

No. 6277-2GSI-72/30745

From

The Chief Secretary to Government, Haryana.

To

1. All Heads of Departments; the Commissioner Ambala Division, Ambala; all Deputy Commissioners, and all Sub Divisional Officers in Haryana.
2. The Registrar, Punjab and Haryana High Court; and all District and Sessions Judges in Haryana.

Dated, Chandigarh, the 24th October, 1972.

Subject :—Absence from duty by a Government servant on the expiry of maximum period of five years amounts automatic resignation.

Sir,

I am directed to invite a reference to the provisions contained in Rule 3.25 of the Punjab Civil Services Rules, Volume I, Part I, which provide as under :—

- (1) No Government servant shall be granted leave of any kind for a continuous period exceeding five years.
- (2) Where a Government servant does not resume duty after remaining on leave for a continuous period of five years, or where a Government servant after the expiry of his leave remains absent from duty, otherwise than on foreign service or on account of suspension, for any period which together with the period of the leave granted to him, exceeds five years, he shall, unless the competent authority in view of the exceptional circumstances of the case, otherwise determine be deemed to have resigned and shall accordingly cease to be in Government employ.

2. In this connection, attention is invited to Haryana Government letter No. 5510-2GSI-71/28244, dated the 14th October, 1971 with which a copy of the judgement of the Supreme Court delivered in Civil Appeal No. 575 of 1964—Jai Shankar vs. State of Rajasthan was forwarded to you and wherein it was observed that action taken under similar provisions as contained in Rule 8.137 of the Punjab Civil Services Rules, Volume I, Part I, amounts to removal from the service and such an action, without affording opportunity of showing cause amounts to violation of clause (2) of Article 311 of the constitution of India. Keeping in view the legal position indicated above, it was decided that, in future, no action should be taken under the provisions of note 4 below Rule 8.137 of the Punjab Civil Services Rules Volume I, Part I, and that, in such cases, action against the concerned Government servant should be taken in accordance with the procedure as prescribed in rule 7 of the Punjab Civil Services (Punishment & Appeal) Rules, 1952.

3. Government have now been advised that the judgement of the Supreme Court referred to in para 2 above will also have to be kept in view while taking action under Rule 3.25 of the Punjab Civil Services Volume I, Part I, particularly, in view of the Supreme Court Judgement in Writ Petition 217—of 1968 Deokinandan Prasad V/s the State of Bihar—AIR 1971—S.C. 1409 (Extract from the Judgement enclosed for ready reference). The Supreme Court had announced this Judgement with reference to the provisions of Rule 76 of Bihar Service Code (1972), which are similar to the provisions contained in Rule 3.25 of Punjab Civil Services Rules Volume I, Part I. Accordingly it has been decided that in future, while taking action under the provisions of rule 3.25 of the Punjab Civil Services Rules Volume I, Part I, the procedure, as laid down in rule 7 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952, should be strictly followed.

4. These instructions may kindly be noted for careful compliance and should be brought to the notice of all concerned Receipt of this communication may also be acknowledged.

Yours faithfully,

Sd./-

Deputy Secretary Political and Services,
for Chief Secretary to Government Haryana.

Extract taken from AIR 1971 Supreme Court 1409 (v 58 c 20)

Deokinandan Prasad, Petitioner vs. The State of Bihar and other Writ Petition No. 217 of 1968.
Dated the 4th May, 1971.

(A) Civil Services-Bihar Service Code (1952), Rule 76-Though the rule prescribe automatic termination of service for continuous absence for 5 years an order passed to that effect without giving opportunity to Government servant offends Article 311 of Constitution —(X-Ref :—Constitution of India, Article 311). (para 25)

23. A contention has been taken by the petitioner that the order dated August 5, 1966 is an order removing him from service and it has been passed in violation of Art. 311 of the constitution. According to the respondents there is no violation of Art. 311. On the other hand, there is an automatic termination of the petitioner's employment under rule 76 of the Service Code. It may not be necessary to investigate this aspect further because on facts we have found that rule 76 of the Service Code has no application. Even if it is a question of automatic termination of service for being continuously absent for over a period of five years, Art. 311 applies to such cases as is laid down by this Court in *Jai Shankar vs State of Rajasthan* 1966-SCR 825 (AIR 1966) Sc. 492). In that Connection this court had to consider Regulation No. 13 of the Jodhpur Service Regulations, which is as follows :—

An individual who absents himself with permission or remains absent without permission for one month or longer after the end of his leave should be considered to have sacrificed his appointment and may only be reinstated with the sanction of the Competent authority.

24. It was contended on behalf of the State of Rajasthan that the above regulation operated automatically and there was no question of removal from service because the officer ceased to be in the service after the period mentioned in the regulations. This court rejected the said contention and hold that an opportunity must be given to a person against whom such an order was proposed to be passed, no matter how the regulation described it. It was further held to give no opportunity is to go against Art. 311 and this is what has happened here.

25. In the case before us even according to the respondents a continuous absence from duty for over five years, apart from resulting in the forfeiture of the office also amounts to misconduct under rule 46 of the Pension. It is admitted by the respondents that no opportunity was given to the petitioner to show cause against the order proposed. Hence there is a clear violation of Article 311. Therefore, it follows even on this ground the order has to be quashed.