

**(1958) 07 AHC CK 0009**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ No. 2757 of 1957

Bipat Prasad Sonekar

APPELLANT

Vs

The State of Uttar Pradesh and Others

RESPONDENT

**Date of Decision :** 25-07-1958

**Acts Referred:**

Civil Services (Classification, Control and Appeal) Rules — Rule 55

Constitution of India, 1950 — Article 311

Uttar Pradesh Deputy Inspector of Schools Service Rules, 1944 — Rule 17, 19

**Citation :** AIR 1959 All 536 : (1959) 2 LLJ 155

**Hon'ble Judges :** J.K. Tandon, J

**Bench :** Single Bench

**Advocate :** S.N. Kackar, for the Appellant; Standing Counsel, for the Respondent

**Final Decision :** Allowed

## Judgement

J.K. Tandon, J.—Bipat Prasad Sonekar, the petitioner was appointed a Sub-Deputy Inspector of Schools in December 1941 with effect from 3-1-1942. He was confirmed in his above post with effect from May 1, 1945. In March 1947 he was selected with the approval of the State Public Service Commission for appointment as Deputy Inspector of Schools and was with effect from March 26, 1947 placed on probation for two years. This notification which related to three persons was as follows :

"The under mentioned persons (the reference was to three persons including the petitioner) are appointed substantively on two years probation in the Deputy Inspectors of Schools service with effect from the date noted against each and are post-ed to the stations shown below".

In accordance with the description given in the relevant column of the notification the date from which Bipat Prasad Sonekar's probation commenced was March 26, 1947. The petitioner has claimed, and this fact is not disputed, that he earned increments upto 1952 in the scale applicable to Deputy Inspectors of Schools. According to him no order extending his period of

probation, which expired on 25-3-1949 had been made either during the period of probation or at the end thereof with the result that he was confirmed in the post of Deputy Inspector of Schools with effect from 26-3-1949.

2. However, on 6-7-1955, the petitioner was informed by the State Government that his period of probation had been extended upto 26-1-1956. This was long after the expiry of the original period of two years fixed on 26-3-1947. On 15-6-1956, nearly six months after the period fixed in the Government Order of 6-7-1955 was over, he was informed by the Joint Secretary to Government in the Education Department that his period of probation had once again been extended upto 31-12-1956. And again on 8-5-1957 he was told that the period of probation had further been extended upto 31-5-1957.

The petitioner's contention is that he throughout continued to discharge his duties with utmost faithfulness, efficiency and sincerity and never gave cause for any complaint during the period of his probation or subsequently, that he was allowed annual Increments also from time to time in accordance with the departmental rules which required that an increment is granted only when the work and conduct of the servant concerned has been found to be satisfactory and that in accordance with the rules he held the post of Deputy Inspector of Schools substantively. He is disputing the legality of the three extensions of probation referred to above ordered in his case by the State Government as according to him he became confirmed with effect from 26-3-1949 and no question of extension of his probation period could at all arise.

3. The further facts are that on 27-1-1955, the Director of Education U. P. asked the petitioner to show cause why he should not be reverted to his substantive post as Sub Deputy Inspector of Schools on the ground that he had shown lack of supervision over the accounts of the District Board Mathura while certain adverse entries, too, had been made from time to time in his character roll. An adverse entry made in his character roll in 1953-54 was also communicated to him as required by rules. He was further warned that if no explanation was received from him within the period of 15 days therein allowed orders would be passed against him ex parte.

The petitioner sent his reply on 9-2-1955 within the time allowed to him. A perusal of this paper, which is Annexure J to the petitioner's affidavit, points out that he had been holding the post of Deputy Inspector of Schools in a substantive capacity since 26-3-1947 and that no question about his reversion to the post of Sub Deputy Inspector of Schools could under the circumstances arise. He also invited attention towards Article 311 of the Constitution pointing out that the proposed action amounted to his reduction in rank and it was necessary for the Government to comply with the requirements of the said Article.

He referred to Rule 55 of Civil Services (Classification, Control and Appeal) Rules also and pointed out that no enquiry, as required by that rule, had been held against him nor any charges framed or communicated to him. In this manner he

challenged the legality and the constitutionality of the proposed action. In the letter of the Director of Education dated 27-1-1955 no specific charges were laid out beyond pointing out that the petitioner did not exercise proper supervision over the accounts of the District Board Mathura which thus created opportunities for the misappropriation and defalcation of public money or that adverse entries had been made against him in the year 1950-51, 1951-52 and 1952-53.

However, the petitioner in furnishing his explanation commented on the auditor's report concerning Mathura District Board as also on the adverse entries made in the years 1950 to 1954. It is not necessary to give in detail his explanation as the decision of this petition will not hinge on it. After the receipt of the above reply the District Inspector of Schools by his letter dated 3-6-1957 informed the petitioner that the Government had passed orders under Sub-rule (2) of Rule 17 of the Deputy Inspectors of Schools Service Rules 1944 that he should be reverted to his substantive post of Sub Deputy Inspector of Schools in the scale of Rs. 120-8-300. The petitioner was further required to hand over charge of Deputy Inspector of Schools by the afternoon of 31-5-1957 and to join his substantive post.

4. The petitioner is impugning the legality of this order which, according to him, is illegal and in direct contravention of Rule 55 C. C. A. Rules and Article 311 of the Constitution. By the present petition he has asked the same to be quashed.

5. It may be useful here to reproduce Rules 17 and 19 of the Deputy Inspectors of Schools Service Rules 1944 as reference to their provisions will be necessary in the course of discussion of the several points arising for decision:

"17. (1) Period of Probation -- All appointments to the service in or against substantive vacancies shall be made on probation. The period of probation shall be two years, provided that the Governor, may extend the period of probation in special cases.

(2) If during or at the end of the period of probation it is found that an officer has not made sufficient use of his opportunities, or has failed to satisfy the standard expected of him, he may be reverted to his substantive post if he has one or his services may be dispensed with, if he has no substantive post.

(3) A person whose services are dispensed with during or at the end of the period of probation or extended period of probation shall not be entitled to any compensation."

"19. Confirmation-(1) A person on probation shall not be confirmed in the appointment till -

(a) he has completed the period of probation prescribed in Rule 17;

(b) he has passed the examination prescribed in Rule 18 or has been exempted from passing the examination; and

(c) the Governor is satisfied that he is fit for confirmation in other respects.

(2) All confirmations under this rule shall be notified in the official Gazette."

6. According to Government Notification dated 3-3-1947, by which the petitioner was appointed Deputy Inspector of Schools, his appointment was substantively made in the Deputy Inspectors of Schools Services and he was placed on two years probation as laid down in Rule 17. It is important to note that the appointment was made substantively in that service though he had been placed on probation. Relying on the above fact and the absence of any order passed during or at the end of the period of two years probation, which expired on 25-3-1949, the petitioner has claimed that he was automatically confirmed as Deputy Inspector of Schools with effect from 26-3-1949 so that any decision by the Government taken subsequently i.e., after, the expiry of the said period to extend the period of probation, was illegal and ineffective. The three extensions given to him by the Government from 1955 to 1957 are thus attacked to be invalid.

7. The State Government on the contrary rely on Rule 19 which makes provision for confirmation. Their argument is that so long as an order confirming a probationer is not passed he continues to be on probation, irrespective of the fact whether the period fixed in that behalf has expired or not. It is not disputed that no order extending the period of probation was made prior to 6-7-1955 but in view of the above argument it is claimed that no such order was necessary and the petitioner continued on probation all along.

8. In view of the said respective contentions, it is necessary to ascertain the true effect of Rules 17 and 19 of the Deputy Inspectors of School Service Rules 1944. According to Sub-rule (1) of Rule 17, every appointment in the service against a substantive post, as was the case of the petitioner, is made on probation and the period in that behalf is two years. The Government has however the power to extend that period in special cases. This Sub-rule does not provide for any automatic extension of the period of probation but the Government has been authorised in special cases to extend it.

There is nothing in the sub-rule to support either the contention that the period of probation which is required to be two years will continue uninterrupted till the time the incumbent is confirmed. The rule has definitely laid down the period of two years, with the proviso that it may be extended in special cases by the Government meaning thereby that the extension can be effected through an order by the State Government. It is not possible to infer from the language of the rule that there is or can be automatic extension in any circumstance.

9. Sub-rules (2) and (3) of Rule 17 do not refer to the question of extension of the period of probation. The former simply lays down that in the event of the probationer not satisfying the standard etc., expected of him during or at the end of the period of probation he can be reverted to his substantive post if there is one, or his service can be dispensed with if he does not hold any substantive post. Likewise, Sub-rule (3) has only provided that where his services are

dispensed with under Sub-rule (2) no compensation shall be payable to him.

10. Rule 19 also does not contain any provision which might be construed to favour, the interpretation that there is automatic extension of the period of probation even in the absence of an order of confirmation, of the probationer. Sub-rule (1), in laying down that a person on probation shall not be confirmed in the appointment till he has completed the period of probation fixed under Rule 17 and has passed the departmental examination prescribed in Rule 18 or has been exempted therefrom and the Governor is satisfied that he is fit for confirmation in other respects, has only laid down when and in what circumstances an order of confirmation shall be made.

It is not possible to read Rules 17 and 19, vis-a-vis the question of the period of probation, as complementary to one another. On the other hand, Rule 19 speaks about confirmation while Rule 17 about the period of probation. The mere fact that confirmation cannot be ordered until the period of probation prescribed by Rule 17 is over does not and cannot mean that there is either automatic confirmation of the probationer, as has been the contention of the petitioner, on the expiry of the period of probation, or that even without an order extending the period of probation, the period is extended.

The intention of Rule 19 is, as I have said earlier also, when and in what circumstances a person on probation can be confirmed. More than that it is not possible to read in it. Sub-rule (2) also which provides that all confirmations shall be notified in the official gazette does not show that the period of probation is in any manner extended until the confirmation has been gazetted.

11. It is not denied that no order was at any time made by the Government confirming Bipat Prasad Sonekar in the post of Deputy Inspector of Schools. Referring, therefore, to Clause (c) of Sub-rule (1) of Rules 19 which provides that a person shall not be confirmed till the Governor is satisfied that he is fit for confirmation in other respects, the respondent has urged that the petitioner, against whom complaints were pending before the Government and were also being examined was not a confirmed employee. The absence of any specific order confirming him as Deputy Inspector of Schools has, too, been relied upon in the same connection and likewise the absence of a notification as required by Sub-rule (2) of Rule 19.

12. To me, it does not appear necessary for deciding the present petition, to record a finding on the question whether Bipat Prasad Sonekar was actually, confirmed or not as Deputy Inspector of Schools. The decision of this case will, on the other band, depend on the fact whether Bipat Prasad Sonekar was on probation in June, 1957 when he was reverted to the post of Sub-Deputy Inspector of Schools. Rule 17 under which the respondent is claiming to have acted and ordered revision (reversion?) will justify the order, as is borne out by Sub-rule (2) also if it can be said to have been made during or at the end of the period of probation. If, however, the period of probation was over, as claimed by

the petitioner in March, 1949, the order for his reversion in June, 1957, unless it can be established that the probation had been extended in the meantime, will not be said to have been ordered during or at the end of the period of probation.

13. It has, therefore, to be found out whether there was an extension of the period of probation. The respondent does not rely on any order in that behalf made prior to 6-7-1955. Two-fold arguments have been urged, firstly, that there was, automatic extension of the period because the order of confirmation had not been made. I have already held above that Rule 17 permitted of no such interpretation. Rule 19 also failed to support it. It is not possible in these circumstances to accept this argument.

14. The second argument is that the grant of extension in 1955 and likewise in June, 1956 and again in May, 1957 had the effect of extending it retrospectively from the date on which the period of probation otherwise expired. This at once raises the question whether the Government had the necessary power to extend the period of probation retrospectively. Rule 17 (1) under which power to extend the period of probation belongs to Government does not state that the power can be exercised with retrospective effect. Sub-rule (2) has, on the other hand, laid down that if during or at the end of probation the officer is not found to have made sufficient use of his opportunities or failed to satisfy the standard expected of him he can be reverted to his substantive post or his services dispensed with.

From it also, therefore, the power to extend the period of probation retrospectively cannot be inferred. The usual rule of interpretation also is that unless the statute expressly so provides a power cannot be exercised retrospectively, more so where it would impair any rights or obligations already acquired or incurred. During the period of probation, the employment can by virtue of Sub-rule (2) of Rule 17 be terminated on the ground that the employee has not been found to have made sufficient use of his opportunities or has not proved to be upto the standard expected of him. This power cannot, in view of Article 311 of the Constitution, be used against him if the period of probation has ended.

If, therefore, the period of probation had ended, in the case of Bipat Prasad Sonekar in 1949, his services could not be dispensed with nor could he be reverted, his reversion clearly amounted to reduction in rank without complying with the provisions of Article 311 of the Constitution. One clear effect therefore of allowing the period of probation to be extended retrospectively would be that his rights to the protection of Article 311 would be impaired.

15. For the above reason, too, therefore it cannot be accepted that the State Government possessed power to extend the period of probation retrospectively. As there is no provision in the rules which gave the State Government power to impose afresh any period of probation the three extensions ordered by it in 1955, 1956 and 1957 were without authority. They failed to extend either the period of probation which expired in this case in March 1949. The order of

reversion passed against the petitioner cannot thus be justified under Rule 17(2).

16. It has next to be seen whether any proceedings were held in this case against the petitioner as required by Rule 55 of the C. C. A. Rules and Article 311 of the Constitution. Rule 55 lays down that no order of reduction in rank shall be passed on a person who is a member of civil service or holds a civil post under the State unless he has been informed in writing of the grounds on which it is proposed to take action and has been afforded an adequate opportunity of defending himself.

The grounds on which it is proposed to take action shall be reduced in the form of a definite charge or charges which shall be communicated to the person charged and which shall be so clear and precise as to give sufficient indication to the charged government servant of the facts and circumstances against him. He shall be required, within a reasonable time, to put in a written statement of his defence and to state whether he desires to be heard in person. It also makes provision for an oral enquiry and the recording of evidence at such enquiry.

Government servant charged has the right to cross-examine the witnesses and to give evidence of himself or of his witnesses. The enquiring officer is further required to maintain a sufficient record of the evidence and statement of findings and the grounds thereof. Clearly these requirements were not fulfilled in this case. The only document that has been placed on the record in this connection is the confidential letter sent by the Director of Education on 27-1-1955 to which reference was made earlier. In this, too, no charges were framed nor any material or circumstances which might have been tended to show to the petitioner the accusation against him were mentioned.

It therefore completely failed to meet the requirements of Rule 55. The vague reference in it to the audit report or to adverse entries made during the four years likewise failed to meet the requirements of Article 311. What really appeared is that the State Government assumed that the petitioner was a probationer and his reversion could be ordered under Rule 17(2); they never realised, that an enquiry as laid down by Rule 55 or by Article 311 of the Constitution was necessary. No enquiry under those provisions was therefore made as how ever was necessary before the order was made reverting him to the post of Sub Deputy Inspector of Schools. The order reverting him is under the circumstances invalid. It must be quashed.

17. The result of the above discussion is that the petition succeeds, and the order of the State Government reverting the petitioner to the post of Sub Deputy Inspector of Schools, which was communicated to him on 3-6-1957 in D.O. No. 76 by the District Inspector of Schools Deoria, is quashed. The petitioner will get his costs from respondent NO. 1.