
(1982) 04 BOM CK 0027
In the Bombay High Court
Case No : Spl. Application 1283/79

Bhikamsingh

APPELLANT

Vs

Maharashtra State Road Transport Corpn.

RESPONDENT

Date of Decision : 28-04-1982

Acts Referred:

Road Transport Corporations Act, 1950 — Section 45

Citation : (1982) 2 BomCR 352 : (1982) 134 ITR 310(1) : (1982) 2 LLJ 304

Hon'ble Judges : V.A. Mohta, J;M.S. Jamdar, J

Bench : Division Bench

Judgement

Mohta, J.—In this petition we are called upon to decide the right of a probationer. The petitioner was appointed as Deputy Engineer (Civil) on 16-11-1976 by the first respondent a Transport Corporation constituted under the Road Transport Corporation Act 1950. The second respondent is the Vice Chairman and General Manager of the first respondent. Admittedly, this appointment was on a probation for one year and subject to the Bombay State Transport Employees' Service Regulations issued under S. 45 of the aforesaid Act.

2. The appointment order fixes the pay scales and the relevant portion of it reads as under :

"On his appointment as Deputy Engineer (Civil). Shri Sapkal will be on probation for period of one year from the date he took over the charge of the post of the post of Deputy Engineer (Civil). His services, if not required are liable to be terminated without notice during or at the end of the probationary period. Shri Sapkal will be governed by B.S.T. Ex. Regulations as amended from time to time."

3. The common point is that as a matter of fact there has been no order either of extension of probationary period or confirmation of the petitioner on the substantive post. The petitioner joined duties on 10th December, 1976. On 6th February, 1976, the second respondent passed an order terminating the services of the petitioner in terms of Regulation 44(b) of the aforesaid Regulations. That

order is impugned in this petition. Before noticing the developments between the period of appointment and termination, it would be necessary to notice the relevant Regulations as their interpretation is more important in this matter than the facts.

4. Chapter II of the Regulations refers to various definitions and Regulation 32 defines a "probationer" as under :

"Probationer means any employee appointed on probation, i.e., on trial for such period as may be fixed by the Competent Authority, before his appointment to a permanent or a temporary post."

Chapter III deals with "General conditions of Service". Regulations 44 and 45 with which we are chiefly concerned read as under :

"44. (a) Appointment in State Transport Service may, in the first instance, be on probation for such period as may be prescribed by the competent Authority, even if the appointment is made in a clear vacancy in a permanent post : provided that this period may be extended by the Competent Authority as may be deemed desirable by that Authority.

(b) The services of a probationer whose work has not been found to be satisfactory by the Competent Authority may be terminated by such Authority or at the end of the probationary period.

45. The Corporation may prescribe any conditions or tests which the employees may have to submit before they are confirmed or continued in service."

It would thus be seen that under the Regulations either the initial period of probation or its ceiling limit is not fixed. This period has to be fixed by the Competent Authority and can be extended by him as may be deemed desirable. Regulation 45 permits the Corporation to prescribe any condition or test which the employees may have to submit before they are confirmed.

5. The developments during the interregnum are as under. On 29-5-1977, some incident took place at Wardha where the petitioner was posted as a result of which the office staff had made representations against him. Some correspondence between the petitioner and the respondent took place regarding inefficiencies in the working of the petitioner at Wardha. Monthly reports regarding the working of the petitioner were being sent by the Executive Engineer, Nagpur to the second respondent who is the "Competent Authority" under Regulation 10. Some of the reports indicate that his working was satisfactory and some reports indicate otherwise. The respondents have maintained the confidential record of the petitioner from 1-4-1977 till 31-3-1978. As per the return, there are adverse remarks against the petitioner in the same. On 11th September, 1978, the respondent issued a confidential communication to the petitioner regarding the self assessment report for the year 1977-78. In that, the petitioner was called upon to show improvement in the performance of his duties.

6. Thus, the respondent's contention has been that considering the background of the Confidential Report and other communications, the petitioner was given further chance of improvement and when it was discovered that the petitioner was not proving upto the mark, the power under Regulation 44(b) was exercised.

7. Now, the law about rights of a probationer is well-settled and crystallised due to many judicial pronouncements made from time to time. The first relevant case on the point is of Sukhbans Singh Vs. State of Punjab, . It was held that a "probationary cannot, as rightly pointed out by the Division Bench, automatically acquire the status of a permanent member of a service unless of course the rules under which he is appointed expressly provide for such a result". In the case of G. S. Ramaswamy, I.G. of Police, reported in 1965 I L.L.J. 118, reiterating the earlier view, it has been observed as under :

"Therefore, even though a probationer may have continued to act in the post to which he is appointed on probation for more than the initial period of probation, he cannot become a permanent servant merely because of efflux of time, unless the rules of service which govern him specifically lay down that the probationer will be automatically confirmed after the initial period of probation is over."

8. In the later decision, pronouncement in the case of State of Uttar Pradesh Vs. Akbar Ali Khan, , it has been held that in case an employee is allowed to continue in the post even after the period of probation without passing an order of confirmation, the only possible view to take is that by implication the period of probation was extended. The last decisions dealing with the question of the right of a probationer in details was given in the case of Shri Kedar Nath Bahl Vs. The State of Punjab and Others, , the Supreme Court laid down that :

"Where a person is appointed as a probationer in any post and a period of probation is specified it does not follow that at the end of this said specified period of probation he obtain confirmation automatically even if no order is passed in that behalf. Unless the terms of appointment clearly indicate the confirmation would automatically follow at the end of specified period or there is a specific service rule to that effect, the expiration of the probationary period does not necessarily lead to confirmation. At the end of the period of probation an order confirming the officer is required to be passed and if no such order is passed and he is not reverted to his substantive post the result merely is that he continues in his post as a probationer".

9. It is on the background of the aforesaid catena of cases that we will have to decide the grievance of the petitioner. It was contended on his behalf that in terms of the relevant Regulations on expiry of a period of one year of probation initially fixed, he should be deemed to be confirmed inasmuch as in point of fact no order of extension of the period was passed. The appointment order and so also the rules provide that the Competent Authority has to apply his mind to the performance of the employee in any case at the end of the initial period and it is only after that the period of probation can be extended. The argument thus is

that the period has not only to be expressly extended but his extension can take place only after the application of mind by the Competent Authority. The stand taken on behalf of the respondent is that in view of the settled law on the subject, no automatic confirmation follows but indeed automatic extension follows. No maximum period of probation is fixed either in terms of the appointment order or under the rules as a result so long as express order of confirmation is not passed, the petitioner was deemed to be on probation. The work of the petitioner was not found satisfactory. He was given some chance to improve and the Competent Authority was subjectively satisfied that the petitioner's work was neither satisfactory nor he was showing any improvement as a result he should not be confirmed and his services should be terminated.

10. Having considered the submission made, it seems to us that the contentions raised on behalf of the petitioner have substance. The plain reading of the relevant Regulations including the definition of the "probationer" leaves no doubt that not only there is no ceiling limit on the probationary period but an employee has to actually appointed to the permanent post.

11. The burden of the whole argument is that the probationary period initially fixed has to be extended in terms, in any case before the last day and once that period is over the extension is not permissible. This aspect of the question has been dealt with the case of State of Maharashtra v. Veerappa R. Saboji and another, reported in : (1979)IILLJ393SC wherein it was observed as under :

"There are two parts of cl. (iv)-(1) that it is imperative to put every person appointed under sub-rule (2) on probation to minimum period of two years unless otherwise expressly directed and (2) 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 to be satisfactory. The plain meaning of the rules is that there is no automatic confirmation on the expiry of the probationary period of two years in the first instance. On expiry of the said period and on the fulfilment of the requirements of sub-cl. (a) and (b) a Government servant becomes eligible for being confirmed. But it is a matter of a common knowledge in many branches of Government service including the judiciary that for administrative reasons or otherwise the confirmation is delayed and is made at the subsequent time. It may also be delayed for watching the work of the Government servant for a further period. The expression "unless otherwise expressly directed" governs only the first part of cl. (iv) and not the second as was attempted to be argued by Mr. Nariman. In my opinion the rule in question, therefore, comes under the ordinary and normal rule that 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".

12. Now, it will have to be appreciated that the period of probation of an employee is the period of trial affording opportunity to the employer to observe his performance and to make up his mind regarding his confirmation. The very fact that an employee has been put on probation for a certain period implies that

the employer has a right to watch his performance till the last day and thereafter to take the decision in the matter. Thus, if he is entitled to wait till the expiry of the whole period, it is but inevitable that some delay in passing the actual order will take place. After all the appointing authority may be having its office at a different place and he has to take the final decision after receiving various reports from those under whom the employee worked. It will be too much to expect that the decision has to be taken without the passage of any time. Thus, it is practically impossible to pass an order of extension of period of probation, the moment the period is over, unless and until the order is passed before expiry of that period. It is for this reason that it has been held that there cannot be any assumption of confirmation as soon as the period is over. Of course, it is but proper that the order one way or the other should be passed within a reasonable period. The extent of this period is a question of facts depending upon many circumstances.

13. The confirmation thus does not depend upon passage of time. It depends upon an employee being found to be fit for conformation. This is of course subject to the specific service conditions and the rules. If any ceiling limit on the probation period is prescribed, the inevitable result is that there cannot be extension of probationary period and an employee will be deemed to have been confirmed.

14. Shri Palshikar and Sri Oka, the learned counsels for the petitioner, had invited our attention to two Supreme Court decisions in support of their propositions. They are the case of State of Punjab Vs. Dharam Singh, and the case of The Superintendent of Police, Ludhiana and others v. Dwarka Das, reported in 1979 (1) SLR 299. In both these cases the relevant rules forbid extension of period of probation beyond three years. It is in the background of this aspect that a finding was recorded that the probationary service repined automatically into permanent service only as a result of the expiry of the period. Our attention was also drawn to the unreported decision of this Court in the case of G. R. Pimpalkar v. Chandrapur Municipal Council, (Special Civil Application No. 3221 of 1976, decided on 20th July, 1976). Dealing with the relevant rules in that matter, the Division Bench observed as under :

"The Rule 14 contemplates a probationary period of 2 years only, There is no other provisions shown to us for purposes of concluding that such probationary period of 2 years could be extended. In other words, on the material before us we shall have to hold that two years is ceiling limit for the probationary period".

Shri Moharir, the learned advocate for the respondents, contended and in our view rightly, that the ratio of this decision does not apply to the present case.

15. Thus, in our judgment it will be impermissible to hold that the petitioner had become a confirmed employee on the date of his termination as a result of his services could not be terminated in this fashion. The petitioner was very much a probationer on the date of this termination and we see no illegality in the action

of the respondents.

16. To conclude, the petition fails but under the circumstances with no order as to costs.