. A.I.R. 1964 S.C. 600.

benefits by honest good work over a long term of years insists on being put to work for the notice period, he is on the look out for opportunities in the discharge of his official duties. He still has so much as stake. If he suddenly turns bad he can lose the hard earned pension and gratuity etc. and be subject to disciplinary action which can be taken against him for any misconduct even after the service of notice of premature retirement.

(42) In the case in hand the appellant, State of Punjab, may appear to have arrogated to itself a course of action in disregard of the unequivocal language of the rule under which the impugned notice was issued. The departure from the statutory rule is sought to be justified on the ground that no material prejudice has been caused to the respondent. I have already tried to expose earlier in this judgment the fallacy of this contention of the learned Deputy Advocate-General for the State of Punjab. Besides the prejudice to the benefits like gratuity and pension the respondent has been derived of the perquisites of his office like Government accommodation, house rent allowance, free medical aid, etc. He would have continued enjoying these benefits if he had been allowd to continue in office for another three months after the service of the notice of premature retirement in the manner prescribed by the rules.

(43) To my mind the impugned notice conforms neither to the letter nor to the spirit of Rule 5.32(c)(ii) of the Punjab Civil Service Rules, Volume II. My answer to the question referred to the Full Bench is therefore a qualified 'No'.

ORDER OF THE FULL BENCH

(44) In view of the majority decision, the answer to the question referred is in the affirmative. The case will now go back to the Division Bench for final orders.

R.N.M.

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