REPORTABLE

SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No. 8421 Of 2018
(Arising out of S.L.P. (Civil) No.12601 of 2018)

STATE OF UTTAR PRADESH & ORS. ..APPELLANTS

VERSUS

ACHAL SINGH ..RESPONDENT

WITH

Civil Appeal No. 8422 of 2018
(Arising out of S.L.P. (Civil) No.18737 of 2018)

Civil Appeal No. 8423 of 2018
(Arising out of S.L.P. (Civil) No.18739 of 2018)

AND

Civil Appeal No. 8424 of 2018
(Arising out of S.L.P. (Civil) No.18741 of 2018)

J U D G M E N T

ARUN MISHRA, J.

1. Leave granted.

2. The State of Uttar Pradesh in the appeals is aggrieved by common judgment and order dated 29.11.2017 passed by the Division Bench of the High Court of Allahabad, allowing the writ petitions filed by the respondents herein seeking voluntary retirement from the Government services. Directions were issued to treat the respondents to have retired from Government services with effect from 30.11.2017 and 31.12.2017.

3. The main question for consideration before us is as to whether under Rule 56 of the Uttar Pradesh Fundamental Rules (hereinafter referred to as the "Fundamental Rules") as amended, an employee has unfettered right to seek voluntary retirement by serving a notice of three months to the State Government or whether the State Government under the Explanation attached to Rule 56 of the Fundamental Rules, is authorised to decline the prayer for voluntary retirement in the public interest under clause (c) of Rule 56 of the Fundamental Rules as applicable to the State of Uttar Pradesh.

4. The respondent - Dr. Achal Singh was working as Joint Director in Medical, Health and Family Welfare, Lucknow Region, Lucknow filed an application dated 14.12.2016 for voluntary retirement *w.e.f.* 31.3.2017. Respondent – Dr. Ajay Kumar Tiwari was holding the post of Joint Director, Medical, Health and Family Welfare, Devi Patan Mandal, Gonda, filed an application on 28.2.2017 seeking voluntary retirement *w.e.f.* 31.5.2017. Respondent - Dr. Rajendra Kumar

Srivastava was working as Senior Consultant, filed an application for voluntary retirement on 15.4.2015 and respondent - Dr. Rajiv Chaudhary was working as Senior Consultant at District Hospital, Raibareli, he sought voluntary retirement by filing an application on 3.12.2016. The applications remained unattended and no order had been communicated, hence writ petitions were filed in the High Court. The respondents-doctors were members of the Provincial Medical Services.

5. The High Court in the impugned judgment and order has observed that it is the responsibility of the authorities to monitor the health system in the State and they have to sincerely examine the issues as to how the working of the Government hospitals can be improved for the betterment of the general public and find out why doctors are opting for voluntary retirement every day. The High Court also observed that the doctors are not interested in joining the Government service when fresh recruitments take place. The High Court has also noted that posts of Medical Officers are not being filled up on account of non-availability of candidates. The High Court has further noted that those who have entered into Government service are continuously opting for voluntary retirement from service causing serious scarcity of doctors in Government hospitals and Primary Health Centres.

6. The High Court in the impugned judgment has also referred to the report of the MCI and the existing proportion of one doctor per 2000 population. In fact, the number of doctors is much smaller than the number given in the MCI report. The High Court also observed that the doctors are being posted, in spite of scarcity, on the administrative posts that causes wastage of specialised talent. The High Court has also observed that the authorities must provide adequate infrastructure, working equipment, and a proper working environment. The hospitals should be made excellent centres of health care. It should be the object of the State Government to provide doctors with good opportunities so as to retain them in services. At the same time, the High Court has also observed that in order to enhance the better medical facilities to the poor and needy people, it would be appropriate to maintain a balance between the senior and junior doctors in each Primary Health Centres in rural and urban areas. There is a need to provide continuing medical education to doctors and to hold conferences and seminars to exchange the latest views/opinions/knowledge etc. and their performance in such events should also be considered for promotion etc. At the same time, the High Court has allowed the writ petitions and treated the doctors to have retired voluntarily on the dates specified. Aggrieved thereby, the State has come up in these appeals.

7. It was urged by Mr. P.N. Mishra, learned senior counsel appeared on behalf of appellant that as per Explanation attached to Rule 56 of the Fundamental Rules as amended in the State of Uttar Pradesh, it was open to the State Government to take a decision whether to retire an employee voluntarily under Rule 56(a) duly considering the public interest or decline the applications for voluntary retirement. It was also submitted that there is no automatic retirement on the expiry of the period of notice of three months served under Rule 56 as applicable in the State of Uttar Pradesh. There has to be an express order granting permission to retire voluntarily, only thereafter an employee can be said to have retired voluntarily. There is a scarcity of doctors in the Provincial Health Services in the State of Uttar Pradesh, thus, the State Government has not accepted the applications for voluntary retirement. The directions issued by the High Court is based on a misinterpretation of Rule 56 of the Fundamental Rules and is against the public interest.

8. It was contended by learned senior counsel appearing on behalf of the appellants that in the case of Dr. Achal Singh, the State Government has passed the order on 31.5.2017. The prayer for voluntary retirement was rejected on the ground of lack of specialised doctors and in public interest and the notice seeking voluntary retirement under Rule 56 was rejected and in other cases, the applications were kept pending. They further contended that Rule 56

contemplates a notice and not a request for voluntary retirement. An employee is not required to give reason while giving a notice for voluntary retirement and in any such event, such reasons are not justiciable. It is a prerogative of the employee to seek voluntary retirement. The right of the employee to retire voluntarily corresponds with the right of the State Government to retire him in the case of deficiency in services. As held in *Dinesh Chandra Sangma vs. State of Assam,* (1977) 4 SCC 441, the rule provides right to retire and not to seek it. The acceptance of the appointing authority is required only when the disciplinary enquiry is pending and its pendency has been communicated to the employee. Once notice of three months is given, the doctor is deemed to have retired and any action of attempting to reject the notice of voluntary retirement after the said date is ineffective in law. The decision has to be taken within a period of three months, otherwise, the employee is automatically deemed to have retired on the lapse of three months' period. It was contended that the court not to interfere with the principle of certainty of rule of law may be applied and long-standing precedent of *Dinesh Chandra Sangma (supra)* may not be dislodged and be applied to the cases at hand. The only condition of voluntary retirement is fulfilled after completion of 20 years of service and if it is allowed, it does not affect the availability of doctors. The State has not taken care to recruit the doctors. It is not permissible to withhold the order of voluntary

retirement. In case this Court does not agree with the decision rendered in *Dinesh Chandra Sangma (supra),* the matter may be referred to a larger Bench. The view taken by the High Court in the impugned judgment and order may be affirmed with the rider of an imposition of the moratorium to balance the equities.

9. In order to appreciate the rival submissions, it is necessary to consider the Fundamental Rules as amended in the State of Uttar Pradesh. The same is somewhat different from the rules framed in other States. Rule 56 of Fundamental Rules as amended in the State of Uttar Pradesh, is extracted hereunder:

> "56.(a) Except as otherwise provided in this Rule, every Government servant other than a Government servant in inferior service shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty eight years. He may be retained in service after the date of compulsory retirement with the sanction of the Government on public grounds which must be recorded in writing, but he must not be retained after the age of 60 years[1] except in very special circumstances.
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> (b) A Government servant in inferior service shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years. He must not be retained in service after that date, except in very special circumstances and with sanction of the Government.
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> (c) Notwithstanding anything contained in clause (a) or clause (b), the appointing authority may, at any time by notice to any Government servant (whether permanent or temporary), without assigning any reason, require him to retire after he attains the age of fifty years or such Government servant may by notice to the appointing authority voluntarily retire at any time after attaining the age of forty-five years or after he has completed qualifying service of twenty years.

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1 In the Medical, Health and Family Welfare Department in State Medical and Health Services, the retirement age of Medical Officers in public interest has been approved as 62 years in place of 60 years with certain conditions vide Notification No.2324/SEC-2-5-2017-7(237)/2014 dated 31.5.2017.

(d) the period of such notice shall be three months:

Provided that-
(i) any such Government servant may by order of the appointing authority, without such notice or by a shorter notice, be retired forthwith at any time after attaining the age of fifty years, and on such retirement the Government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances, if any, for the period of the notice, or as the case may be, for the period by which such notice falls short of three months, at the same rates at which he was drawing immediately before this retirement;

(ii) it shall be open to the appointing authority to allow a Government servant to retire without any notice or by a shorter notice without requiring the Government servant to pay any penalty in lieu of notice:

Provided further that such notice given by the Government servant against whom a disciplinary proceeding is pending or contemplated, shall be effective only if it is accepted by the appointing authority, provided that in the case of a contemplated disciplinary proceeding the Government servant shall be informed before the expiry of his notice that it has not been accepted:

Provided also that the notice once given by a Government servant under clause (c) seeking voluntary retirement shall not be withdrawn by him except with the permission of the appointing authority.

(e) A retiring pension shall be payable and other retirement benefits, if any, shall be available in accordance with and subject to the provisions of the relevant Rules to every Government servant who retires or is required or allowed to retire under this rule.

Provided that where a Government servant who voluntarily retires or is allowed voluntarily to retire under this rule the appointing authority may allow him, for the purposes of pension and gratuity, if any, the benefit of additional service of five years or of such period as he would have served if he had continued till the ordinary date of his superannuation, whichever be less;

Explanation.- (1) The decision of the appointing authority under clause (c) to require the Government servant to retire as specified therein shall be taken if it appears to the said authority to be in public interest, but nothing herein contained shall be construed to require any recital, in the order, of such decision having been taken in the public interest.

(2) In order to be satisfied whether it will be in the public interest to require a Government servant to retire under clause

(c), the appointing authority may take into consideration any material relating to the Government servant and nothing herein contained shall be construed to exclude from consideration –

(a) any entries relating to any period before such Government servant was allowed to cross any efficiency bar or before he was promoted to any post in an officiating or substantive capacity or on an ad hoc basis; or
(b) any entry against which a representation is pending, provided that the representation is also taken into consideration along with the entry; or
(c) any report of the Vigilance Establishment constituted under the Uttar Pradesh Vigilance Establishment Act, 1965.

(2A) Every such decision shall be deemed to have been taken in the public interest.

(3) The expression appointing authority means the authority which for the time being has the power to make substantive appointments to the post or service from which the Government servant is required or wants to retire; and the expression 'qualifying service' shall have the same meaning as in the relevant Rules relating to retiring pension.

(4) Every order of the appointing authority requiring a Government servant to retire forthwith under the first proviso to clause (d) of this rule shall have effect from the afternoon of the date of its issue, provided that if after the date of its issue, the Government servant concerned, *bona fide* and in ignorance of that order, performs the duties of his office his acts shall be deemed to be valid notwithstanding the fact of his having earlier retired."

Reading of the aforesaid rule makes it clear that an employee can be retired by the Government after he attains the age of 50 years or Government servant may voluntarily retire at any time after attaining the age of 45 years or after he has completed qualifying service of 20 years under Rule 56(c). It is provided in the Rule 56 that Government may retire a Government servant without any notice or by serving a shorter notice and on such retirement, the Government servant shall be entitled to claim a sum equivalent to the amount of

his pay plus allowances, if any, for the period of notice or for the period it falls short of three months at the same rates at which he was drawing immediately before his retirement. It is also open to the Government to allow a Government servant to retire without any notice or by a shorter notice without requiring the Government servant to pay any penalty in lieu of notice. The proviso to Rule 56(d) makes it clear that the notice given by the Government servant against whom a disciplinary proceeding is pending or contemplated, shall be effective only if it is accepted by the appointing authority and provided that in case of a contemplated disciplinary proceeding, the Government servant shall be informed before the expiry of the notice that it has not been accepted. It is also provided that once a notice is given by a Government servant seeking voluntary retirement shall not be withdrawn by him except with the permission of the appointing authority.

Rule 56(e) provides that pension and other retiral benefits shall be available to every Government servant, who retires or is required or allowed to retire under the rule. Proviso to Rule 56(e) provides that appointing authority at its discretion may allow benefits of additional service of 5 years to such employees who voluntarily retires or is allowed voluntarily to retire under the rule for the purposes of pension and gratuity or of such period as he would have served if he had continued till the ordinary date of his superannuation.

10. The explanation attached to Rule 56 makes it clear that the decision of the appointing authority under clause (c) of Rule 56 to retire a Government servant shall be taken if it appears to be in public interest. The explanation is applicable to both the exigencies *viz.,* when Government retires an employee or when an employee seeks voluntary retirement, not only when Government desires to retire an employee in public interest. The Explanation attached to Rule 56 as applicable in the State of Uttar Pradesh is clear and precise.

11. In our opinion, whether voluntary retirement is automatic or an order is required to be passed would depend upon the phraseology used in a particular rule under which retirement is to be ordered or voluntary retirement is sought. The factual position of each and every case has to be seen along with applicable rules while applying a dictum of the Court interpreting any other rule it should be Pari Materia. Rule 56(2) deals with the satisfaction of the Government to require a Government servant to retire in the public interest. For the purpose, the Government may consider any material relating to Government servant and may requisition any report from the Vigilance Establishment.

12. The respondents have relied on dictum in *Dinesh Chandra Sangma vs. State of Assam,* (1977) 4 SCC 441, a three-Judge Bench of this Court observed as under:

"7. Before we proceed further we may read F. R. 56 as amended:

> F.R.56(a) The date of compulsory retirement of a Government servant is the date on which he attains the age of 55 years. He may be retained in service after this age with sanction of the State Government on public grounds which must be recorded in writing and proposals for the retention of a Government servant in service after this age should not be made except in very special circumstances.
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> (b) Notwithstanding anything contained in these rules the appropriate authority may, if he is of the opinion that it is in the public interest to do so, retire Government servant by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice, after he has attained fifty years of age or has completed 25 years of service, whichever is earlier.
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> (c) Any Government servant may, by giving notice of not less than three months in writing to the appropriate authority, retire from service after he has attained the age of fifty years or has completed 25 years of service, whichever is earlier.

It is clear from the above that under F. R. 56(b) the Government may retire a Government servant in the public interest by giving him three months' notice in writing or three months' pay and allowances in lieu thereof after he has attained the age of fifty years or has completed 25 years of service, whichever is earlier.

8. As is well-known Government servants hold office during the pleasure of the President or the Governor, as the case may be, under Article 310 of the Constitution. However, the pleasure doctrine under Article 310 is limited by Article 311(2). It is clear that the services of a permanent Government servant cannot be terminated except in accordance with the rules made under Article 309 subject to Article 311(2) of the Constitution and the Fundamental Rights. It is also well-settled that even a temporary Government servant or a probationer cannot be dismissed or removed or reduced in rank except in accordance with Article 311(2). The above doctrine of pleasure is invoked by the Government in the public interest after a Government servant attains the age of 50 years or has completed 25 years of service. This is constitutionally permissible as compulsory termination of

> service under F.R. 56 (b) does not amount to removal or dismissal by way of punishment. While the Government reserves its right to compulsorily retire a Government servant, even against his wish, there is a corresponding right of the Government servant under F. R. 56(c) to voluntarily retire from service by giving the Government three months' notice in writing. There is no question of acceptance of the request for voluntary retirement by the Government when the Government servant exercises his right under F. R. 56(c). Mr. Niren De is therefore right in conceding this position.
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> 13. F.R. 56 is one of the statutory rules which binds the Government as well as the Government servant. The condition of service which is envisaged in Rule 56(c) giving an option in absolute terms to a Government servant to voluntarily retire with three months' previous notice, after he reaches 50 years of age or has completed 25 years of service, cannot therefore be equated with a contract of employment as envisaged in Explanation 2 to Rule 119.
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> 14. The field occupied by F. R. 56 is left untrammelled by Explanation 2 to Rule 119. The words "his contract of employment" in Explanation 2 are clinching on the point.
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> 17. The High Court committed an error on law in holding that consent of the Government was necessary to give legal effect to the voluntary retirement of the appellant under F.R. 56(c). Since the conditions of F.R. 56(c) are fulfilled in the instant case, the appellant must be held to have lawfully retired as notified by him with effect from August 2, 1976.

13. It was submitted that despite the absence of any identical language, the rule involved in *Dinesh Chandra Sangma (supra)* is comparable with Uttar Pradesh Fundamental Rules and therefore, the judgment is binding. The submission based upon the same cannot be accepted and Rule 56(b)(c) came up for consideration was somewhat different and there was no such Explanation to Rule 56.

14. In *Dinesh Chandra Sangma* (supra) he was the District and Sessions Judge at Dibrugarh in the State of Assam. On account of domestic troubles, he did not want to continue after attainment of the age of 50 years. He served a notice under Rule 56(c) as amended by the Governor of Assam under Article 309 of the Constitution by notification dated 22.7.1975. The formal notice was served upon by him. The Government allowed him to retire from the State Government Service and then there were certain developments in the Government and Government sought to retrace its steps and passed an order on 28.7.1976, countermanding its earlier order allowing him to retire from service. The High Court dismissed the writ application filed by him. The Fundamental Rule as applicable in the State of Assam came up for consideration. In our opinion, it was quite different. It is provided in the Fundamental Rule 56(b) as applicable in the State of Assam that public interest was germane when a Government servant retires. Under Rule 56(c), a Government servant may retire by giving notice of not less than three months. Hence it was observed that there was no question of acceptance of the request for voluntary retirement by the Government when the Government servant exercises his right under Rule 56(c). Not only the rule was different it was passed on the concession also, however, the Explanation given to Rule 56 in the State of Uttar Pradesh makes it completely different and the provisions in F.R.56(c) is also quite

different. The rules as applicable in Assam for the purpose of retirement by the Government is contained in F.R.56(b) which require retirement in public interest whereas no such rider exist in F.R.56(c) when employee seek voluntary retirement, whereas rule in the State of Uttar Pradesh both provisions are conjointly read not only the language is different and the explanation makes out the whole difference.

15. The Explanation attached to Rule 56 as applicable in the State of Uttar Pradesh makes it clear that when a decision is taken by the authority under clause (c) of Rule 56, the right of an employee to retire cannot be said to be absolute as in the case of resignation, voluntary retirement is with retiral benefits whereas it may not necessarily follow in case of resignation. The decision under the rules in U.P. is to be based upon considering the public interest, whether it is a case of retirement by the Government or a case of a Government servant seeking voluntary retirement. The decision rendered in *Dinesh Chandra Sangma (supra)* is distinguishable and was based on the differently couched rule. The Explanation added makes the provisions different in the State of Uttar Pradesh. The decision in the case of *Dinesh Chandra Sangma (supra)* cannot be said to be operative being quite distinguishable.

16. Reliance has also been placed by the learned counsel for the respondents on the decision rendered by this Court in *B.J. Shelat vs. State of Gujarat*, (1978) 2 SCC 202. The Court observed thus:

> "7. Rule 161 of the Bombay Civil Services Rules provides for the retirement of Government servants before attaining the age of superannuation. Rule 161(1)(aa) provides-
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> Notwithstanding anything contained in clause (a) :
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> > (1) An appointing authority shall, if he is of the opinion that it is in the public interest so to do, have the absolute right to retire any Government servant to whom clause (a) applies by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice:
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> Sub-rule (2)(ii) is as follows:
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> > Any Government servant to whom clause (a) applies may, by giving notice of not less than three months in writing to the Appointing Authority, retire from service ... and in any other case, after he has attained the age of 55 years.
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> There is no dispute that the Rule applicable is Rule 161 (2)(ii) and the appellant is entitled to retire by giving a notice of not less than 3 months after he has attained the age of 55 years. Under Rule 161(1)(aa)(1) the appointing authority has an absolute right to retire any Government servant to whom clause (a) applies in public interest by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice. But the Government servant has no such absolute right. A right is conferred on the Government servant under Rule 161(2)(ii) to retire by giving not less than three months' notice on his attaining the prescribed age. Such a right is subject to the proviso which is incorporated to the sub-section which reads as follows:
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> > Provided that it shall be open to the appointing authority to withhold permission to retire to a Government servant who is under suspension, or against whom departmental proceedings are pending or contemplated, and who seeks to retire under this sub-clause.

But for the proviso, a Government servant would be at liberty to' retire by giving not less than three months' notice in writing to the appointing authority on attaining the prescribed age. This position has been made clear by this Court in Dinesh Chandra Sangma v. State of Assam, (1977) 4 SCC 441, where the Court was considering the effect of the (Assam) Fundamental Rule 56(c) which confers right on the Government servant to voluntary retire. Rule 56(c) of the (Assam) Fundamental Rules runs as follows :

> (c) Any Government servant may, by giving notice of not less than three months in writing to the appropriate authority, retire from service after he has attained the age of fifty years or has completed 25 years of service, whichever is earlier.

On a construction of the Rule this Court held that the condition of service which is envisaged in Rule 56(c) giving an option in absolute terms to a Government servant to voluntarily retire with three months' previous notice, after he reaches 50 years of age or has completed 25 years of service, cannot be equated with a contract of employment as envisaged in Explanation 2 to Rule 119 of the Defence of India Rules and that Rule 56 is a statutory condition which operated in law without reference to a contract of employment and when once the conditions of Fundamental Rule 56(c) are fulfilled the Government servant must be held to have lawfully retired. But for the proviso to Rule 161(2)(ii), the decision of this Court in the case cited above would be applicable and the right would have been absolute. But the proviso has restricted the right conferred on the Government servant. Under the proviso it is open to the appointing authority to withhold permission to retire to a Government servant when (1) he is under suspension, or (2) against whom departmental proceedings are pending or contemplated. Thus the permission to retire can be withheld by the appointing authority either when the Government servant is under suspension or against whom departmental proceedings are pending or contemplated. It was submitted on behalf of the appellant that admittedly he was not under suspension on the date when he attained the age of 55 years and that no departmental proceedings were pending or contemplated against him as required under the proviso. No departmental proceeding was pending but on the facts one cannot say that a proceeding was not under contemplation.

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9. Mr. Patel next referred us to the meaning of the word "withhold" in Webster's Third New International Dictionary which is given as "hold back" and submitted that the permission should be deemed to have been withheld if it is not

> communicated. We are not able to read the meaning of the word "withhold" as indicating that in the absence of a communication it must be understood as the permission having been withheld."

The rule which came up for consideration in *B.J. Shelat (supra)* was the Rule 161 of Bombay Civil Services Rules, 1959. The Rule 161(1) (aa) provides that appointing authority may retire a Government servant in public interest by giving him a notice of not less than three months or three months' pay and allowances in lieu thereof. Rule 161(2)(ii) did not employ the word public interest when the Government servant seeks voluntary retirement. This has been added to the Rule applicable in the State of Uttar Pradesh. Neither there is any provision in the aforesaid rules that require to pass an order to decide an application by a Government servant seeking voluntary retirement that too considering the public interest. Under the rules, it was open to the appointing authority to withhold the permission to retire a Government servant who is under suspension or against whom the departmental enquiry was pending or contemplated. The rules considered by this Court in *B.J. Shelat (supra)* were different and did not contain the provision like Explanation as incorporated in the Fundamental Rule 56 as applicable in the State of Uttar Pradesh. In that context, the discussion has been made and cannot be applied to a rule differently couched in U.P.

17. Reliance was also placed on the decision rendered by this Court in *State of Bombay vs. United Motors,* AIR 1953 SC 252 and *Bengal Immunity vs. State of Bihar,* AIR 1955 SC 661, in which it has been observed that Explanation can be read as proviso and it explain the scope of the main provision and the Explanation becomes part of the main section. There is no dispute with the aforesaid proposition. The Explanation in rules in question has to be applied to both the situations as contemplated in Rule 56(c) and is applicable to both the exigencies not only when Government decides to retire an employee, but also applicable where voluntary retirement is sought by an employee. It cannot be said that no further restriction by explanation has been added in a case where an employee has decided to obtain voluntary retirement. The public interest is the prime consideration on which authority has to decide such a prayer as per the rules applicable in the State of Uttar Pradesh.

18. It was also urged that principles of certainty of rule of law are squarely applicable in the present case. Reliance has been placed on the decision of *State of Haryana vs. S.K. Singhal,* (1999) 4 SCC 293. This Court considered Rule 5.32(b) of the Punjab Civil Services Rules and observed thus:

> "6. The said rule 5.32(B) of the Punjab Civil Service Rules, (Vol.II) reads as follows:
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> > "Rule 5.32(B)(1) At any time a government employee has completed twenty years' qualifying service, he may, by giving notice of not less than

three months in writing to the appointing authority retire from service. However, a government employee may make a request in writing to the appointing authority to accept notice of less than three months giving reason therefor. On receipt of a request, the appointing authority may consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months on the condition that the government employee shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.

(2) The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the appointing authority subject to Rule 2.2, of Punjab Civil Services Rules Vol.II :

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in sub-rule (1) supra, the retirement shall become effective from the date of expiry of the said period:

Provided further that before a government employee gives notice of voluntary retirement with reference to sub-rule (1) he should satisfy himself by means of a reference to the appropriate authority that he has, in fact, completed twenty years' service qualifying for pension."

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8. It will be noticed that under Rule 5.32(B), a government employee who has completed 20 years of qualifying service may, by giving notice of not less than 3 months in writing to the appointing authority, retire from service. There is provision for requesting for relaxation of the notice period of 3 months and for consideration thereof. As to what the appointing authority is to do is governed squarely by sub-rule (2). That sub-rule states that the notice of voluntary retirement given under sub-rule (1) "shall" require acceptance by the appointing authority subject to Rule 2.2 of the Punjab Civil Services Rules (Vol.II). Acceptance of the request is subject to Rule 2.2 of the Rules. But the proviso to sub-rule (2) of Rule 5.32(B) states that if the permission to retire is not refused within the period

specified in sub-rule (1), the retirement shall become effective from the date of expiry of the period. Therefore, it is clear that if a person has completed 20 years qualifying service and has given a notice under Rule 5.32(B) of 3 months (or if his request for relaxation of 3 months is accepted), then the request "shall" be accepted subject to invoking the provision of Rule 2.2 of the Punjab Civil Services Rules (Vol.II). Under Rule 2.2, the "future good conduct" of an employee is an implied condition of every grant of pension. In other words, what all it means is that even if the acceptance of the voluntary retirement is mandatory, there is an obligation cast on the retired employee to maintain good conduct after such retirement. The words "future good conduct" mean good conduct after retirement. If the employee does not continue to maintain good conduct after retirement, then the Government can withhold or withdraw the pension or a part of it in case he is convicted of serious crime or in case he be guilty of grave misconduct. Such a decision to withhold or withdraw the whole or part of pension would be final and conclusive, that is to say, so far as the governmental hierarchy is concerned. It will be noticed that Rule 2.2 does not obstruct the voluntary retirement to come into force automatically on the expiry of 3 months and it only enables withdrawal or withholding of pension subject to certain conditions, to a retired employee.

9. The employment of government servants is governed by rules. These rules provide a particular age as the age of superannuation. Nonetheless, the rules confer a right on the Government to compulsorily retire an employee before the age of superannuation provided the employee has reached a particular age or has completed a particular number of years of qualifying service in case it is found that his service has not been found to be satisfactory. The rules also provide that an employee who has completed the said number of years in his age or who has completed the prescribed number of years of qualifying service could give notice of, say, three months that he would voluntarily retire on the expiry of the said period of three months. Some Rules are couched in language which results in an automatic retirement of the employee upon expiry of the period specified in the employee's notice. On the other hand, certain rules in some other departments are couched in language which makes it clear that even upon expiry of the period specified in the notice, the retirement is not automatic and an express order granting permission is required and has to be communicated. The relationship of master and servant in the latter type of rules continues after the period specified in the notice till such acceptance is communicated; refusal of permission could also be communicated after 3 months and the employee continues to be in service. Cases like Dinesh Chandra Sangma v. State of Assam, (1977) 4 SCC 441, B.J. Shelat v. State of Gujarat, (1978) 2 SCC 202 and Union of

India v. Sayed Muzaffar Mir, (1995) Supp (1) SCC 76 belong to the former category where it is held that upon the expiry of the period, the voluntary retirement takes effect automatically as no order of refusal is passed within the notice period. On the other hand H.P. Horticultural Produce Marketing & Processing Corpn. Ltd. v. Suman Behari Sharma, (1996) 4 SCC 584 belongs to the second category where the bye-laws were interpreted as not giving an option "to retire" but only provided a limited right to "seek" retirement thereby implying the need for a consent of the employer even if the period of the notice has elapsed. We shall refer to these two categories in some detail.

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13. Thus, from the aforesaid three decisions it is clear that if the right to voluntarily retirement is conferred in absolute terms as in Dinesh Chandra Sangma case by the relevant rules and there is no provision in rules to withhold permission in certain contingencies the voluntary retirement comes into effect automatically on the expiry of the period specified in the notice. If, however, as in B.J. Shelat case and as in Sayed Muzaffar Mir case, the concerned authority is empowered to withhold permission to retire if certain conditions exist, viz., in case the employee is under suspension or in case a departmental enquiry is pending or is contemplated, the mere pendency of the suspension or departmental enquiry or its contemplation does not result in the notice for voluntary retirement not coming into effect on expiry of the period specified. What is further needed is that the concerned authority concerned must pass a positive order withholding permission to retire and must also communicate the same to the employee as stated in B.J. Shelat case and in Sayed Muzaffar Mir case before the expiry of the notice period. Consequently, there is no requirement of an order of acceptance of the notice to be communicated to the employee nor can it be said that non-communication of acceptance should be treated as amounting to withholding of permission.

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18. In the case before us sub-rule (1) of Rule 5.32(B) contemplates a “notice to retire” and not a request seeking permission to retire. The further "request" contemplated by the sub-rule is only for seeking exemption from the 3 months’ period. The proviso to sub-rule (2) makes a positive provision that "where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in Sub-rule (1), the retirement shall become effective from the date of expiry of the said period. The case before us stands on a stronger footing than Dinesh Chandra Sangma case so far as the employee is concerned. As already stated

> Rule 2.2 of Punjab Civil Service Rules Vol.II only deals with a situation of withholding or withdrawing pension to a person who has already retired."

19. Rule 5.32(b)(2) of Punjab Rules clearly provide that where the appointing authority does not refuse to grant the permission to retire before the expiry of the period in sub-rule (1), the retirement shall become effective from the date of the expiry of the said date. There is no such provision of notice becoming effective from the date of the expiry of the period in the Fundamental Rules as applicable to the State of Uttar Pradesh. In the context of the proviso, the notice becomes effective from the date of expiry of the period, in that context this Court has made observations in the aforesaid dictum that Rule 2.2 does not obstruct the voluntary retirement to come into force automatically on the expiry of three months.

20. In the *State of Haryana (supra)*, this Court also observed that some rules are couched in language, which results in an automatic retirement of the employee upon the expiry of the period specified in the employee's notice. On the other hand, certain rules in some other departments are couched in the language which makes it clear that even upon expiry of the period specified in the notice, the retirement is not automatic and an express order granting permission is required and has to be communicated. The relationship of master and servant in the latter type of rules continues after the period specified in the

notice till such acceptance is communicated and the refusal of permission could also be communicated after three months and the employee continues to be in service. It is the aforesaid later observations made by this Court, which are squarely applicable to the rule in question as applicable in the State of Uttar Pradesh.

21. In *Himachal Pradesh Horticultural Produce Marketing & Processing Corporation Ltd. vs. Suman Behari Sharma* (1996) 4 SCC 584, the Court considered the language employed in the applicable bye-laws. It was observed that if the permission for voluntary retirement is not granted, the employee would not be able to retire. The Court observed:

> "8. Clause (2) of the bye-law inter alia provides for voluntary retirement from service of HPMC on completion of 25 years' service or on attaining the age of 50 years whichever is earlier. The employee, however, has a right to make a request in that behalf and his request would become effective only if he is 'permitted' to retire. The words "may be...permitted at his request" clearly indicate that the said clause does not confer on the employee a right to retire on completion of either 25 years' service or on attaining the age of 50 years. It confers on the employee a right to make a request to permit him to retire. Obviously, if request is not accepted and permission is not granted the employee will not be able to retire as desired by him. Para (5) of the bye-law is in the nature of an exception to para (2) and permits the employee who has not completed 25 years' service or has attained 50 years of age to seek retirement if he has completed 20 years' satisfactory service. He can do so by giving three months' notice in writing. The contention of the learned Counsel for HPMC was that though para 5 of the bye-law relaxes the conditions prescribed by para (2), the relaxation is only with respect to the period of service and attainment of age of 50 years and it cannot be read to mean that the requirement of permission is dispensed with. On the other hand, the learned counsel for the respondent submitted that as para 5 opens with the words "Notwithstanding the provision under para (2)" and the words "may be...permitted at his request" are absent that would mean that the employee has a right to retire after giving three

> months' notice and no acceptance of such a request is necessary. We cannot agree with the interpretation canvassed by learned counsel for the respondent. The bye-law has to be read as a whole. Para (2) thereof confers a right on the employee to request for voluntary retirement on completion of 25 years' service or on attaining the age of 50 years, but his desire would materialise only if he is permitted to retire and not otherwise. Ordinarily, in a matter like this an employee who has put in less number of years of service would not be on a better fooling than the employee who has put in longer service. It could not have been the intention of the rule-making authority while framing para 5 of the bye-law to confer on such an employee a better and a larger right to retire after giving three months' notice in writing. The words "seek retirement" in para 5 indicate that the right which is conferred by it is not the right to retire but a right to ask for retirement. The word "seek" implies a request by the employee and corresponding acceptance or permission by HPMC. Therefore, there cannot be automatic retirement or snapping of service relationship on expiry of three months' period."

22. In *Padubidri Damodar Shenoy vs. Indian Airlines Ltd. & Anr.* (2009) 10 SCC 514, a question arose of voluntary retirement from service which was not acceded to by the competent authority by according approval. The matter travelled to this Court. It was held that voluntary retirement did not come into force. The Court observed:

> "33. There is nothing to indicate in Regulation 12 that if employer decides to withhold approval of voluntary retirement, such refusal of approval must be communicated to the petitioner during the period of notice. True it is that notice of three months for voluntary retirement given by an employee covered by Clause (b) remains valid even if no communication is received within the notice period but it becomes effective only on its approval by the competent authority. As a matter of fact, this seems to have been understood by both the parties.
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> 34. The appellant issued a notice of voluntary retirement under Regulation 12(b) on 30-9-2005. The notice period was to expire on 31-12-2005. It is an admitted position that the competent authority neither gave an approval nor indicated disapproval to the appellant within the notice period of three months. The employee never treated that there has been cessation of employment on the expiry of three months' notice period inasmuch as he continued to attend his duties after 31-12-2005 until 30-6-2006. It is only by his letter dated 8-6-2006 that the appellant requested the respondent to relieve

> him in terms of his notice dated 30-9-2005 by 30-6-2006 and he stopped attending work from 1-7-2006. The letter dated 8-6-2006 does not make any material difference as the fact of the matter is that after the expiry of the notice period, the appellant continued to attend his duties for many months thereafter.
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> 35. By the letter dated 15-9-2006 the respondent communicated to the appellant that his application for voluntary retirement under Service Regulation 12(b) has not been acceded to by the competent authority. Since the notice for voluntary retirement by an employee who has not attained 55 years but has completed 20 years of continuous service, under the proviso appended to Regulation 12(b), is subject to approval by the competent authority and that approval was not granted, the voluntary retirement of the appellant never came into effect."

23. In *C.V. Francis vs. Union of India & Ors*. (2013) 14 SCC 486, this Court observed that it would depend upon the language used in the rule whether notice for voluntary retirement would come into effect automatically. There has to be a stipulation in the scheme providing that even without acceptance of his application, it would be deemed that the application for voluntary retirement had been accepted. There is no such provision in the rules in question. In *C.V. Francis* (supra), this Court observed:

> "13. It is well-established that a voluntary retirement scheme introduced by a company, does not entitle an employee as a matter of right to the benefits of the Scheme. Whether an employee should be allowed to retire in terms of the scheme is a decision which can only be taken by the employer company, except in cases where the scheme itself provides for retirement to take effect when the notice period comes to an end. A voluntary retirement scheme introduced by a company is essentially a part of the company's desire to weed out the deadwood.
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> 14. The petitioner's contention that his application for voluntary retirement came into effect on the expiry of the period of notice given by him must fail, since there was no such stipulation in the scheme that even without acceptance of his application it would be deemed that the petitioner's

> voluntary retirement application had been accepted. Once that is not accepted, the entire case of the petitioner falls to the ground. The decision in Tek Chand case (2001) 3 SCC 290 will not, therefore, have any application to the facts of this case, particularly when the petitioner's application for voluntary retirement had not been accepted and he had been asked to rejoin his services. The petitioner was fully aware of this position as he continued to apply for leave after the notice period was over."

24. Decision in *Tek Chand vs. Dile Ram* (2001) 3 SCC 290 has been relied upon by the respondents. This Court considered Rule 48-A(2) of the Central Civil Services (Pension) Rules, 1972, proviso to said rule contained a provision where the appointing authority did not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period. The relevant observations are extracted hereunder:

> "31. It is not disputed that the appointing authority did not refuse to grant the permission for retirement before expiry of the period specified in the said application dated 5.12.1994 given by Nikka Ram. Further, no communication whatsoever was made to him within the said period. During the course of the argument before the High Court, the learned counsel for the parties referred to Rule 48-A of the Rules, of course, placing their own interpretation. Since the said Rule is material and has bearing on the question to be determined, it is extracted below:
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> > "48-A. Retirement on completion of 20 years' qualifying service. - (1) At any time after a government servant has completed twenty years' qualifying service, he may, by giving notice of not less than three months in writing to the appointing authority, retire from service:
> > Provided that this sub-rule shall not apply to a government servant, including scientist or technical expert who is -
> >
> > (i) on assignments under the Indian Technical and Economic Cooperation (ITEC) Programme of the

Ministry of External Affairs and other aid programmes.

(ii) posted abroad in foreign-based offices of the Ministries / Departments.

(iii) on a specific contract assignment to a foreign Government, unless, after having been transferred to India, he has resumed the charge of the post in India and served for a period of not less than one year.

(2) The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the appointing authority:

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period."

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33. It is clear from sub-rule (2) of the Rule that the appointing authority is required to accept the notice of voluntary retirement given under sub-rule (1). It is open to the appointing authority to refuse also, on whatever grounds available to it, but such refusal has to be before the expiry of the period specified in the notice. The proviso to sub-rule (2) is clear and certain in its terms. If the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement sought for becomes effective from the date of expiry of the said period. In this case, admittedly, the appointing authority did not refuse to grant the permission for retirement to Nikka Ram before the expiry of the period specified in the notice dated 5.12.1994. The learned Senior Counsel for the respondent argued that the acceptance of voluntary retirement by appointing authority in all cases is mandatory. In the absence of such express acceptance the government servant continues to be in service. In support of this submission, he drew our attention to Rule 56(k) of Fundamental Rules. He also submitted that acceptance may be on a later date, that is, even after the expiry of the period specified in the notice and the retirement could be effective from the date specified in the notice. Since the proviso to sub-rule (2) of Rule 48-A is clear in itself and the said Rule 48-A is self-contained, in our opinion, it is unnecessary to look to other provisions, more so in the light of law laid down by this Court. An argument that acceptance can be even long after the date of the expiry of the period specified in the notice and that the voluntary retirement may become effective from the date specified in the notice, will lead to anomalous situation. Take a case, if an application for

> voluntary retirement is accepted few years later from the date specified in the notice and voluntary retirement becomes operative from the date of expiry of the notice period itself, what would be the position or status of such a government servant during the period from the date of expiry of the notice period up to the date of acceptance of the voluntary retirement by the appointing authority? One either continues in service or does not continue in service. It cannot be both that the voluntary retirement could be effective from the date of expiry of the period mentioned in the notice and still a Government servant could continue in service till the voluntary retirement is accepted. The proviso to sub-rule (2) of Rule 48-A of the Rules does not admit such situation."
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> *** *** ***
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> 35. In our view, this judgment fully supports the contention urged on behalf of the appellant in this regard. In this judgment, it is observed that there are three categories of rules relating to seeking of voluntary retirement after notice. In the first category, voluntary retirement automatically comes into force on expiry of notice period. In the second category also, retirement comes into force unless an order is passed during notice period withholding permission to retire and in the third category voluntary retirement does not come into force unless permission to this effect is granted by the competent authority. In such a case, refusal of permission can be communicated even after the expiry of the notice period. It all depends upon the relevant rules. In the case decided, the relevant Rule required acceptance of notice by appointing authority and the proviso to the Rule further laid down that retirement shall come into force automatically if the appointing authority did not refuse permission during the notice period. Refusal was not communicated to the respondent during the notice period and the Court held that voluntary retirement came into force on expiry of the notice period and subsequent order conveyed to him that he could not be deemed to have voluntary retired had no effect. The present case is almost identical to the one decided by this Court in the aforesaid decision."

The rule which came up for consideration was entirely different. There is no provision contained in rule in question in the case at hand like the proviso to Rule 48-A(2) referred to above due to which the retirement shall become effective from the date of expiry of period of notice in case the same was not refused.

25. In our considered opinion, under Rule 56 as applicable in the State of Uttar Pradesh, notice of voluntary retirement does not come into effect automatically on the expiry of the three months period. Under the rule in question, the appointing authority has to accept the notice for voluntary retirement or it can be refused on permissible grounds.

26. In our opinion, the Rule 56(c) does not fall in the category where there is an absolute right on the employee to seek voluntary retirement. In view of the aforesaid dictum and what is held by this Court, we find that the prayer made to make a reference to a larger Bench, in case this Court does not follow the earlier decision is entirely devoid of merit as on the basis of what has been held by this Court in the earlier decisions, we have arrived at the conclusion. This Court has authoritatively laid down the law umpteen number of time.

27. Reliance has also been placed on behalf of respondents on the decision in *Mahant Dhanmir vs. Madan Mohan,* (1987) Supp SCC 528, in which this Court observed that law should not be unsettled unless there are compelling reasons. There is no dispute that the said proposition has already been held. There is no question of law unsettling the law but is of its application, which unfortunately appears as against the interests of the respondents in view of language employed in the rule in question. An attempt in vain has been made

by the respondents to wriggle out of the clutches of the various decisions by raising the aforesaid argument.

28. It was also urged that the Rule 56(c) does not require the employee to give reasons for voluntary retirement. No doubt under Rule 56(c) there is no requirement for an employee to give any reason, however, while considering the prayer, the appointing authority has to keep in mind the public interest as provided in the Explanation attached to F.R. 56.

29. Learned counsel also urged that outside the proviso to Rule 56(d), there is no general right of appointing authority to reject the notice of voluntary retirement of an employee on the ground of public interest. For this purpose, threefold submission has been made. Firstly, that the principle of liberty under the Constitution and specifically Part III of the Constitution requires that any restriction on freedom and liberty must have the sanction of the law and that law must be just, fair and reasonable. Presently, there is no law as enacted under Article 309 of the Constitution. Secondly, the right of Government employee and that of the Government are delineated in terms of Fundamental Rules governing State Government employees. Thus, if any Fundamental Rules do not restrict the general liberty of an employee or do not empower the employer to act in a certain way, an action otherwise would be impermissible. For this purpose,

reliance has been placed on *Moti Ram Deka vs. G.M., North East Frontier Railway,* (1964) 5 SCR 683. It was also submitted that public interest restriction that applies to the State in the case of compulsory retirement, applies on account of Article 311. The Court observed:

> 27. In this connection, it is necessary to emphasise that the rule-making authority contemplated by Art. 309 cannot be validly exercised so as to curtail or affect the rights guaranteed to public servants under Art. 311(1). Art. 311(1) is intended to afford a sense of security to public servants who are substantively appointed to a permanent post and one of the principal benefits which they are entitled to expect is the benefit of pension after rendering public service for the period prescribed by the Rules. It would, we think, not be legitimate to contend that the right to earn a pension to which a servant substantively appointed to a permanent post is entitled can be curtailed by Rules framed under Art. 309 so as to make the said right either ineffective or illusory. Once the scope of Art. 311(1) and (2) is duly determined, it must be held that no Rule framed under Art. 309 can trespass on the rights guaranteed by Art. 311. This position is of basic importance and must be borne in mind in dealing with the controversy in the present appeals.

30. The reliance placed on *Moti Ram Deka (supra)* is of no avail as it has no application to the instant case as no right conferred by Article 311 of the Constitution can be said to have been taken away and service *rule dehors* of it can provide for the concept of public interest.

31. There is no doubt about it that Rule 56(d) provides that where a disciplinary enquiry is pending or contemplated and in the case of contemplated disciplinary enquiry, the Government servant shall be informed before the expiry of notice that it has not been accepted. The proviso to Rule 56(d) has no application where a disciplinary enquiry

is not contemplated or pending. When the proviso itself is not applicable, in no case it will dilute the provisions of Explanation with respect to exigencies mentioned in clause (c) of Rule 56.

32. The submission made upon principle of liberty and its curtailment, the law must be just, fair and reasonable can also not be accepted as the Fundamental Rules are statutory rules and have been made by the Governor under section 241(2)(b) of the Government of India Act,1935 and provisions of rule in question cannot be said to be unfair, unreasonable and oppressive.

33. The concept of liberty not to serve when the public interest requires cannot be attracted as retirement which carries pecuniary benefits can be subject to certain riders. The general public has the right to obtain treatment from super skilled specialists, not second rates. In *Jagadish Saran vs. Union of India,* (1980) 2 SCC 768, the Court observed thus:

> "44. Secondly, and more importantly, it is difficult to denounce or renounce the merit criterion when the selection is for post-graduate or post-doctoral courses in specialised subjects.... To sympathise mawkishly with the weaker sections by selecting sub-standard candidates, is to punish society as a whole by denying the prospect of excellence say in hospital service. Even the poorest, when stricken by critical illness, needs the attention of super-skilled specialists, not humdrum second-rates. So it is that relaxation on merit, by overruling equality and quality altogether, is a social risk where the stage is post-graduate or post-doctoral."

34. The concept of public interest can also be invoked by the Government when voluntary retirement sought by an employee, would be against the public interest. The provisions cannot be said to be violative of any of the rights. There is already paucity of the doctors as observed by the High Court, the system cannot be left without competent senior persons and particularly, the High Court has itself observed that doctors are not being attracted to join services and there is an existing scarcity of the doctors. Poorest of the poor obtain treatment at the Government hospitals. They cannot be put at the peril, even when certain doctors are posted against the administrative posts. It is not that they have been posted against their seniority or to the other cadre. Somebody has to man these administrative posts also, which are absolutely necessary to run the medical services which are part and parcel of the right to life itself. In the instant case, where the right of the public are involved in obtaining treatment, the State Government has taken a decision as per Explanations to decline the prayer for voluntary retirement considering the public interest. It cannot be said that State has committed any illegality or its decision suffers from any vice of arbitrariness.

35. The decision of the Government cater to the needs of the human life and carry the objectives of public interest. The respondents are claiming the right to retire under Part III of the Constitution such right cannot be supreme than right to life. It has to be interpreted along

with the rights of the State Government in Part IV of the Constitution as it is obligatory upon the State Government to make an endeavour under Article 47 to look after the provisions for health and nutrition. The fundamental duties itself are enshrined under Article 51(A) which require observance. The right under Article 19(1)(g) is subject to the interest of the general public and once service has been joined, the right can only be exercised as per rules and not otherwise. Such conditions of service made in public interest cannot be said to be illegal or arbitrary or taking away the right of liberty. The provisions of the rule in question cannot be said to be against the Constitutional provisions. In case of voluntary retirement, gratuity, pensions, and other dues etc. are payable to the employee in accordance with rules and when there is a requirement of the services of an employee, the appointing authority may exercise its right not to accept the prayer for voluntary retirement. In case all the doctors are permitted to retire, in that situation, there would be a chaos and no doctor would be left in the Government hospitals, which would be against the concept of the welfare state and injurious to public interest. In the case of voluntary retirement, there is a provision in Rule 56 that a Government servant may be extended benefit of an additional period of five years then an actual period of service rendered by him there is the corresponding obligation to serve in dire need.

36. It was urged that in the State of Tamil Nadu, Government has amended the rules not to retire Government doctors, if there is any scarcity of doctors it is open to the Government of Uttar Pradesh to amend its rules. In India, the Government sponsored Medical Services to cater to the needs of poorest of the poor and have-nots otherwise there is the commercialisation of the charitable medical profession. In other States too, it is seen sometime that when a doctor is transferred from one place to another, the doctor forwards application resigning from the post or seeks voluntary retirement as he does not want to move out and leave his lucrative private practice and joins the duty only when he obtains posting back to the place of his choice. In such a scenario people cannot be deprived of the services of good doctors. In view of the scarcity of the doctors and the unfortunate privatisation and commercialisation of the noble medical profession, for maintaining the efficiency of the State Medical Services, the decision taken by the Government is permissible as per rules and cannot be interfered with. Unfortunately, the High Court has given the aforesaid observations pointing out the shortage of specialised doctors and at the same time has ultimately decided against the State Government on wrong interpretation without considering the Explanation attached to Rule 56 applicable in the State of Uttar Pradesh. The preface given by the High Court is just opposite to its conclusion. The High Court

ought to have rejected and not to allow the prayer of voluntary retirement made by the doctors.

37. It was urged that some of the doctors suffered from neck pain etc. as such prayer ought to have been accepted but they have not given any such serious ailments which may make their functioning in the hospital difficult in any manner whatsoever. It was the pretext that was used by them to seek voluntary retirement. It is for the Government to consider the efficacy. Doctors too have right under the Rights of Persons with Disabilities Act, 2016, they can continue in services unfettered by such ailments.

38. Under Article 47 it is the duty of the State to improve the public health, which is a primary duty under the Directive Principles of the State Policy and the statutory expression which may be enforced. When we consider Article 51A containing Fundamental Duties, it is a duty of every citizen under Article 51A(g) to have compassion for living creatures and to have humanism is also contemplated under Article 51A(h) and to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavours and achievement. It cannot be done by depriving poorest of the poor essential medical services and to leave them at the mercy of doctors. There cannot be an exodus from the Government Medical Services at large, which is being projected in the instant case,

definitely this cannot be permitted to happen within four corners of law as it has to be living organism and has to live up to the essence and spirit of constitution and cannot ignore and overlook needs of poorest strata of the society.

39. It was urged that the State Government is discriminating between the doctors in the Provincial Medical Services with the doctors working in the State-owned Hospitals and Medical Colleges. In the Medical Colleges etc. doctors are being permitted to retire. Instances of 7 doctors have been given, who were permitted to retire in 2016, 2017 and 2018. Doctors of Medical Colleges are on a different footing than that of Provincial Medical Services. Even otherwise in view of the scarcity of the doctors, no ground of equality can be claimed and the doctors of different services form different class, apart from that there is no concept of negative equality that too against the public interest. In case, such a plea is allowed, none may be left to serve public at large.

40. There are several decisions of the High Court, namely, *Dr. Anil Dewan vs. State of Punjab,* ILR 1 Punjab & Haryana 46; *State of Punjab vs. Dr. Harbir Singh Dhillon*, 2010 SCC Online P&H 6159 and *Dr. Kalpana Singh vs. State of Rajasthan,* (2014) SCC Online Raj 6253, were cited to show that the decision in *Dinesh Chandra Sangma (supra)* had been followed. We have considered the aforesaid decisions

and we find that it would depend upon the scheme of the Rules. Each and every judgment has to be considered in the light of the provisions which came up for consideration and question it has decided, language employed in the rules, and it cannot be said to be of general application as already observed by this Court in *State of Haryana (supra).*

41. It was also contended that the State of Uttar Pradesh may amend rules, in our opinion there is no such necessity in view of the Explanation the State has already amended its rules so as to enable it to pass an order with respect to retirement whether it is at the instance of the Government or at the instance of the employee for both the public interest is germane.

42. The submission was also made with respect to the imposition of moratorium period of one year on retirement and that there should be the recruitment of the doctors and thereafter acceptance of voluntary retirement by the State. We do not propose to venture into it. The action of the State Government was appropriate in disallowing the prayer seeking voluntary retirement. The Government may fill the vacancies if any. But that would not bring doctors of experience at senior level and exodus of doctors cannot be permitted to weaken the services when the public interest requires to serve for the sake of efficient medical profession and fulfil Directive Principles of State

Policy once they found statutory expression in the rules cannot be made mockery. When services are required, denial of voluntary retirement is permissible under the Rules applicable in the State of Uttar Pradesh.

43. In view of the above, we allow the civil appeals and hereby set aside the impugned judgment and order passed by the High Court. The applications for intervention and to implead stand allowed.

.....J.
(Arun Mishra)

.....J.
(S. Abdul Nazeer)

August 21, 2018.
New Delhi.