

CHAPTER 43

CIVIL SERVICE

43.01 DEFINITIONS.

The petition and writ does not, under the civil service act, show a clear and complete right to the moneys demanded and the proceedings are dismissed. State ex rel v Hoffman, 209 M 308, 296 NW 24.

Relator, having been certified to the position of state director of vocational education in accordance with section 21 of the civil service act (L. 1939, c. 441), after the expiration of the probationary period provided for in section 10 (1) thereof, acquired a permanent classified civil service status in such position and could not thereafter be separated from it except in accordance with the provisions of said act. State ex rel v Civil Service Board, 215 M 515, 10 NW(2d) 422.

The state civil service act applies generally to all employments in the state service except those expressly excluded therefrom, but it does not apply to hirings under L. 1941, c. 478, and the rules adopted thereunder, under which the commissioner of highways is authorized to hire a truck and operator as an employee rather than as an independent contractor, for the reason that the civil service statute is one of general application relating only to the employment of persons, and Chapter 478 is a special statute relating to employment of both trucks or animals and operators or drivers. Aslakson v State Dept. 217 M 524, 15 NW(2d) 22.

Employees of the Minnesota Historical Society are not state employees and not under state civil service act (L. 1939, c. 411). 1944 OAG 248, May 26, 1944 (230).

Civil service law is the exclusive method of dealing with employees on wages, hours, or conditions of employment. 1944 OAG 252, May 5, 1944 (644-F).

Insurance against negligence of agents of the bureau of criminal apprehension; liability of head of department; right to pay premiums on public liability insurance. 1944 OAG 259, Feb. 4, 1944 (985-A).

Promotional employments while on military leave permitted. Actual and not constructive service on probationary period required. Forty-five day limitation on making application may not be waived. Employee qualifying for reinstatement entitled to immediate employment. 1944 OAG 266, March 15, 1944 (644-D).

A member of classified service is not ineligible for public office under Minnesota Statutes, Section 43.28, but upon filing for office must resign from state service. 1944 OAG 267, April 20, 1944 (644-E).

Persons engaged by the highway department to operate their own trucks are not employees of the state under the civil service law. 1944 OAG 271, July 11, 1944 (331-A-6).

Credit for military leave as applying to situations under sections 192.26, 192.264, 352.11. 1940 OAG 272, Nov. 29, 1944 (331-A-9).

In a legal sense, mere cessation of hostilities does not terminate the war. Enlistments under present conditions would be within the purview of the phrase "or other emergency." Under L. 1943, c. 640, the leave of absence granted expires 45 days after December 31, 1946. Certain salary increases expire as of February 28, 1947. The so-called suspension period under L. 1945 c. 585, extends to and expires on June 30, 1947. OAG Jan. 20, 1947 (644-B).

43.02 COMPOSITION OF DEPARTMENT.

The state civil service act applies generally to all employments in the state service except those expressly excluded therefrom, but it does not apply to hirings under L. 1941, c. 478. Aslakson v State Department, 217 M 524, 15 NW(2d) 22.

43.05 DUTIES AND POWERS OF DIRECTOR.

An employee can apply to the civil service board for a declaration of status, *State ex rel v Stassen*, 208 M 524, 294 NW 647; *Nollet v Hoffman*, 210 M 88, 297 NW 164.

It should be noted that the state civil service act specifically provides for a hearing by the civil service commission before the suspension or discharge of a person who is required to take a qualifying examination before his position becomes permanent. *State ex rel v County of St. Louis*, 216 M 146, 12 NW(2d) 193.

If the attention of the director is called to an alleged failure of the appointing power to comply with section 43.18, he may call the matter to the attention of the civil service board. If after investigation the director finds that the appointing officer has not made the appointment on the sole basis of merit and fitness, the director may refuse to certify the name of such appointee on the payroll of the state, and the appointee in that case may appeal.

The civil service board may in its discretion institute or accord an investigation or hearing, and upon same make and enforce such decision as the circumstances warrant. OAG June 12, 1946 (644-G).

The civil service board has authority to pay to the heirs or estate of a deceased employee such pay as he may be entitled to for any unused portion of his annual leave allowance. 1942 OAG 285, Nov. 6, 1941 (644-F).

Leave of absence. 1944 OAG 264, March 29, 1944 (644-D).

As to working time, and overtime and compensation therefor in grain inspection department, see L. 1945, c. 609. OAG June 27, 1945 (215-a-3) (371-a-5).

Upon discharge from service a superintendent of schools is entitled to reinstatement. OAG Nov. 28, 1945.

43.06 DUTIES AND POWERS OF BOARD.

A determination of the civil status of an employee is a duty imposed upon the board, and an appeal to the board for such a determination is a remedy open to a discharged employee. *State ex rel v Stassen*, 208 M 523, 294 NW 647; *State ex rel v Elston*, 214 M 205, 7 NW(2d) 750.

Where, as here, there was a complete failure by the state civil service board to act upon appellant's application for a determination of his civil service status and grant him a hearing on his claim of wrongful discharge, such failure or refusal was erroneous. *State ex rel v Elston*, 214 M 206, 7 NW(2d) 750.

43.07 TESTIMONIAL POWERS; WITNESSES; FEES.

When employees of the state are subpoenaed to appear before the civil service board in a pending proceeding, the department instituting the inquiry must pay the expenses of the witness. OAG Aug. 23, 1945 (196-N).

43.09 DIVISIONS; UNCLASSIFIED SERVICE; CLASSIFIED SERVICE.

Amended by L. 1947, c. 482, s. 1.

The arbitrary power of removal must not be confused with the power of removal for cause. Where no tenure is fixed by law, the power of removal arbitrarily at the will of the appointing power exists. The effect of fixing the tenure by statute is that removal must be for cause after due notice and hearing. *State ex rel v State Board*, 213 M 190, 6 NW(2d) 251.

At the time of the accidental injury, employees of the state highway department were covered by the workmen's compensation act. The unitary hiring in the present case includes the hiring of men. The commissioner through rules and in practice had direct control of the operator of the truck, and thus the creation of the relation of employer and employee existed. The fact that the employment under L. 1941, c. 478, did not comply with the civil service act is not material. The

MINNESOTA STATUTES 1947 ANNOTATIONS

193

CIVIL SERVICE 43.123

award by the industrial commission is approved. *Aslakson v State Department of Highways*, 217 M 526, 15 NW(2d) 22.

The classified civil service includes the deputy and other employees of the district boiler inspectors, and the usual rules as to appointments and salary ranges apply. OAG Nov. 6, 1945 (644-B).

43.10 TENURE; FIVE-YEAR PROVISION; DISCHARGE; QUALIFYING; REMOVALS.

Amended by L. 1947, c. 610, s. 1.

The legislature may abolish or modify any civil service or preference right which it has granted as well as the remedies for enforcement. A public officer or employee appointed pursuant to statutory authority has no vested right to continuance in his position. *State ex rel v Stassen*, 208 M 523, 294 NW 647; *Reed v Trovatten*, 209 M 352, 296 NW 535.

There is a clear distinction between the situation created by a suspension and that created by the occurrence of a vacancy. A suspension becomes imperative pending the trial of the officer for malfeasance or nonfeasance. A vacancy does not occur until the officer is removed following trial or is occasioned by some other event. L. 1937, c. 310, s. 3 (h), does not apply in the instant case. The acting officer may make valid appointments of subordinates. *State ex rel v Strunk*, 219 M 529, 18 NW(2d) 457.

43.11 TEMPORARY EMPLOYMENT.

In appointing safety inspectors in divisions of control of occupational disease, and accident prevention, the industrial commission is controlled by the veterans preference act. OAG July 12, 1945 (644g).

Under the provisions of L. 1945, c. 585, until June 1, 1947, all appointments, including promotional appointments, in state or in any municipality, are made on a temporary basis, and it will be necessary to take new examinations and establish new eligibility tests at the end of the suspension period. OAG Dec. 13, 1946 (120).

43.12 DIRECTOR TO CLASSIFY EMPLOYEES.

Amended by L. 1947, c. 604, s. 2, and L. 1947, c. 606, s. 1.

L. 1939, c. 441, the civil service act, positively imposes upon the director of civil service the duty of classifying "all offices, employments, and positions in the classified service," and allocating "each office, position or employment in the classified civil service." *State ex rel v Pennebaker*, 215 M 78, 9 NW(2d) 257.

Evidence sustains the findings of the trial court that the director of civil service has made "no original classification or allocation of plaintiff, (a veteran of World War I) as of April 22, 1939," the effective date of the civil service act. Mandamus does not lie to interfere with the discretion of public officers, but it will be granted, as in the instant case, to compel the performance of a public duty which the law clearly imposes upon them. *State ex rel v Pennebaker*, 215 M 80, 9 NW(2d) 259.

Relator, having been certified to the position of state director of vocational education, in accordance with section 21 of the civil service act (L. 1939, c. 441), after expiration of the probationary period provided for in section 10 (1) thereof, acquired a permanent classified civil service status in such position and could not thereafter be separated from it except in accordance with the provisions of the act. *State ex rel v Civil Service Board*, 215 M 217, 10 NW(2d) 422.

43.121 CLASSES OF EMPLOYMENT ASSIGNED TO PROPER SALARY RANGE.

Amended by L. 1947, c. 606, s. 2.

43.123 INVESTIGATION.

Amended by L. 1947, c. 606, ss. 3, 4, 5.

43.13 EXAMINATIONS REASONABLE.

District boiler inspectors, being in the classified service, must be appointed from eligible lists established by the director of civil service. In the absence of the establishment of eligible lists by geographical area, appointments of district boiler inspectors may be made from state-wide eligible lists. OAG Oct. 17, 1946 (644-B).

43.17 APPOINTMENTS; TERM OF ELIGIBILITY; CERTIFIED LISTS.

The war emergency terminates in accordance with a declaration by the president or the congress and does not await the signing of peace treaties. OAG Sept. 6, 1945 (644-D).

43.171 ELIGIBILITY OF VETERANS.

HISTORY. 1947 c. 393 s. 1.

43.19 VACANCIES; HOW FILLED; PROMOTIONS; SALARY INCREASES; DISMISSAL.

Amended by L. 1947 c. 604 s. 3.

Persons who have left the state service and lost their status on the permanent classified list of civil service employees may not be carried on the current re-employment list; but this does not affect the placing at work such employees who have retained a permanent status and are merely placed on lay-off lists at certain times. OAG July 7, 1945 (120); OAG July 12, 1945 (644-C).

Subdivision 1. Vacancies filled by promotion.

Under section 43.19, subd. 1, as amended by L. 1947, c. 604, s. 3, merit and fitness for promotion must, except as provided by clause (2), be ascertained by competitive examination. Clause (2) vests in the director, with the approval of the board, the discretion to determine whether an exception to clause (1) shall be made and a promotion allowed following a non-competitive examination. The board may approve or disapprove of the action of the director under clause (2) and prescribe rules as to conduct of non-competitive examinations. OAG July 11, 1947 (644-C).

Subd. 3. Restoration to position after dismissal. Reinstatement of illegally discharged civil service employees. 18 MLR 837.

43.21 PROBATIONARY PERIOD.

Amended by L. 1947 c. 489 s. 1.

After expiration of the probationary period provided for in L. 1939, c. 441, s. 10 (1), relator acquired a permanent classified civil service status in such position and could not thereafter be separated from it except in accordance with the provisions of the act. State ex rel v Civil Service Board, 215 M 518, 10 NW(2d) 422.

Promotional appointments while on military leave permitted. Actual service required. Forty-five day limitation cannot be waived. Employee qualified for reinstatement entitled to immediate employment, 1944 OAG 266, March 15, 1944 (644-D).

43.22 TRANSFERS WITHIN CLASSIFIED SERVICE; LEAVES OF ABSENCE; REINSTATEMENT.

Amended by L. 1947 c. 604 s. 4.

Civil service commission may reinstate an employee to his former position in cases where he was demoted because of lack of work or shortage of funds. OAG July 7, 1945 (120).

If the matter involves service in the armed forces, the 45 days written into section 43.22 will start to run is the date on which the proper federal authorities officially proclaim that hostilities have ceased. OAG Sept. 6, 1945 (644-D).

MINNESOTA STATUTES 1947 ANNOTATIONS

195

CIVIL SERVICE 43.30

Transfer of employees from federal to state service; Public Laws 549, 79th Congress, 2nd Session, c. 672; Wagner-Peyser Act, June 6, 1933, as amended; L. 1943, c. 640; L. 1945, c. 585; Civil service rules 7.2, 7.3, and 8.2. OAG Oct. 17, 1946 (644-B).

43.225 SUSPENSION PERIOD; OCCUPATION OF PERMANENT STATUS BY CERTAIN PERSONS.

HISTORY. 1947 c. 630 s. 1.

43.226 SUSPENSION PERIOD; VETERANS PREFERENCE; EXCEPTION.

HISTORY. 1947 c. 630 s. 2.

43.24 REMOVALS; REASONS FOR IN WRITING; HEARINGS; DECISION.

Amended by L. 1947 c. 604 s. 5.

The scope of review by the supreme court in certiorari is limited to and determined by the record made by the officers whose action is sought to be reviewed. The supreme court cannot make findings of fact. A wrongfully discharged employee has a right through certiorari proceedings to have considered and determined all questions properly presented by the record. State ex rel v Elston, 214 M 206, 7 NW(2d) 750.

Specifications for removal. State ex rel v Civil Service Board, 215 M 519, 10 NW(2d) 422.

Since the rules of the Minneapolis civil service commission have the force and effect of statutory law, they should be sustained unless violative of constitutional guarantees, controlling state law, or the applicable provisions of the home rule charter; and rules so formulated are valid even if logic is lacking and injustice may result, provided the constitution, state law, or charter provisions are not violated. State ex rel v Hauser, 219 M 297, 17 NW(2d) 504.

The time within which persons in the provisional, probationary, and labor service classes may be dismissed without cause is not affected by section 192.261. OAG Nov. 6, 1945 (644-D).

Discontinuance of residence in Minnesota and establishment of residence in another state, deprives an employee of his civil service status. OAG June 10, 1947 (644-c).

Removal from public office in Minnesota. 20 MLR 721.

43.30 VETERANS PREFERENCE.

Amended by L. 1947 c. 395 s. 1.

A veteran appointed from an eligible register is a permanent employee from the date of his appointment to a permanent position. 1944 OAG 162, Nov. 16, 1944 (85-C).

Where upon investigation the director believes an appointment is not based upon merit and fitness he may refuse to certify appointee's name on state payroll. OAG June 12, 1946 (644-G).

A rejected veteran may as a citizen petition the board to investigate an appointment made from one of three names certified to the appointing power. OAG June 12, 1946 (644-G).

A disabled veteran under this act is one whose disability has been rated by the U. S. Veterans Administration and does not extend to one who receives monthly retirement pay as certified by the war department. OAG July 1, 1946 (644g).