
(1996) 10 OHC CK 0002

In the Orissa High Court

Case No : Original Jurisdiction Case No's. 3638 of 1992 and 1152 of 1995

Amiya Charan Jena

APPELLANT

Vs

Managing Director, Orissa Handloom Development
Corporation Ltd.
 Jugal Kishore Barik Vs Orissa State
Handloom Development Corporation Ltd. and Others

RESPONDENT

Date of Decision : 09-10-1996

Acts Referred:

Orissa State Handloom Development Corporation Limited Employees Service Rules,
1986 — Rule 16, 17, 18, 19, 20

Citation : (1997) 1 OLR 506

Hon'ble Judges : S.N. Phukan, C.J.;C.R. Pal, J;A. Pasayat, J

Bench : Full Bench

Advocate : M.K. Malik, P. Nayak and R. Mohanty in OJC Nos. 3638 and 3668/92 and N.C. Panigrahi and S.C. Dash in OJC No. 1152/95, for the Appellant; Bijan Ray in OJC Nos. 3638 and 3668/92 and 1152/95; B.K. Bal in OJC Nos. 3638 and 3668/92; B. Mohanty in OJC Nos. 3668/92, 1152/95 and B.B. Chouchary, A.K. Mohanty, S.K. Dwibedy and R.K. Biswal in OJC No. 1152/95, for the Respondent

Judgement

S.N. Phukan, C.J.—Bench of this Court while hearing OJCs 3638 and 3668 of 1992 entertained doubt regarding correctness of the judgment dated. 5-11-1993 rendered in OJC No. 3883/92 (Hrushikesh Mohanty v. Managing Director, Orissa State Handloom Development Corporation Ltd. and others) and referred the matter to a larger Bench. Subsequently, OJC No. 1152/95 was also heard along with the aforesaid cases. The order of reference in OJCs 3638 and 3668 of 1992, which is dated 2-5-1995, reads as follows :

"Rule 20 of the Orissa State Handloom Development Corporation Limited Employees Service Rules, 1986, has been struck-down by a Bench of this Court in OJC No. 3883 of 1992 (Hrushikesh Mohanty v. Managing Director Orissa State Handloom Development Corporation Ltd. and Ors.) on the assumption that a probationer on expiry of 2 years must be deemed to have been confirmed in the post. While coming to the aforesaid conclusion. Rule 18 of the Rules has not

been brought to the notice of the Court which unequivocally states that on satisfactory completion of probation, an employee shall be confirmed and no employee shall be deemed to be confirmed unless confirmation is done in writing by the Managing Director. A combined reading of Rules 16, 17 and 18 indicates that a person can remain as a probationer for a maximum period of two years and thereafter his status will be that of a temporary servant until an order of confirmation is passed in terms of Rule 18 and the services of such a temporary employee could be terminated in terms of Rule 20. Since a Bench of this Court without noticing Rule 18 has held that a person must be deemed to have been confirmed after expiry of two years of probation act on that basis has struck down Rule 20 and the same point is involved in the present two cases, we think it appropriate to refer both the cases to a larger Bench"

2. Before proceeding to consider the reference, we may refer to the provisions of the Orissa State Handloom Development Corpora- " lion Limited Employees Service Rules, 1986 (for short, "the Rules"). Rules 1.6, 17, 18, 19 and 20, which are relevant for the present purpose, are quoted below :

"16. All employees to be on probation-All persons appointed in the Corporation Service either by direct recruitment or promotion shall be on probation.

17. Period of probation-The period of probation in case of employees shall be one year. The Managing Director may extend the period of probation of an employee by one year only if his work is not found satisfactory during the period of probation.

18. Discharge/Reversion during probation-During the probationary period an employee if he is directly recruited may be discharged from service without assigning any reason by giving 15 days notice or on payment of an amount equal to his 15 days pay in lieu of notice. During the probationary period an employee may resign by giving 15 days notice or pay in lieu thereof.

On satisfactory completion of the probation an employee shall be confirmed. No employee shall be deemed to be confirmed unless confirmation is done in writing by the Managing Director. The Managing Director shall be the final authority to decide about the satisfactory completion of the probation or otherwise.

During the period of probation an employee appointed by promotion may be reverted to his former post.

19. Termination of service by the employee-An employee at any time after the expiry of the period of probation may resign from the service of the Corporation on giving a notice in writing of his intention to do so. The period of notice required shall be three calendar months in case of an Officer in Class-I and Class-II service and one calendar month in case of any other employee of the Corporation, except in cases where special contract is executed.

In the case of breach of provision of this Rule the employees shall pay to the Corporation a sum equal to his pay for the period of notice required or for the

period of the notice falls short of the prescribed period which sum shall be paid in cash or in default deducted from any money due to him. During the notice period, the employee will hand-over full charge of the work assigned to him to the person authorised for the purpose.

20. Termination of service by Corporation-The Corporation may terminate the service of an employee at any time after the expiry of the probation on giving him three calendar months notice or pay in lieu thereof in the case of Class-I and Class-II employees, and one calendar month's notice or pay in lieu thereof in the case of other employees of the Corporation.

The power to terminate the service of an employees shall be exercised by the Managing Director.

Nothing in these rules shall affect the right of the Corporation to terminate the service of an employee without notice or pay in lieu thereof on his being certified by a Medical Officer to be physically unfit (permanency incapacitated) for further continuance in the service of the Corporation."

3. The Division Bench of this Court, in OJC No. 3883/92 (Hrushikesh Mohanty v. Managing Director, Orissa State Handloom Development Corporation Ltd. and Ors.), by judgment dated 5-11-1993 considered the above rules except rule 18 and held that Rule 20 of the Rules cannot be pressed into service because such a rule was characterised as Henry VII clause in Central inland Water Transport Corporation Ltd. v. Brojo Nath : AIR 1985 SC 1571, a two-Judge Bench decision, which was affirmed by a Constitution Bench in Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, . The Bench while making the present reference rightly pointed out that the earlier Division Bench in Hrushikesh Mohanty (supra) did not take into consideration Rule 18 of the Rules, which we have quoted above.

4. It is the settled-law that while interpreting a statute, it is the duty of the Court to go into the intention of the Legislature, and if a provision is open to more than one interpretation, the Court has to accept that interpretation which reflects the true intention of the Legislature. It is also the settled-position of law that a statute must be read as a whole and every section should be construed with reference to the context of other sections of the Act as far as possible to make it consistent with the subject-matter of the Act. This proposition would also apply while interpreting Rules.

5. Reading Rules 16 to 20 of the Rules, we have to consider as to whether there can be deemed confirmation of an employee after the maximum period of probation is over or whether a written order of confirmation by the Managing Director is necessary. If we hold that there is no deemed confirmation and an order of confirmation in writing by the Managing Director is necessary, whether the services of an employee, after he has completed the maximum period of probation, can be terminated by the Corporation by invoking Rule 20, or whether Rule 20 has to be struck down being characterised as Henry VIII clause.

6. Let us now consider the decisions placed before us by the parties in this regard.

7. Reference has been made to the decision of the apex Court in *West Bengal State Electricity Board and Others Vs. Desh Bandhu Ghosh and Others*, . The apex Court considered the Electricity (Supply) Act, 1948 and the Regulations framed thereunder. Regulation 33 provides that the services of permanent employee of the Board may be terminated without notice on his attaining the age of retirement or by reason of a declaration by the competent medical authority that he is unfit for further service, or as a result of disciplinary action, or if he remains absent from duty, on leave or otherwise, for a continuous period exceeding two years. Regulation 34 provides that in case of a permanent employee, his services may be terminated by serving three months notice or on payment of salary for the above period. It was held that Regulation 33 is a naked "hire and fire" rule and is parallel to Henry VIII clause. Therefore, this regulation was quashed. This decision of the apex Court is of no help to the petitioners inasmuch as the point to be decided is whether there was deemed confirmation under the Rules, as there is no iota of doubt that the services of a confirmed employee cannot be terminated only by giving notice.

8. Reliance was also placed on *Om Prakash Maurya v. U.P. co-operative Sugar Factories Federation, Lucknow* and Regulations 17 and 18 of the U.P. Co-operative Societies Employees, Service Regulations, 1975 and took note of the fact that both these regulations read together provide that the period of probation is for one year and this period may be extended for another one year. The proviso to Regulation 17 restricts the power of the appointing authority in extending the period of probation beyond the period of one year. Therefore, it was held that by implication, after the maximum period of probation of two years, the employee shall be deemed to be confirmed. But this case is not applicable to the case in hand inasmuch as under the present Rules, there has to be an order for confirmation in writing by the Managing Director under the second para of Rule 18.

9. Another decision to which our attention has been drawn is *M.K. Agrwala v. Gurgaon Gramin Bank and Ors.* : , in which the apex Court considered Regulation 10(2) (a) of the Gurgaon Gramin Bank (Staff) Services Regulations, 1980. Under the aforesaid regulation, the maximum period of probation is 18 months, at the end of which the employee would either be confirmed, if he is found suitable, or , if otherwise, discharged from service. Therefore, the Court held that there was limitation on the power of the employer to extend the period of probation beyond 18 months, and that being so, if the employee was neither discharged nor confirmed, then there would be an implied confirmation as there was no statutory indication as to what would follow in the absence of express confirmation at the end of the maximum permissible period of probation. But, in the case in hand, there is a provision, namely, Rule 20 of the Rules.

10. In *State of Gujarat Vs. Akhilesh C. Bhargav and Others*, , the apex Court

considered the relevant rules of the Indian Police Service (Probation) Rules, 1954, as it then stood. As in that case there was no extension of the period of probation, relying on two earlier decisions of the apex Court in *State of Punjab Vs. Dharam Singh*, ; and *Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc.*, ; it was held that the officer stood confirmed though there was no formal order of confirmation. So, the main question is whether there is deemed confirmation under the Rules which we shall consider at the relevant place.

11. in *O.P. Bhandari Vs. Indian Tourism Development Corpn. Ltd. and Others*, ,. the apex Court considered Rule 31 (v) of the Indian Tourism Development Corporation Rules, which, inter alia, provides that the services of an employee may be terminated by giving such notice or notice pay as may be prescribed in the contract of service in the following manner :

(i) to (iv) xxx xxx xxx (v) of an employee who has completed his probationary period and who has been confirmed or deemed to be confirmed by giving him 90 days" notice or pay in lieu thereof.

As by the above rule even the services of a confirmed employee could be terminated by giving notice and without holding any disciplinary proceeding, the apex Court held that the said rule cannot co-exist with Articles 14 and 16(1) of the Constitution as the tenure of service of a citizen, who takes up employment with the State will depend on the pleasure and whim of the competent authority. Therefore, the above rule was quashed. The same ratio was laid down in *Desh Bandhu Ghosh* (supra) and we have recorded our views on this point.

12. *Sri Dhiraj Ghosh Vs. Union of India and another*, , on which reliance has been placed, is not relevant for our purpose as it was a case of temporary employee and governed by Civil Service (Temporary) Rules, 1949.

13. Reliance has also been placed on *Central Inland Water Transport Corporation Ltd. v. Brojo Math* :AIR 138 SC 1571; and *Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others*, . These two decisions are also not relevant as the law laid down by the apex Court is in respect of permanent employees. We may mention that in both the cases, the employer was empowered by the relevant regulations/rules to remove from service a permanent employee by giving notice without any reason and without any proceeding, which would amount to violation of the principles of natural justice.

14. We may now refer to the decision of the apex Court in *Municipal Corporation, Raipur Vs. Ashok Kumar Misra*, . The employee in that case was appointed as a Lower Division Clerk on 22-9-1966 and yams kept on probation for a period of two years which expired on 21-9-1968. On 9-12-1968. he was served ; with a notice terminating his services with effect from 9-1-1969. Rule 8 of the M. P. Government Servants" General Conditions of Service Rules, 1961, inter alia, provides that a person appointed to a service or post by direct recruitment shall be on probation which may be" extended and there is a note which provides that

the probationer whose period of probation is not extended but who has neither been confirmed nor discharged from service at the end of the period of probation shall be deemed to have been continued in service subject to the condition of his service being terminable on the expiry of the notice of one calendar month giving in writing by either side. It was also provided in the rule that on successful completion of probation and passing of the departmental examination, the probationer shall be confirmed in the service post to which he has been appointed. On the above facts, the apex Court held that after expiry of the period of probation and before confirmation, the employee would be deemed to have been continued in service as a probationer and the expiration of the said period does not entitle him with a right to deemed confirmation. The rule contemplates for passing of an express order of confirmation. This law was laid down after taking into consideration Dhararn Singh's case (supra).

15. in *State of Maharashtra v. V.R. Saboli and Anr.*, , the apex Court considered the provisions of the Bombay Judicial Service Recruitment Rules, 1956, more particularly, Rule 4 (2) (iv) regarding the period of probation. Clause (iv) of Submit; (2), inter alia, provides that unless otherwise expressly directed, every person appointed shall be on probation for a period of two years and on the expiry of such period he may be confirmed if-{a) there is vacancy and (b) his work is found satisfactory. In paragraph-6 of the Judgment of the apex Court, it was held that it is imperative to put. every person appointed on probation for a minimum period of two years unless otherwise expressly directed, and on the expiry of the said period of two years, the person appointed may be confirmed if there is a vacancy and if his work is found satisfactory. The apex Court further held that the plain meaning of the rule is that there is no auto-matic confirmation on the expiry of the probation period of two years, and that on the expiry of the said period and on fulfillment of the requirement of the above Sub-clauses (a) and (b), a Government servant becomes eligible for being confirmed, and normally he is likely to be confirmed. But, it is a matter of common knowledge that in many branches of Government service including the Judiciary, for administrative reasons or otherwise, confirmation Is delayed and is made at a subsequent date. It was also held that in view of the rule in question, without an express order of confirmation, the Government servant will not be taken to have been confirmed in the post to which he was appointed temporarily and/or on probation.

16. In *Dhanjibhai Ramjibhai Vs. State of Gujarat*, , it was held that the power to extend the period of probation must not be confused with the manner in which the extension may be effected-one relates to power and the other a mere procedure. It was held therein that in the absence of such rules, it is sufficient that the power is exercised fairly and reasonably, and that a probationer has no right to be confirmed merely because he has completed the period of probation and has passed the requisite tests and completed the prescribed training. According to the apex Court, the function" of confirmation implies the exercise of judgment by the confirming authority on the overall suitability of the employee

for permanent absorption in service.

17. In *Shri Kedar Nath Bahl Vs. The State of Punjab and Others*, , the apex Court held that where a person is appointed as a probationer and the "period of probation is specified. It does not follow that at the end of the specified period of probation he obtains confirmation automatically even if no order has been passed in that behalf, unless the terms of appointment clearly indicate that confirmation would automatically follow at the end of the specified period of probation.

18. in *State of Uttar Pradesh Vs. Akbar Ali Khan*, , a Tahasildar, who submitted false bills in respect of his journey, after an inquiry, was reverted to his substantive post of Naib-Tahasildar. The apex Court held that the order was not punitive in character and the inquiry was to ascertain as to whether he was to be continued on probation or whether his probation should be terminated.

19. We may now refer to some decisions of the High Courts on which reliance has been placed.

In *Ramanand Ramnarayan Raidas v. State of M. P. and Ors.*: 1979 (3) SLR 671, the Madhya Pradesh high Court after considering the M. P. Civil Services (General Conditions of Service) Rules, 1361 held that a person appointed on probation as a Civil Judge and continued after expiry of the period of probation cannot be held to have been confirmed without a specific order of confirmation.

20. The Gauhati High Court in *Sekhar Roy v. Union of India and Ors.* : 1984 (3) SLR 588, held that an employee becomes quasi-permanent Government servant after completion of temporary service for more than three years in view of the provisions of the Central Civil Services (Temporary Services), Rules 1965.

21. A Division Bench of this Court in *Bhabani Prasad Dash v. Arbitrator-cum-Director of Textiles, Orissa and Ors.* : 76 (1993) CLT 449, held that after expiry of the maximum period of probation, an employee stands confirmed and cannot be discharged without inquiry. But, in this judgment, the relevant rule was not quoted.

22. Another Division Bench of this Court in *Ayodhya Prasad Singh Vs. Registrar, Co-operative Societies and Others*, , held that when under the terms of service there is no automatic confirmation in the post after the prescribed period, till confirmed by a specific order the employee, following the normal rule, continues to be a probationer.

23. We may now refer to the decision of the Constitution Bench of the apex Court in *Dharam Singh* (supra). The relevant rule in that case runs as follows :

"6. (1), Members of the service, officiating or to be promoted against permanent posts, shall be on probation in the first instance for one year.

(2) Officiating service shall be reckoned as period spent on probation, but no member who has officiated in any appointment for one year shall be entitled to be confirmed unless he is appointed against a permanent vacancy.

(3) On the completion of the period of probation the authority competent to make appointment may confirm the member in his appointment or if his work or conduct during the period of probation has been in his opinion unsatisfactory, he may dispose with his services or may extend his period of probation by such period as he may deem fit or revert him to his former post if he was promoted from some lower post; Provided that the total period of probation including extensions, if any shall not exceed three years.

(4) Service spent on deputation to a corresponding or higher post may be allowed to count towards the period of probation, if there is a permanent vacancy against which such , member can be confirmed.

The constitution Bench after considering the above rule held as follows :

"...Where, as in the present case, the service rules fix a certain period of time beyond which the probationary period cannot be extended, and an employee appointed or promoted to a post on probation is allowed to continue in that post after completion of the maximum period of probation without an express order of confirmation, he cannot be deemed to continue in that post as a probationer by implication. The reason is that such an implication is negated by the service rule forbidding extension of the probationary period beyond the maximum period fixed by it. In such a case, it is permissible to draw the inference that the employee allowed to continue in the post on completion of the maximum period of probation has been confirmed in the post by implication."

In paragraph 3 of the judgment, the apex Court held that it has been hold consistently by the apex Court that when a first appointment or promotion is made on probation for a specified period and the employee is allowed to continue in the post after the expiry of the period without any specific order of confirmation, he should be deemed to continue in that post as a probationer in the absence of any indication to the contrary in the original order of appointment or promotion or the service rules, and in such a case, an express order of confirmation is necessary to give the employee a substantive right to the post, and from the mere fact that he is allowed to continue in the post after the expiry of the specified period of probation, it is not possible to hold that he should be deemed to have been confirmed. In coming to the above decision, the apex Court relied on the earlier decisions in Sukhbans Singh v. State of Punjab : AIR 1962 SC 177 ; G. S. Ramaswamy v. Inspector-General of Police, Masore State. Bangalore : AIR 1986 SC 175 ; and the Commissioner of Income Tax, Patiala and Others Vs. Shahzada Nand and Sons and Others, ,

24. Let us now refer to the recent decision of the apex Court in Jai Kishan Vs. Commissioner of Police and another, . A two Judge Bench of the apex Court considered Rule 5(a) of the Central Services Temporary (Service) Rules, 1966, which runs as follows :

"(e) (i) All direct appointments of employees shall be made initially on purely temporary basis. AH employees appointed to the Delhi Police shall be on

probation for a period of two years :

Provided that the competent authority may extend the . period of probation but in no case shall the period of probation extend beyond three years in all.

(ii) The services of an employee appointed on probation are liable to be terminated without assigning any reason.

(iii) After successful completion of period of probation, the employees shall be confirmed in the Delhi Police by the competent authority, subject to the availability of permanent post."

Relying on the decision in Dharam Singh (supra) the apex Court rejected the contention that even if the appellant in that case was not confirmed by passing any order, on expiry of three years he must be deemed to have been confirmed as a member of the service. It was held that successful completion of probation is a condition precedent for confirmation, as envisaged in Clause (iii) of the above Rule 5 (e).

In *State of Punjab v. Baldev Singh Khosla* : AIR 1996 SC 1993, the apex Court considered Rule 10 of the Punjab State Cooperative Service (Class II) Rules, 1958. The said rule runs as follows :

"10. Probation-All members of the service shall on appointment remain on probation in the first instance for a period of two years, provided that Govt. may allow service rendered on a post on an identical cadre or in the higher post in another department to count for probation in the post in the service.

2. Provided further that in the case of members promoted from the State Service Class III- continue officiating of four months or over shall be reckoned as a period spent on probation.

3. If the work or conduct of any candidate or member during the period of training of probation in the opinion of Government not satisfactory they may dispense with his service if he has been recruited by direct recruitment, or may revert him, to his former post if he has been recruited by promotion or by transfer. On the conclusion of the period of probation of any members of the service. Government may, if vacancy exists, confirm him in his appointment; if his work or conduct has, in its opinion been satisfactory may extend his period of probation by such period as it may think fit and thereafter pass such orders as it could have passed on the expiry of the first period of probation, provided that the total period of probation, including extension, shall not exceed three years in any case."

The apex Court, after considering the above rule, rejected the contention that as the outer-limit of probation is three years, an employee, on completion of that period, must be deemed to have been confirmed. It was held that the above outer-limit of three years provided under the Rules is an enabling provision to allow the employee to continue in service without being reverted or discharged

from service for failure to satisfactorily complete the period of probation, but that would not mean that the probationer, on the expiry of three years" probation period, must be deemed to have been confirmed as the rule itself envisages a positive order of confirmation. Therefore, even after the expiry of probation, if no order of confirmation is made, the employee may continue and remain in service, but it cannot be deemed that he has been confirmed.

25. We may now summarise the law laid down by the apex Court in *Dhararn Singh (supra)*, *Ashok Kumar Mishra (supra)*, *Dhanjibhai Ramjibhai (supra)*, *Kedar Nath Bahi (supra)*, *Jai Kishan (supra)*, and *Baldev Singh Khosla (supra)* and the Division Bench decision of this Court in *Ayodhya Prasad Singh (supra)* :

(i) If the relevant Rules provide the maximum period of probation and there is nothing in the Rules that after the period of probation is completed an order in writing for confirmation of the employee is necessary, the employee shall be deemed to have been confirmed after completion of the period of probation;

(ii) if in the relevant Rules, the maximum period of probation is laid down and there is a specific provision that an order of confirmation will be required to be passed by the competent authority, in absence of such an order of confirmation, it cannot be deemed that the probationer, after completion of the maximum period of probation, has been confirmed; and

(iii) if in the relevant Rules, there is a provision that the competent authority has to pass an order of confirmation in writing after the employee has completed the maximum period of probation, in absence of such order of confirmation, the employee shall continue as a probationer.

26. Situated thus, let us examine the relevant rules of the Rules in the present case. Para 2 of Rule 18 of the Rules runs as follows :

"On satisfactory completion of the probation an employee shall be confirmed. No employee shall be deemed to be confirmed unless confirmation is done in writing by the Managing Director. The Managing Director shall be the final authority to decide about the satisfactory completion of the probation or otherwise.

Thus, it is clear from the above rule that an order of confirmation in writing by the Managing Director is necessary in case of a probationer under the Corporation. From a reading of Rule 17 of the Rules, we find that the initial period of probation is one year and the Managing Director may extend the period of probation of an employee by one year only if his work is not found satisfactory during the period of probation. Therefore, the maximum period of probation can be two years; but in view of the second para of Rule 18, unless there is an order of confirmation in writing by the Managing Director, there cannot be deemed confirmation, and the employee, who is on probation, shall continue as a probationer.

27. Rule 20 of the Rules empowers the Corporation to terminate the services of an employee at any time after the expiry of the period of probation after giving

him three calendar months" notice or pay in lieu thereof in case of Class I and Class II employees, and one calendar month's notice or pay in lieu thereof in case of other employees of the Corporation. Thus, it appears that Rule 20 of the Rules would apply only to probationers and, not to a confirmed employee. As we have held that under the above rules of the Rules there cannot be any deemed confirmation and the employee, even after completion of the maximum period of probation, continues to be a probationer, it cannot be held that Rule 20 of the Rules is bad in law, as held by the Division Bench of this Court in *Hrushikash Mohanty (supra)* following the ratio laid down by the apex Court in *Brojo Nath (supra)* and *Delhi Transport Corporation (supra)*. We say so as this rule does not empower the Corporation to terminate the services of a confirmed/permanent employee.

28. in *Hrushikesh Mohanty (supra)*, the Division Bench of this Court proceeded on the assumption that the petitioner in that case was a confirmed employee and therefore, held that Rule 20 of the Rules cannot be pressed into service, because such a clause was characterised as Henry VIII Clause in *Brojo Nath (supra)* and *Delhi Transport Corporation (supra)*. From the perusal of the judgment, we find that the Division Bench did not consider Rule 18 of the Rules and also the question of deemed confirmation in view of the specific provision in para 2 of the said Rule 18 of the Rules, Therefore, we are unable to accept that Rule 20 of the Rules is bad In law and it cannot ha pressed into service in case of a probationer.

29. We have perused the entire Rules and we find that there are provisions for drawing up of disciplinary proceedings in case of permanent employees of the Corporation. Therefore, the above Rule 20 will not be applicable to a permanent/confirmed employee of the Corporation. So, Rule 20 cannot be held to be arbitrary or violative of Articles 1, 4 and 16(1) of the Constitution of India.

30. Rule 20 of the Rules can be invoked by the Corporation for termination of services of a probationer after the expiry of the period of probation. There has to be some limit to the expression "after the expiry of probation", as the sword of Damocles cannot be kept hanging on the head of a probationer. In other words, this rule can be invoked by the Corporation within a reasonable time after the expiry of the period of probation. What would be the reasonable lime would depend on the facts of each case, which shall be considered by the appropriate Bench while dealing with the merits of the case. That apart, the appropriate Bench shall also consider by lifting the veil as to whether the termination of services of the employees concerned was by way of punishment or it was only a termination simpliciter. We are not entering into the facts of each case as it is the function of the appropriate Bench to consider each case on merit.

31. The reference is therefore, answered as follows :

(i) Considering the relevant Rules 16 to 20 of the Rules, we hold that there cannot be deemed confirmation and there has to be an order of confirmation in writing by the Managing Director after the expiry of the maximum period of

probation.

(ii) Rule 20 of the Rules cannot be said to be bad in law as it applies only to a probationer and not to a confirmed/ permanent employee of the Corporation,

(iii) The Managing Director has to apply his mind under Rule 18 within a reasonable time as to whether an employee should be confirmed or not. If the work of the employee concerned is found suitable, he may pass an order of confirmation in writing. If the services of the probationer is not found suitable, consequential orders may be passed by the Managing Director. The power under para 2 of Rule 18 has to be exercised within a reasonable period; and what is the reasonable period will depend on the facts of each case."

(iv) By resorting to Rule 20 of the Rules, the services of a probationer cannot be terminated by way of punishment after the maximum period of probation, and the Court can lift the veil to ascertain whether the order was an order of termination simpliciter for unsatisfactory performance of the probationer or it was a way of punishment. If it was by way of punishment, though the employee may continue to be a probationer after completion of the maximum period of probation, it cannot be passed without proper inquiry by giving reasonable opportunity to the employee, as in that case it will be violative of the principles of natural justice.

32. Before parting, we may refer to Rule 16 of the Rules, which provides that all persons appointed in the Corporation service, either by direct recruitment or promotion, shall be on probation. We are of the view that this rule is not exhaustive, as the Corporation may appoint persons on contract, on temporary basis, on daily wage basis etc. Therefore, while dealing with each case, the appropriate Bench shall also consider the question as to whether the employee was actually put on probation or not. The cases may now be listed before the appropriate Bench for disposal.

A. Pasayat, J.

33. I agree.

C.R Pal, J.

34. I agree.