

(2005) 11 DEL CK 0100
In the Delhi High Court
Case No : LPA 509 of 2002

B.S. Chopra

APPELLANT

Vs

The Magmt. of Karnataka Handloom Development
Corporation Limited and Another

RESPONDENT

Date of Decision : 17-11-2005

Acts Referred:

Citation : (2006) 126 DLT 518 : (2006) 87 DRJ 76 : (2006) 2 LLJ 378

Hon'ble Judges : Markandeya Katju, C.J.; Madan B. Lokur, J

Bench : Division Bench

Advocate : Sanjay Bansal, for the Appellant; Naveen R. Nath, for the Respondent

Final Decision : Dismissed

Judgement

Markandeya Katju, C.J.—This Letters Patent Appeal has been filed against the impugned judgment of a learned Single Judge dated 23.4.2002. Heard learned counsel for parties and perused the record. The facts in detail have been set out in the judgment of the learned Single Judge and hence we are not repeating the same except where necessary.

2. The appellant was appointed as Assistant Accounts Officer in the service of respondent No. 1 vide appointment letter dated 19.2.1986 on probation for one year. The relevant clause in the appointment letter states:-

You will be on probation for a period of one year. You will be eligible for confirmation on successful completion of the period of probation. If at the end of the probationary period no order of confirmation is issued, you will continue to be on probation till you receive the order of confirmation or order of termination.

3. The probation period was extended by another letter dated 8.5.1987 in which it was stated:-

It is reported that the overall performance and conduct of Sri B.S.Chopra during probationary period is found to be unsatisfactory. Although it is open to the

Management to terminate the services of Sri B.S.Chopra as per the terms of appointment the Management considers it necessary to afford one more opportunity to him to improve his performance and conduct. Accordingly, his period of probation is extended for a period of six months from 2.3.1997.

4. It appears that on 5.8.1988 a show cause was issued to the petitioner asking him to show cause why action be not taken against him on account of certain shortages in cash. However, thereafter no enquiry was held and instead by an order dated 28.9.1988 his service was terminated on the following terms:-

You, Sri B.S.Chopra were appointed as Assistant Accounts Officer vide appointment order No. KHDC:ADM:10-81/23197 dated 19.2.1986 and placed on probation for one year from 2.3.1986. As your overall performance and conduct were found to be unsatisfactory, the probation was further extended for 6 months from 2.3.1987 vide Memo No. KHDC:ADM:173-86/2008 dated 8.5.1987. Inspire of several opportunities given to you, you have not improved your performance. Therefore, you are hereby terminated from the services of the Corporation as per clause (3) of your appointment order referred to above with immediate effect.

5. The appellant raised an industrial dispute which was decided against him by Labour Court No. III, Tis Hazari Courts, Delhi against which he filed a writ petition which was dismissed. Hence this appeal.

6. Learned counsel for appellant has relied on Clause (iii) of Regulation 18 of the Karnataka Handloom Development Corporation Limited (Staff Regulations), 1979 which states:

iii) The period of probation of an employee fixed at the time of his appointment may be extended by the appointing authority unless his services are otherwise terminated within or on the completion of the period of probation stipulated. In no case, shall the period of probation be extended beyond two years.

7. Learned counsel for appellant submitted that since the maximum period of probation of two years expired on 19.2.1988, hence it must be deemed that the appellant was confirmed on 19.2.1988. Therefore, he contends his service could not be terminated without an enquiry after that date. On the other hand, learned counsel for respondent relied on Clause (vii) of Regulation 18 which states:-

vii) If at the end of the probationary period or extended period of probation, no order of the appointing authority is issued either confirming him or discharging him from service, he will continue to be on probation till he receives order of confirmation or order of termination. Any delay in the issue of an order of confirmation or termination as the case may be shall not entitle the probationer to be deemed to have satisfactorily completed his probation.

8. In The High Court of High Court of Madhya Pradesh thru. Registrar and Others Vs. Satya Narayan Jhavar, the Supreme Court observed:-

The question of deemed confirmation in service jurisprudence, which is

dependent upon the language of the relevant service rules, has been the subject-matter of consideration before this Court, times without number in various decisions and there are three lines of cases on this point. One line of cases is where in the service rules or in the letter of appointment a period of probation is specified and power to extend the same is also conferred upon the authority without prescribing any maximum period of probation and if the officer is continued beyond the prescribed or extended period, he cannot be deemed to be confirmed. In such cases there is no bar against termination at any point of time after expiry of the period of probation. The other line of cases is where while there is a provision in the rules for initial probation and extension thereof, a maximum period for such extension is also provided beyond which it is not permissible to extend probation. The inference in such cases is that the officer concerned is deemed to have been confirmed upon expiry of the maximum period of probation in case before its expiry the order of termination has not been passed. The last line of cases is where, though under the rules the maximum period of probation is prescribed, but the same requires a specific act on the part of the employer by issuing an order of confirmation and of passing a test for the purposes of confirmation. In such cases, even if the maximum period of probation has expired and neither any order of confirmation has been passed nor has the person concerned passed the requisite test, he cannot be deemed to have been confirmed merely because the said period has expired.

9. The Supreme Court in the aforesaid case has considered its earlier decisions and hence we are not referring in detail to the same here. We agree with the learned Single Judge who has held in the impugned judgment that the present case falls within the third category of cases referred to in para 11 of the Supreme Court decision in *High Court of Madhya Pradesh and Ors. v. Satya Narayan Jhavar* (supra). This is because clause (iii) and Clause (viii) of Regulation 18 have to be read together and not in isolation.

10. The principle of harmonious construction is a well settled principle of interpretation of statutes vide *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, wherein the Supreme Court observed:-

The essence of the rule of harmonious construction may be explained in following terms:

(i) It is the duty of the courts to avoid a head-on clash between two sections of the Act and to construe the provisions which appear to be in conflict with each other in such a manner as to harmonise them.

(ii) The provisions of one section of a statute cannot be used to defeat the other provisions unless the court, in spite of its efforts, finds it impossible to effect reconciliation between them.

(iii) It has to be borne in mind by all the courts all the time that when there are two conflicting provisions in an Act, which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both.

(iv) The courts have also to keep in mind that an interpretation which reduces one of the provisions as a "dead letter" or "useless lumber" is not harmonious construction.

(v) To harmonize is not to destroy any statutory provision or to render it otiose.

11. A particular provision in a statute cannot be picked up in isolation and interpreted in a manner so as to defeat another provision in the same statute vide *British Airways Plc. Vs. Union of India and ors*,

12. It is the duty of the court to read all provisions in the statute together harmoniously so as to give effect to all the provisions as a consistent whole rendering no part of the statute as redundant. Otherwise by a process of interpretation one part of the statute would be rendered otiose vide *Institute of Chartered Accountants of India Vs. Price Waterhouse and Another*,

13. A construction that reduces one of the provisions to a "useless lumber" (vide *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, or "dead letter" (vide *The J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. The State of Uttar Pradesh and Others*), is not harmonious construction, and hence has to be avoided. The statute has to be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute. Such a construction has the merit of avoiding any inconsistency or repugnancy either within a section or between a section and other parts of the statute. It is the duty of the courts to avoid "a head on clash" (vide *Raj Krushna Bose Vs. Binod Kanungo and Others*, *Sultana Begum Vs. Prem Chand Jain*, . It should not be lightly assumed that "Parliament had given with one hand what it took away with the other" (vide *Dormer v. Newcastle-on-tyne Corporation* (1940) 2 All ER 521); *Tahsildar Singh and Another Vs. The State of Uttar Pradesh*, *K.M. Nanavati Vs. The State of Bombay*, ; *Krishna Kumar v. State of Rajasthan*, supra).

14. Hence we cannot take into consideration Clause iii of Regulation 18 in isolation, but have to read it along with Clause viii.

15. In the decision of Supreme Court in *The High Court of Madhya Pradesh and Ors. v. Satya Narayan Jhavar* (supra), the Supreme Court has referred to a large number of its earlier decisions whose facts fell within the third category of case referred in para 11. These decisions are referred to from paragraph 23 to 37 of the aforesaid decision. In all these decisions the relevant rule provided for a maximum period of probation and yet the Supreme Court held that there was no deemed confirmation on expiry of that period and he remained a probationer.

16. Thus in *Jai Kishan Vs. Commissioner of Police and another*, , the relevant service rule provided:

5.(e)(i) All direct appointments of employees shall be made initially on purely temporary basis. All 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 employee shall be confirmed in the Delhi Police by the competent authority, subject to the availability of permanent post.

17. In the aforesaid decision, the petitioner was appointed on temporary basis on 9.9.1982. He was continued in service for five years. He was given opportunities to improve his performance, but he did not do so. Hence, his service was terminated. His contention that he will be deemed to have been confirmed on completion of three years service was rejected and the Supreme Court held: "successful completion of probation is a condition precedent for confirmation as envisaged in clause (iii) of Rule 5(e) of the Rules." The Supreme Court held that since the petitioner was not improving his performance, the termination of his service was not illegal.

18. A similar view was taken in several other decisions referred to by the Supreme Court in The High Court of Madhya Pradesh and Ors. v. Satya narayan Jhavar (supra).

19. In para 37 of the aforesaid decision the Supreme Court observed:-

Ordinarily a deemed confirmation of a probationer arises when the letter of appointment so stipulates or the Rules governing service conditions so indicate. In the absence of such term in the letter of appointment or in the relevant Rules, it can be inferred on the basis of the relevant Rules by implication, as was the case in Dharam Singh. But it cannot be said that merely because a maximum period of probation has been provided in the Service Rules, continuance of the probationer thereafter would ipso facto be held to be a deemed confirmation which would certainly run contrary to the seven-Judge Bench judgment of this Court in the case of Samsher Singh and the Constitution Bench decisions in the cases of Sukhbans Singh, G.S.Ramaswamy and Akbar Ali Khan.

20. In view of the above, we find no merit in the submission of the learned counsel for appellant that the service of appellant must be deemed to have been confirmed on the expiry of two years from the date of his appointment.

21. Learned counsel for the appellant then submitted that the impugned termination order is punitive in nature as it was preceded by a show cause notice dated 5.9.1988.

22. In State of U.P. and Others Vs. Ram Bachan Tripathi, , the Supreme Court observed:-

Mere description of a background fact cannot be called as stigma. In the termination order it was merely stated that the show cause notices were issued

and there was no response. This can by no stretch of imagination be treated as a stigma as observed by the Tribunal and the High Court.

23. In the aforesaid decision also the facts were similar to the facts in the present case. A show cause notice was issued to the employee and thereafter his service was terminated. It was held that the termination order was valid.

24. In the same decision, the Supreme Court also refer to its earlier judgment in *Dhananjay v. Chief Executive Officer, Zilla Parishad Jalna* AIR 2003 SCW 731, in which it was held that mere mention about the suspension of an employee in the order of termination did not make the order punitive. Similarly in *Union of India and others Vs. Shri Bihari Lal Sidhana*, , it was held that merely because the termination order mentions that the employee was under suspension, this did not constitute a stigma.

25. In *Municipal Committee, Sirsa Vs. Munshi Ram*, , the Supreme Court observed that if the order of termination indicates that it is a termination implicate and does not cast any stigma on the employee, the mere fact that there was an inquiry into his conduct earlier would not by itself render the termination invalid. The mere fact that there was misconduct on the part of probationer which was not enquired into ipso facto would not lead to the conclusion that the order of the termination is colourable and in fact is punitive.

26. In *Union of India (UOI) and Others Vs. A.P. Bajpai and Others*, , the Supreme Court held that the allegations stated in the counter-affidavit against an employee would not change the nature and character of the order of termination.

27. In *Pavanendra Narayan Verma Vs. Sanjay Gandhi P.G.I. of Medical Sciences and anr*, , the Supreme Court held that mere holding of an inquiry prior to the termination order would not make the termination order punitive in nature.

28. The same view was taken by the Supreme Court in *State of Punjab and Ors. v. Sukhwinder Singh* 2005 (106) FLR 613.

29. Following the aforesaid decision, we see no reason to interfere in the judgment of the learned Single Judge. This appeal is consequently dismissed.