

(2022) 04 GUJ CK 0010
In the Gujarat High Court

Case No : R/Special Civil Application No. 7047 Of 2019

Chintan Harishbhai Vaishnav

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 04-04-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Gujarat Civil Services (Classification And Recruitment) General Rules, 1967 — Rule 9A, 10(A), 14, 20, 27

Citation : (2022) 04 GUJ CK 0010

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : Hriday Buch, Surbhi Bhati

Final Decision : Allowed

Judgement

Biren Vaishnav, J

(1) Rule, returnable forthwith. Ms. Surbhi Bhati, learned Assistant Government Pleader waives service of notice of Rule for and on behalf of the respondents.

(2) With the consent of the learned counsel appearing for the respective parties, the petition was taken up for its final disposal.

(3) In this petition, under Article 226 of the Constitution of India, the petitioner has challenged the order dated 2nd March, 2019, by which, the service of the petitioner has been terminated on the ground that during the course of his probation, his conduct was not good.

(4) The facts in brief would indicate that the petitioner was appointed as Mamlatdar in the Pay Scale of Rs.9,300-34,800/-vide Notification dated 6th May, 2011. The first posting of the petitioner was as an Administrator of the trust of Dwarkadhish temple at Dwarka. Petitioner resumed his duties on 9th May, 2011. On 19th March, 2012, the petitioner was transferred to Surendranagar. During his course of his service, the petitioner passed his lower level as well as higher

level departmental examinations. The period of probation of the petitioner was extended after it was over on 8th May, 2013. Initially, it was extended for a period of one year till 8th May, 2014 vide order dated 3.2.2014. Thereafter, it was extended for a period of six months till 8.11.2014.

(5) A charge-sheet came to be issued to the petitioner on 22.1.2013 levelling 3 charges against the petitioner, for which, a penalty was imposed on 24th June, 2016 of stoppage of one increment for two years without future effect. Vide a second charge-sheet dated 3rd February, 2014, the petitioner was exonerated by the Inquiry Officer to which the Disciplinary Authority agreed vide order dated 12th March, 2015. The order of penalty imposed by virtue of the first charge-sheet was never implemented. The petitioner continued as such till the order of termination was passed on 2nd March, 2019.

(6) Mr. Hriday Buch, learned counsel for the petitioner would submit that the order dated 2nd March, 2019 putting the services of the petitioner to an end on the ground that his services as a probationer were not required to be continued based on the assessment of his Annual Confidential Reports and his conduct, is an order which is illegal. He would submit that it is illegal for the following grounds:

(i) According to the submission of Mr.Buch, he was appointed as a Mamlatdar by an order dated 24th June, 2011. Relying on Rule 10(A) of the Gujarat Civil Services (Classification and Recruitment) General Rules, 1967, Mr.Buch, learned counsel for the petitioner would submit that the appointing authority can extend period of probation for a further period of two years, which was done in the present case by extending the period twice, for a total period of two and half years. Thereafter, there was no order of extending his probation till the year 2019. Accordingly, it was a case where the petitioner ought to have been treated as deemed confirmed and the services of the petitioner could not have been terminated on the basis of he being a probationer.

(ii) As far as disciplinary proceedings are concerned, Mr.Buch, learned counsel for the petitioner would submit that for the first charge-sheet, the order of stoppage of increment could not be implemented on the ground that the respondent perceived that since the petitioner was a probationer and was not drawing increments, the penalty could not be inflicted. As far as the second charge is concerned since the petitioner was already exonerated, it was never implemented and, therefore, these grounds cannot be taken as grounds for termination. As far as ACRs are concerned, it is the case of the petitioner that for the period from 2011-12 to 2014-15, the respondent looked into the ACRs for the period from 26.9.2012 to 31.3.2013. For that period, the Collector did not accept the ACRs and, in fact accepted the explanation of the petitioner. For the years 2016-18, no ACRs were supplied. Mr. Buch, learned counsel for the petitioner would submit that for the period from 13.5.2013 to 15.2.2014, the ACRs were good and, therefore, the same could not have been treated as adverse for the purposes of not extending the period of probation and / or

terminating the services of the petitioner.

(7) Basing primarily his case on the question of law and relying on Rule 10(A) of the Rules, Mr. Buch, learned counsel for the petitioner would submit that since the petitioner was deemed confirmed, his services could not have been terminated on the ground that his probation did not deserve extension.

(8) For the purposes of this submission in law, Mr. Buch, learned counsel for the petitioner would rely on the following decisions:

(I) Om Prakash Maurya v. U. P. Cooperative Sugar Factories Federation, Lucknow reported in 1986 (Suppl) SCC, 95. He would rely on paragraph No.5 and submit that once the stipulation for extension of period is considered in accordance with Regulation 10(A), and the period would not be extended for a period beyond two years since after the last extension, there was no extension of probation, his services were deemed to have been confirmed.

(II) Reliance is also placed on the decision in the case of Wasim Beg v. State of U.P. and others reported in 1998(3) SCC, 321.

(III) Mr. Buch also relied on a decision of the Division Bench dated 14.8.1988 in the case of Gujarat Maritime Board v. C.M. Rathod passed in Letters Patent Appeal No.855 of 1998.

(IV) Following the decision in the case of C.M. Rathod (Supra), the Coordinate Bench of this Court had delivered a decision in the case of Ram Suhag Kumar v. State of Gujarat reported in 2013 (LabIC), 3466 which was confirmed by a Division Bench in Letters Patent Appeal No.1297 of 2013.

(V) Mr. Buch also relied on a decision dated 23.8.2016 in the case of R.J. Mansuri v. State of Gujarat in Special Civil Application No.13652 of 2008 which was considered and confirmed by the Division Bench of this Court in the Letters Patent Appeal No.1780 of 2017.

(9) Ms. Surbhi Bhati, learned Assistant Government Pleader for the State would rely on the affidavit-in-reply filed by the State and submit that during the course of probation, the petitioner was issued charge-sheet dated 22nd January, 2013. Based on this charge-sheet, a penalty of stoppage of one increment for two years came to be issued. However, the said order of punishment of stoppage of increments could not be implemented as it was not capable of being implemented.

9.1. Ms. Bhati, learned Assistant Government Pleader would next argue that the ACRs for the period from 26.9.2012 to 10.5.2013 and 13.5.2013 to 15.2.2014 were adverse and, therefore, it was decided not to extend the probation of the petitioner.

9.2. According to Ms. Surbhi Bhati, learned Assistant Government Pleader for extension of period of probation, reliance was placed on Government Resolution dated 8th November, 2015 issued by the GAD, Gandhinagar. Submitting that

once it was found that the service of a probationer is not satisfactory and a misconduct on the part of the probationer is proved, it was not required to issue notice to the petitioner and the termination was just and proper. Having failed to fulfill the terms and conditions of the appointment, the services were rightly terminated.

(10) Mr. Hriday Buch, learned counsel for the petitioner would rely on the affidavit-in-rejoinder filed by the petitioner and submit that on the basis of file notings which were annexed to the petition, it was the specific case of the authority that since the probation period of the petitioner had been completed on 8th May, 2014, the petitioner was supposed to be treated as deemed confirmed and no penalty could have been imposed nor could the services of the petitioner have been terminated.

(11) Considering the submissions made by the learned advocate for the petitioner, we need to see the order of appointment of the petitioner in context of the submissions made by learned advocate for the petitioner. The petitioner was appointed as Mamlatdar vide order dated 24th June, 2011. The order of appointment and conditions thereto state that his appointment was on a probation for a period of two years. One of the conditions of the appointment indicated that the appointment was in accordance with the conditions of service namely; the Gujarat Civil Services (Class-II) Rules. Conditions of the appointment order which were read by Mr. Buch, learned counsel for the petitioner would indicate that the condition stipulated that during the course of two years if the petitioner had committed misconduct, the services could be terminated within the period of two years without any notice.

(12) Ms. Surbhi Bhati, learned Assistant Government Pleader appearing for the State would rely on one of the conditions that unless and until the petitioner's services were confirmed, he is treated to be on probation. The argument that therefore the concept of deemed confirmation would apply is misconceived.

(13) It is in this context that Rule 10(A) of the Gujarat Civil Services Classification and Recruitment (General) Rules, 1967 have to be seen. Rule 10(A) of the Rules, 1967 reads as under:

"10-A PERIOD OF PROBATION:

Notwithstanding anything contained in these Rules or any rules or orders relating to the Recruitment to any service of post included in the State Service or Subordinate Service, a candidate appointed to Class-I or Class- II service or post by direct selection, shall be on probation for a period of two years and in case of his appointment to Class-III service or post for a period of one year:

Provided that the appointing authority may, if it thinks fit in any case, extend the period of probation for a further period not exceeding two years in case of Class-I and Class-II service or post and one year in case of Class-III service or post:

Provided further that if in any case passing of a departmental examination during

the period of probation is stipulated as a prerequisite condition for completion of such probation period and where the probationer could not pass the same within the prescribed chances admissible to him under the Rules reasons beyond his control the above ceiling on the period of probation shall not be applicable.

“Provided also that nothing in this Rule shall apply to the appointments made to the Subordinate Services on contractual basis under Rule 9A.”

(14) Reading the proviso of the Rules together with the body of the Rule indicates that initial appointment on direct selection had to be on a probation period for two years. If the appointing authority thinks fit to extend the period of probation, it can do so, for a further period not exceeding two years.

(15) Considering these Rules in context of the facts, the petitioner was appointed on probation in the year 2011. On two occasions, namely; vide order dated 3rd February, 2014, the probation was extended till 8th May, 2014. Thereafter, it was extended for a period of six months till 8th November, 2014. Till the date of termination of 2nd March, 2019, that is eight years after his first appointment and almost four and half years after his last extension, no further extension in probation was made assuming that it could have been made for a further period of two years till the year 2015.

(16) Considering the decisions rendered by this Court to which a reference was made and relied upon by Mr.Buch, learned counsel for the petitioner in the decision in the case of Wasim Beg (Supra), the Hon’ble Supreme Court held as under:

“15. Whether an employee at the end of probationary period automatically gets confirmation in the post or whether an order of confirmation or any specific act on the part of the employer confirming the employee is necessary, will depend upon the provisions in the relevant Service Rules relating to probation and confirmation. There are broadly two sets of authorities of this Court dealing with this question. In those cases where the Rules provide for a maximum period of probation beyond which probation cannot be extended, this Court had held that at the end of the maximum probationary period there will be deemed confirmation of the employee unless Rules provide to the contrary. This is the line of cases starting with *State of Punjab v. Dharam Singh* (1968 [3] SCR 1), *M.K. Agarwal v. Gurgaon Gramin Bank & Ors .* (1987) Supp. SCC 643), *Om Prakash Maurya v. U.P. Cooperative Sugar Factories Federation, Lucknow & Ors .* (1986 Supp. SCC 95), *State of Gujarat v. Akhilesh C. Bhargav & Ors .* (1987 [4] SCC 482).

16. However, even when the Rules prescribe a maximum period of probation, if there is a further provision in the Rules for continuation of such probation beyond the maximum period, the courts have made an exception and said that there will be no deemed confirmation in such cases and the probation period will be deemed to be extended. In this category of cases we can place *Samsher Singh v. State of Punjab & Anr.* (1974 [2] SCC 831) which was the decision of a Bench of

seven judges where the principle of probation not going beyond the maximum period fixed was reiterated but on the basis of the Rules which were before the Court, this Court said that the probation was deemed to have been extended. A similar view was taken in the case of *Municipal Corporation, Raipur v. Ashok Kumar Misra* (1991 [3] SCC 325). In *Satya Narayan Athya v. High Court of Madhya Pradesh & Anr.* (1996 [1] SCC 560), although the Rules prescribed that the probationary period should not exceed two years, and an order of confirmation was also necessary, the termination order was issued within the extended period of probation. Hence the termination was upheld.

17. The other line of cases deals with Rules where there is no maximum period prescribed for probation and either there is a Rule providing for extension of probation or there is a Rule which requires a specific act, on the part of the employer (either by issuing an order of confirmation or any similar act) which would result in confirmation of the employee. In these cases unless there is such an order of confirmation, the period of probation would continue and there would be no deemed confirmation at the end of the prescribed probationary period. In this line of cases one can put *Sukhbans Singh v. State of Punjab* (1963 [1] SCR 416), *State of Uttar Pradesh v. Akbar Ali Khan* (1966 [3] SCR 821), *Shri Kedar Nath Bahl v. The State of Punjab & Ors.* (1974 [3] SCC 21), *Dhanjibhai Ramjibhai v. State of Gujarat* (1985 [2] SCC 5) and *Tarsem Lal Verma v. Union of India and Ors.* (1997 [9] SCC 243), *Municipal Corporation, Raipur v. Ashok Kumar Misra* (supra) and *State of Punjab v. Baldev Singh Khosla* (1996 [9] SCC 190). In the recent case of *Dayaram Dayal v. State of M.P. and Anr.* (AIR 1997 SC 3269) (to which one of us was a party) all these cases have been analyzed and it has been held that where the Rules provide that the period of probation cannot be extended beyond the maximum period there will be a deemed confirmation at the end of the maximum probationary period unless there is anything to the contrary in the Rules.

18. In the present case under the Service Rules in force at the time when the appellant was appointed on probation, there was no time-limit on the period up to which probation can be extended. The appointing authority was required to issue a certificate of the appellant having satisfactorily completed the period of probation. The provision relating to deemed confirmation would come into effect on his satisfactorily completing probationary period. From the affidavit filed by the respondent-Corporation as also looking to the report which was submitted by the Managing Director to the Board of Directors on 8.2.1985, it is clear that the appellant was considered by the respondents as having satisfactorily completed his period of probation on 9.1.1979, and he was considered as a regular employee from 10.1.1979. In the affidavit of the respondent-Corporation before the High Court also it has been very fairly stated that the services of the appellant were satisfactory for the first few years and his work was very good. It was only thereafter that serious problems arose regarding his work and the corporation suffered losses on that account. It is, therefore, not possible to hold that the appellant remained a probationer till his discharge.

19. The respondents, however, contend that the services of the appellant have been terminated validly in accordance with the provisions relating to discharge of employees. On 31.3.1985 when the appellant was discharged the new Service Rules framed by the respondent-Corporation were in force which have been set out hereinabove. Under those Service Rules a confirmed employee can be discharged from service on three months' notice or giving three months' notice or giving three months' salary in lieu thereof. In the present case, the fact that such three months' notice or three months' salary in lieu thereof was given to the appellant would also indicate that he was treated as a confirmed employee. As a probationer he would have been entitled only to 30 days' notice. The relevant Service Rule set out earlier further provides that discharge in the case of a confirmed employee should be only on the grounds of continued inefficiency or dishonesty, serious dereliction of duty or conviction by a court. It should be used to weed out inefficient employees who, in spite of a number of warnings, have failed to correct themselves or employees who are not, in the opinion of the Board, suitable for continued employment. The report of the Managing Director which was placed before the Board of Directors gives cogent reasons for his discharge. His conduct in connection with several contracts has been set out in detail in the report and the loss occasioned thereby to the respondent-Corporation has also been set out in detail. It was on the basis of this report that the Board of Directors decided to terminate the services of the appellant. The appellant had also been earlier warned by the Managing Director. Therefore, there is no breach of this part of the Rule relating to discharge.

20. However, there is an important safeguard in this Rule relating to discharge of a confirmed employee. The competent authority under the Rule is required to give an opportunity to the employee concerned for explaining himself before coming to a decision regarding his discharge. The Rule provides that the competent authority on getting a recommendation from the appointing authority for the discharge of a confirmed employee with reasons thereof, may give an opportunity to the employee concerned for explaining himself before coming to a decision. Although the word used is 'may', in the context it has to be construed as 'shall' so that the principles of natural justice are complied with when the principles of natural justice are complied with when the competent authority considers the question of discharge of an employee for reasons which are set out in the Rule. Even if one assumes that the earlier service Rules apply to the appellant, the earlier service Rules are also similar and they also require that the employee should be heard before taking a decision on the discharge of an employee. This was not done in the present case although very serious allegations were levelled against the appellant in the report of the Managing Director, and the appellant's conduct in respect of a number of contracts had been seriously questioned in the report. Apart from anything else, when the Rules specifically require that an opportunity of explaining himself should be given to the employee, the denial of such opportunity is a serious violation of the principles of natural justice and vitiates the decision. The order of termination,

therefore, cannot be sustained looking to the relevant Rules, and applying the principles of natural justice when the employee is not a probationer. The impugned order of termination is, therefore, set aside."

(17) In the case of C.M. Rathod (Supra), the Division Bench considered the controversy with regard to deemed confirmation. Appropriate paragraphs of the decision read as under:

"4. In order to resolve the controversy raised in the appeal, it would be relevant to notice the provisions regarding period of probation made in Gujarat Civil Service Classification and Recruitment (General) Rules, 1967 as amended in 1994.

"10-A. Period of Probation :

Notwithstanding anything contained in these rules or any rules or orders relating to the recruitment to any service or post included in the State Service or subordinate service, a candidate appointed to Class I or Class II service or post by direct selection, shall be on probation for a period of two years and in case of his appointment to Class III service or post for a period of one year:

Provided that the appointing authority may, if it thinks fit in any case, extend the period of probation for a further period not exceeding two years in case of Class I and Class II service or post and one year in case of Class III service or post :

Provided further that if in any case passing of a departmental examination during the period of probation is stipulated as a prerequisite condition for completion of such probation period and where the probationer could not pass the same within the prescribed chances admissible to him under the rules for reasons beyond his control, the above ceiling on the period of probation shall not be applicable.

5. A bare reading of the above-referred to Rule makes it abundantly clear that the probation period can be extended for a maximum period of two years beyond which probation cannot be extended. As noticed earlier, probation period of the respondent was over on January 9, 1996, which was extended till July 9, 1997 by order dated March 20, 1997 i.e. after expiry of period of probation. Again, the probation period of the respondent was extended till January 9, 1998 by order dated July 8, 1997 and thereafter it was extended till March 9, 1998 by an order dated January 8, 1998. As the rule relating to probation provides for extension for a maximum period of two years, beyond which probation cannot be extended, we are of the view that at the end of maximum extended probationary period, there will be deemed confirmation of the respondent because Rule does not provide to the contrary. In Kedar Nath Bahl (Supra), the Supreme Court has held 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 the said specified period of probation he obtains confirmation automatically even if no order is passed in that behalf. The Apex Court has emphasized in the said case that at the end of 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. Similarly, in the case of Pratap Singh (Supra), the Apex Court has held that after expiry of the period of probation, the probationer does not automatically get confirmed unless rules specifically so provide and termination, therefore, of a probationer after expiry of such period, is not improper.

6. In our view, the principle laid down in the above-referred two decisions would not be applicable to the facts of the present case. In the case of WASIM BEG (Supra), the Supreme Court has reviewed the whole law on the subject. After taking into consideration almost all the decisions rendered by Supreme Court earlier on this point, the Apex Court has ruled that where the rules provide for a maximum period of probation beyond which probation cannot be extended, at the end of the maximum probationary period, there will be a deemed confirmation of the employee, unless the rules provide to the contrary. Whether an employee at the end of the probationary period automatically gets confirmation in the post or whether an order of confirmation or any specific act on the part of the employer confirming the employee is necessary, will depend upon the provisions in the relevant service rules relating to probation and confirmation. In the case of WASIM BEG, the appellant was selected and appointed as Divisional Manager in the respondent-Corporation on January 10, 1978. The appointment letter was as under :

".....His appointment will be on probation for a period of one year which can be extended at the discretion of the Managing Director. His services are liable to be terminated on one month's notice or salary in lieu thereof. He will be governed by the Service Rules of the Corporation."

The appellant continued to work as Divisional Manager of the respondent-Corporation till April 21, 1981. In April, 1983 he was even allowed to cross the efficiency bar. However, by an order dated March 31, 1985 his services were terminated, validity of which was subject matter of examination before the Apex Court. The service rules which were in force at the time of appellant's appointment, were as under :-

"Any employee regularly appointed for the first time or promoted to any post in the corporation shall be placed on probation for a period of one year from the date of joining the new post.

The performance of the employee in the new post will be watched during the probation and the appointing authority will issue a certificate of having satisfactorily completed the probation at the end of the period. The appointing authority has discretion to extend the period of probation without assigning any reason therefor."

7. In the said case, the relevant Rule relating to confirmation was as follows:

"Confirmation- An employee directly appointed or promoted to any post in the

corporation shall be deemed to have become a confirmed employee in that grade after he has successfully completed the period of probation."

On review of the law on the subject, the Supreme Court has held as under :-

"15. Whether an employee at the end of the probationary period, automatically gets confirmation in the post or whether an order of confirmation or any specific act on the part of the employer confirming the employee is necessary, will depend upon the provisions in the relevant Service Rules relating to probation and confirmation. There are broadly two sets of authorities of this Court dealing with this question. In those cases, where the Rules provide for a maximum period of probation beyond which probation cannot be extended, this Court has held that at the end of the maximum probationary period there will be a deemed confirmation of the employee unless Rules provide to the contrary. This is the line of cases starting with *State of Punjab v. Dharam Singh*, *M.K. Agarwal v. Gurgaon Gramin Bank*, *Om Prakash Maurya v. U.P. coop. Sugar Factories Federation*, *State of Gujarat v. Akhilesh C. Bhargava*.

16. However, even when the Rules prescribe a maximum period of probation, if there is a further provision in the Rules for continuation of such probation beyond the maximum period, the courts have made an exception and said that there will be no deemed confirmation in such cases and the probation period will be deemed to be extended. In this category of cases we can place *Samsher Singh v. State of Punjab* which was the decision of a Bench of seven Judges, where the principle of probation not going beyond the maximum period fixed was reiterated, but on the basis of the Rules which were before the Court, this Court said that the probation was deemed to have been extended. A similar view was taken in the case of *Municipal Corpn. v. Ashok Kumar Misra*. In *Satya Narayan Athya v. High Court of M.P.* although the Rules prescribed that the probationary period should not exceed two years, and an order of confirmation was also necessary, the termination order was issued within the extended period of probation. Hence, the termination was upheld.

17. The other line of cases deals with Rules where there is no maximum period prescribed for probation and either there is a Rule providing for extension of probation or there is a Rule which requires a specific act on the part of the employer (either by issuing an order of confirmation or any similar act) which would result in confirmation of the employee. In these cases unless there is such an order of confirmation, the period of probation would continue and there would be no deemed confirmation at the end of the prescribed probationary period. In this line of cases, one can put *Sukhbans Singh v. State of Punjab*, *State of U.P. v. Akbar Ali Khan*, *Kedars Nath Bhl v. State of Punjab*, *Dhanjibhai Ramjibhai v. State of Gujarat* and *Tarsem Lal Verma v. Union of India*, *Municipal Corpn. v. Ashok Kumar Misra* and *State of Punjab v. Baldev Singh Khosla*. In the recent case of *Dayaram Dayal v. State of M.P.* (to which one of us was a party) all these cases have been analyzed and it has been held that where the Rules provide that the period of probation cannot be extended beyond the maximum period there

will be a deemed confirmation at the end of the maximum probationary period unless there is anything to the contrary in the Rules."

8. Applying the ratio laid down in the said decision to the facts of the present case, we find that the relevant Service Rules of the respondent provide for extension of probation period for a maximum period of two years beyond which probation cannot be extended and, therefore, the ratio laid down in Para-15 of the reported judgment of the Supreme Court would be applicable to the facts of the present case. This is not a case, wherein rule prescribes a maximum period of probation which can be continued beyond the maximum period. Under the circumstances, the principles laid down by the Apex Court in Para-16 of the WASIM BEG's case will not apply to the facts of the present case.

9. In Gujarat Mineral Development Corporation Ltd. vs. B.B.Sinha and another, Letters Patent Appeal No. 918/95 decided on October 24, 1997 by Court (Coram: Mr.Justice C.K.Thakker and Miss Justice R.M.Doshit) petitioner was appointed as Mines Manager at Lignite Project, Panondhro in February, 1987. He was appointed as Mines Manager in March, 1987 on probation for a period of one year. His services were, however, terminated in exercise of power under Rule 27 of the Rules by offering him a sum equivalent to three months' salary. The said action was challenged by the petitioner in Special Civil Application no. 10679/94. The petition was allowed by the learned Single Judge. Rule-14 of the Rules provided that the first appointment to a post shall be made on probation for a period not exceeding one year provided that the appointing authority may from time to time extend such period of probation as may be considered necessary, so that the total period of probation does not exceed two years. Rule-20 provided for confirmation of an employee and it empowered the appointing authority to confirm an employee in the service of the Corporation on satisfactory completion of the period of probation. The Division Bench after considering the Rules has held as under in Para-10 of the judgment:-

"In our opinion, the ratio laid down in Dharamsingh would apply with equal force to the facts of the instant case. Though a specific and express order of confirmation was not passed in favour of the petitioner, Rule 14 of the Rules provides for maximum period of probation and as the said period was over, as per the law laid down by the Apex Court, the petitioner could be deemed to have been confirmed. He, therefore, cannot be treated as a probationer and no action can be taken on that basis."

Applying the principle laid down by the Division Bench, with which we agree, to the facts of the present case, we are of the view that the respondent must be deemed to have been confirmed after expiry of the maximum extended period of probation."

(18) The Division Bench while considering Rule 10(A) of the Rules, considered the decision of the Wasim Beg (Supra). A recent decision dated 6.7.2021 of the Division Bench in Letters Patent Appeal No.1780 of 2017 also held as under:

"2. The facts giving rise to this appeal may be summerised as under;

The writ applicant was appointed in Class II vide order dated 12.02.2002 issued by the Social Justice and Empowerment Department, State of Gujarat, initially on a probation of two years as prescribed by Rule 10A of the Gujarat Civil Services Classification and Recruitment (General) Rules, 1967 (for short 'the Rules, 1967').

2.1 It appears that in view of the terms and conditions of the appointment, the writ applicant was required to clear the departmental examination within a period of probation and in the event of non clearance of the departmental examination within the period of two years as provided in the 2nd proviso to Rule 10A of the Rules, 1967.

2.2 It is not in dispute that the writ applicant was not able to clear the departmental examination in the first attempt. The period of probation was extended by an order dated 16.03.2004.

2.3 The writ applicant thereafter cleared the departmental examination, indisputably within the permissible chances. However, it appears that vide different orders passed from time to time, his probation was extended till the time the impugned order of termination dated 20.09.2008 came to be passed.

2.4 Being dissatisfied and aggrieved by the order of termination dated 20.09.2008, the writ applicant came before this Court by filing Special Civil Application No.13652 of 2008.

3. The learned Single Judge adjudicated the writ application and vide impugned order allowed the same. The learned Single Judge quashed and set aside the order of termination dated 20.09.2008. The learned Single Judge, while allowing the writ application held as under:

"9. In the opinion of this Court, the issue stands resolved by the judgment in the case of CM Rathod (Supra). Rule 10A has been interpreted by the Division Bench and it has been held that as the rule relating to probation provides for extension for a maximum period of two years, beyond which probation cannot be extended, there will be deemed confirmation because the rule does not provide to the contrary. It is therefore fallacious to contend that Rule 10A of 1967 Rules does not restrict the Government from extending the period of probation beyond the period of two years. That seems to be incorrect reading of the rule. Moreover, the circular relied upon by the learned AGP principally refers to the manner and method of writing confidential remarks and it also points out that if service of the employees is not found satisfactory during the period of probation or if the terms and conditions of appointment on probation are not complied with, the appropriate decision for dispensing with the services of the probationer shall be taken promptly. Thus, the circular does not control the rule and it could not in as much as it is settled legal position that the statutory rules cannot be controlled by a mere administrative fiat.

10. Learned AGP relied upon paragraph No.9 of the affidavit as well which reads

as under:

"9. I say and submit that the petitioner's conduct and his behavior was not good. He was punished by withholding two increments for two years without future effect vide order dated 03/10/2007 for the irregularities made by him during probation period. More over he avoided to appear before inquiry officer during the said inquiry. A copy of the order passed dated 03- 10/2007 is annexed to petition as Annexure K. I further say and submit that one Criminal case was also registered against the petitioner. The petitioner has been acquitted. Moreover several irregularities were also found against the petitioner, in pursuance of the payment made by the petitioner. For there irregularities he was warned by the authority vide order dated 05/03/2008 Annexure R.II. Moreover the evaluation of working during the probation period was also average good, except one year."

10.1 In the opinion of this Court, even if the averments made in paragraph No.9 above are correct, the only course open for the employer to get rid of a confirmed employee is to follow necessary procedure under the relevant rules. The averments made in paragraph No.9 would not justify the respondent to extend the period of probation and circumvent the procedure necessary for getting rid of the confirmed employee.

10.2 Attention of this Court was also invited to paragraph No.8 of the affidavit in reply which reads as under:

"8. I respectfully say and submit that there is no such order in existence, providing that the probation period would be treated as deemed completed at the end of probation period, even if the probation period is not extended. In fact the Rule provide that the period of probation can be extended beyond the maximum probation period. There is no provision for deemed confirmation. Hence, I say and submit that the respondent authority has extended the probation period time to time, and no specific order issued to confirm the petitioner. Moreover, it is to state that the petitioner had not objected for the extension of probation period when the probation period was extended vide orders dt. 29/11/2007, 26/02/2008 and 16/07/2008, but has raised such objection when his services are discontinued. Such contention ought to have been raised by the petitioner at the time when his probation period was extended."

10.3 It is argued that the period of probation was extended on 29/11/2007, 26/02/2008 and 16/07/2008 without any objection from the petitioner. It was contended that when objection was raised by the petitioner against extension of the period of probation, no such objection was permissible when services were terminated. This Court is unable to accept the said contention for the simple reason that the extension of period of probation without authority of law is non est and merely because no objections were raised in past by the employee, the waiver would not invest an authority in employer to extend the period of probation when non – exists."

4. The State Government, being dissatisfied with the impugned order passed by

the learned Single Judge, has come up with the present appeal.

5. We have heard Mr. Chintan Dave, the learned Assistant Government Pleader for the appellant - State and Mr. T. R. Mishra, the learned counsel appearing for the respondent (original writ applicant).

6. The question of law that fell for the consideration of the learned Single Judge was as under;

"2. The question raised in this petition is as to whether after having completed the prescribed period of probation and in absence of the rule prescribing for confirmation of the employee, the petitioner was deemed to have been confirmed and whether under such circumstances, his services could have been terminated fro his having not completed the probation satisfactorily"

7. The first two years of the probation period was between 12.02.2002 and 12.02.2004. The extended period of probation was between 12.02.2004 and 12.02.2006. The order of termination came to be passed in the year 2008. The learned Single Judge, while allowing the writ application took the view that once the second part of the period of probation is over and the services of the employee are not terminated during the period of probation, then the employee is deemed to have been confirmed. The learned Single Judge took support of the Division Bench decision of this Court in case of Gujarat Maritime Board vs. C. M. Rathod in Letters Patent Appeal No.855 of 1998 in Special Civil Application No.1913 of 1998 decided on 14.08.1998. We quote the relevant observations of the Division Bench;

"3. Learned Counsel for the appellant submitted that no order confirming the respondent in the post of Port Officer Grade-II was passed by the appellant and as the respondent continued as probationer in the said post,his services as probationer were liable to be terminated because of unsatisfactory work. It was claimed that the period of probation stood extended beyond 4 years until and unless the respondent was confirmed by a specific order and, therefore, order passed by the learned Single Judge deserves to be set aside. In support of her contention, learned Counsel for the appellant placed reliance on the decisions rendered in the cases of (1) Kedar Nath Bahl vs. The State of Punjab and others, AIR 1972 S.C. 873 and (2) Pratap Singh vs. Union Territory of Chandigarh, (1979)4 SCC 263.

Learned Counsel for the respondent, who appeared on caveat, pleaded that the Gujarat Civil Services Classification and Recruitment (General) (Amendment) Rules, 1994, which govern the service conditions of the respondent provide for a maximum period of probation beyond which probation cannot be extended and, therefore, at the end of maximum probationary period, the respondent must be deemed to have been confirmed in the post and therefore, the appeal should not be entertained.

4. In order to resolve the controversy raised in the appeal, it would be relevant

to notice the provisions regarding period of probation made in Gujarat Civil Service Classification and Recruitment (General) Rules, 1967 as amended in 1994.

"10-A. Period of Probation : Notwithstanding anything contained in these rules or any rules or orders relating to the recruitment to any service or post included in the State Service or subordinate service, a candidate appointed to Class I or Class II service or post by direct selection, shall be on probation for a period of two years and in case of his appointment to Class III service or post for a period of one year:

Provided that the appointing authority may, if it thinks fit in any case, extend the period of probation for a further period not exceeding two years in case of class I and Class II service or post and one year in case of Class III service or post :

Provided further that if in any case passing of a departmental examination during the period of probation is stipulated as a prerequisite condition for completion of such probation period and where the probationer could not pass the same within the prescribed chances admissible to him under the rules for reasons beyond his control, the above ceiling on the period of probation shall not be applicable."

5. A bare reading of the above-referred to Rule makes it abundantly clear that the probation period can be extended for a maximum period of two years beyond which probation cannot be extended. As noticed earlier, probation period of the respondent was over on January 9, 1996, which was extended till July 9, 1997 by order dated March 20, 1997 i.e. after expiry of period of probation. Again, the probation period of the respondent was extended till January 9, 1998 by order dated July 8, 1997 and thereafter it was extended till March 9, 1998 by an order dated January 8, 1998. As the rule relating to probation provides for extension for a maximum period of two years, beyond which probation cannot be extended, we are of the view that at the end of maximum extended probationary period, there will be deemed confirmation of the respondent because Rule does not provide to the contrary. In *Kedar Nath Bahl (Supra)*, the Supreme Court has held 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 the said specified period of probation he obtains confirmation automatically even if no order is passed in that behalf. The Apex Court has emphasised in the said case that at the end of 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. Similarly, in the case of *Pratap Singh (Supra)*, the Apex Court has held that after expiry of the period of probation, the probationer does not automatically get confirmed unless rules specifically so provide and termination, therefore, of a probationer after expiry of such period, is not improper.

6. In our view, the principle laid down in the above-referred two decisions would not be applicable to the facts of the present case. In the case of *WASIM BEG*

(Supra), the Supreme Court has reviewed the whole law on the subject. After taking into consideration almost all the decisions rendered by Supreme Court earlier on this point, the Apex Court has ruled that where the rules provide for a maximum period of probation beyond which probation cannot be extended, at the end of the maximum probationary period, there will be a deemed confirmation of the employee, unless the rules provide to the contrary. Whether an employee at the end of the probationary period automatically gets confirmation in the post or whether an order of confirmation or any specific act on the part of the employer confirming the employee is necessary, will depend upon the provisions in the relevant service rules relating to probation and confirmation. In the case of WASIM BEG, the appellant was selected and appointed as Divisional Manager in the respondent-Corporation on January 10, 1978. The appointment letter was as under :

".....His appointment will be on probation for a period of one year which can be extended at the discretion of the Managing Director. His services are liable to be terminated on one month's notice or salary in lieu thereof. He will be governed by the Service Rules of the Corporation."

The appellant continued to work as Divisional Manager of the respondent-Corporation till April 1981. In April, 1983 he was even allowed to cross efficiency bar. However, by an order dated March 1985 his services were terminated, validity of which subject matter of examination before the Apex Court. service rules which were in force at the time appellant's appointment, were as under :-

"Any employee regularly appointed for the first time or promoted to any post in the corporation shall be placed on probation for a period of one year from the date of joining the new post.

The performance of the employee in the new post will be watched during the probation and the appointing authority will issue a certificate of having satisfactorily completed the probation at the end of the period. The appointing authority has discretion to extend the period of probation without assigning any reason therefor."

7. In the said case, the relevant Rule relating to confirmation was as follows:

"Confirmation- An employee directly appointed or promoted to any post in the corporation shall be deemed to have become a confirmed employee in that grade after he has successfully completed the period of probation."

On review of the law on the Court has held as under :-

"15. Whether an employee at the end of the probationary period, automatically gets confirmation in the post or whether an order of confirmation or any specific act on the part of the employer confirming the employee is necessary, will depend upon the provisions in the relevant services Rules relating to probation and confirmation. There are broadly two sets of authorities of this Court dealing with this this question. In those cases, where the Rules provide for a maximum

period of probation beyond which probation cannot be extended, this Court has held that at the end of the maximum probationary period there will be a deemed confirmation of the employee unless Rules provide to the contrary. This is the line of cases starting with *State of Punjab v. Dharam Singh*, *M.K. Agarwal v. Gurgaon Gramin Bank*, *Om Prakash Maurya v. U.P. coop. Sugar Factories Federation*, *State of Gujarat v. Akhilesh C. Bhargav*.

16. However, even when the Rules prescribe a maximum period of probation, if there is a further provision in the Rules for continuation of such probation beyond the maximum period, the courts have made an exception and said that there will be no deemed confirmation in such cases and the probation period will be deemed to be extended. In this category of cases we can place *Samsher Singh v. State of Punjab* which was the decision of a Bench of seven Judges, where the principle of probation not going beyond the maximum period fixed was reiterated, but on the basis of the Rules which were before the Court, this Court said that the probation was deemed to have been extended. A similar view was taken in the case of *Municipal Corpn. v. Ashok Kumar Misra*. In *Satya Narayan Athya v. High Court of M.P.* although the Rules prescribed that the probationary period should not exceed two years, and an order of confirmation was also necessary, the termination order was issued within the extended period of probation. Hence, the termination was upheld.

17. The other line of cases deals with Rules where there is no maximum period prescribed for probation and either there is a Rule providing for extension of probation or there is a Rule which requires a specific act on the part of the employer (either by issuing an order of confirmation or any similar act) which would result in confirmation of the employee. In these cases unless there is such an order of confirmation, the period of probation would continue and there would be no deemed confirmation at the end of the prescribed probationary period. In this line of cases, one can put *Sukhbans Singh v. State of Punjab*, *State of U.P. v. Akbar Ali Khan*, *Kedars Nath Bhl v. State of Punjab*, *Dhanjibhai Ramjibhai v. State of Gujarat* and *Tarsem Lal Verma v. Union of India*, *Municipal Corpn. v. Ashok Kumar Misra* and *State of Punjab v. Baldev Singh Khosla*. In the recent case of *Dayaram Dayal v. State of M.P.* (to which one of us was a party) all these cases have been analyzed and it has been held that where the Rules provide that the period of probation cannot be extended beyond the maximum period there will be a deemed confirmation at the end of the maximum probationary period unless there is anything to the contrary in the Rules."

8. Applying the ratio laid down in the said decision to the facts of the present case, we find that the relevant Service Rules of the respondent provide for extension of probation period for a maximum period of two years beyond which probation cannot be extended and, therefore, the ratio laid down in Para- 15 of the reported judgment of the Supreme Court would be applicable to the facts of the present case. This is not a case, wherein rule prescribes a maximum period of probation which can be continued beyond the maximum period. Under the

circumstances, the principles laid down by the Apex Court in Para-16 of the WASIM BEG's case will not apply to the facts of the present case.

9. In Gujarat Mineral Development Corporation Ltd. vs. B.B.Sinha and another, Letters Patent Appeal No. 918/95 decided on October 24, 1997 by Court (Coram: Mr.Justice C.K.Thakker and Miss Justice R.M.Doshit) petitioner was appointed as Mines Manager at Lignite Project, Panondhro in February, 1987. He was appointed as Mines Manager in March, 1987 on probation for a period of one year. His services were, however, terminated in exercise of power under Rule 27 of the Rules by offering him a sum equivalent to three months' salary. The said action was challenged by the petitioner in Special Civil Application no. 10679/94. The petition was allowed by the learned Single Judge. Rule-14 of the Rules provided that the first appointment to a post shall be made on probation for a period not exceeding one year provided that the appointing authority may from time to time extend such period of probation as may be considered necessary, so that the total period of probation does not exceed two years. Rule- 20 provided for confirmation of an employee and it empowered the appointing authority to confirm an employee in the service of the Corporation on satisfactory completion of the period of probation. The Division Bench after considering the Rules has held as under in Para-10 of the judgment:-

"In our opinion, the ratio laid down in Dharamsingh would apply with equal force to the facts of the instant case. Though a specific and express order of confirmation was not passed in favour of the petitioner, Rule 14 of the Rules provides for maximum period of probation and as the said period was over, as per the law laid down by the Apex Court, the petitioner could be deemed to have been confirmed. He, therefore, cannot be treated as a probationer and no action can be taken on that basis."

Applying the principle laid down by the Division Bench, with which we agree, to the facts of the present case, we are of the view that the respondent must be deemed to have been confirmed after expiry of the maximum extended period of probation."

(19) In view of the aforesaid position of law, it is categorically in the facts of the case held that the period of probation was over and the petitioner in accordance with the provisions of Rule 10(A) of the Rules ought to be treated as deemed confirmed and therefore the order of termination dated 2.3.2019 is held to be bad.

(20) Accordingly, the order dated 2nd March, 2019 is hereby quashed and set aside. The respondents are directed to reinstate the petitioner in service forthwith on the post on which he was working prior to the order of termination. The petitioner is deemed to have continued in service and shall be entitled to all consequential benefits. The respondents are directed to reinstate the petitioner and give all consequential benefits within a period of three months from the date of receipt of copy of this CAV Judgment.

(21) The petition is allowed in above terms. Rule is made absolute to the aforesaid extent. Direct Service is permitted. No order as to costs.