

(1993) 06 SHI CK 0007

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 30 of 1993

D.A.V. Public School

APPELLANT

Vs

Smt. Umawati

RESPONDENT

Date of Decision : 30-06-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Industrial Disputes (Central) Rules, 1957 — Rule 6(3)

Citation : (1993) 2 ShimLC 425

Hon'ble Judges : Kamlesh Sharma, J

Bench : Single Bench

Advocate : K.D. Sood, for the Appellant; A.K. Goel, for the Respondent

Final Decision : Allowed

Judgement

Kamlesh Sharma, J.—The undisputed facts are that the Respondent Plaintiff Umawati was appointed Junior teacher in D.A.V. Public School, Barmana, District Bilaspur-Appellant-Defendant (hereinafter called "the School") on 12th May, 1985 vide appointment order, Ex. P-B on probation for a period of one year with effect from 12th August, 1985; that before she could complete the probation period, she was informed vide Memo dated 11th July, 1986, Ex. P-D, that her probation period was extended until further orders and thereafter on 15th July, 1987, she was served with termination notice. Ex. P-E, that she stood relieved from her duties with effect from the same day, that is, 15th July, 1987.

2. Feeling aggrieved Umawati filed an application before the District Conciliation Officer, Bilaspur. challenging her termination to which reply dated 20th August, 1987, Ex. D.C. was filed on behalf of the School. But the Labour Commissioner, Himachal Pradesh, intimated Umawati by his letter dated 20th August, 1987 that Teaching Institutions and the staff working therein are not covered under the Industrial Disputes Act, 1947, hence his office could not intervene in her matter.

3. Thereafter, Umawati gave legal notice dated 9th December, 1987, Ex. P.H.

through her Counsel Sh Rattan Lal Sharma, Advocate, Bilaspur to the School and when no reply was received, she filed civil suit for declaration that the order of termination dated 15th July, 1987 was illegal, wrong and without jurisdiction and she continued to be a teacher in the School and also for damages of Rs. 20,000. The suit was resisted on behalf of the School and besides raising a number of preliminary objections, on merits, its stand was that the services of Umawati could be terminated as she was on probation and was not confirmed as alleged by her. Her claim for damages was denied. The defence of the School did not find favour with the trial Court which decreed the suit holding that the maximum period of probation as stated in the appointment letter was for one year, which could not be extended and on its expiry Umawati was deemed to be a confirmed teacher and could not be terminated as probationer. These findings were affirmed by the Additional District Judge in an appeal filed by the School. Hence the present Regular Second Appeal.

4. This Court has heard the learned Counsel for the parties and gone through the record. The short point before this Court is whether Umawati was a probationer or a confirmed teacher on the day when her services were terminated. There is no dispute that though it was stated in the order of appointment that she will be governed by the Rules of D.A.V. Managing Committee, New Delhi, yet, no such rules were placed on record by either party. The Principal of the School, who appeared as D.W. 1, has admitted that the appointment of Umawati was governed by the terms and conditions given in Ex. R-X, a copy of the appointment letter. One of the terms and conditions is that during the period of probation the services of the appointee could be terminated by one month's notice or payment of salary in lieu of notice period. It is also mentioned that in the matter of general conditions of service the appointee will be governed by the Rules framed from time to time by the D.A.V. Managing Committee, New Delhi but no such rules have so far been framed, as stated by Sh. K.D. Sood at the Bar. However, there is no term and condition in respect of period of probation, its extension and its maximum limit in the appointment letter. Therefore, the answer to the point in controversy will depend upon the interpretation of appointment order dated 12th August, 1985, Ex. P-B.

5. Both the Courts below have concurrently held that in the absence of any rule or any term and condition in the appointment letter, Ex. R-X, the maximum period of probation was one year as stated in the appointment order, Ex. P-B. Sh. A.K. Goel, learned Counsel for the Respondent-Plaintiff Umawati, has urged that these are findings of fact which should not be interfered with in the exercise of the jurisdiction u/s 100 CPC But in the admitted facts and circumstances on record, this submission is not tenable These concurrent findings are vitiated because for arriving at them, both the Court below have not only adopted an erroneous approach but have also misapplied the law laid in *The State of Punjab Vs. Dharam Singh*, and *State of Gujarat Vs. Akhilesh C. Bhargav and Others*, which is a substantial question of law arising in this appeal. Para 9 of the judgment in the case of *State of Punjab v. Dharam Singh*, referred to by the

Addl. District Judge does not contain the ratio of the decision and is not relevant for deciding the present controversy. In this para on the interpretation of the Rule 6(3) which is reproduced in Para 1 of the judgment and in the facts and circumstances of the case, the learned Judges of the Supreme Court held the employees to have been confirmed without the formal order of confirmation passed by the competent authority and orders regarding their termination as probationers bad. In what kind of rules and facts and circumstances such a conclusion can be arrived at is stated in Paras 3 and 5 of the judgment.

6. In Para 3 of the judgment in *State of Punjab v. Dharam Singh*, (supra), the learned Judges have also referred to earlier decisions of their Court to point out distinction between the cases in which there is implied extension of probation period even if no order extending probation period is passed and cases in which there is deemed confirmation despite order of extension of probation period. Para 3 is:

(3) This Court has consistently held that when a first appointment or promotion is made on probation for a specific period and the employee is allowed to continue in the post after the expiry of the period without any specific order of confirmation, he should be deemed to continue in his post as a probationer only, in the absence of any indication to the contrary in the original order of appointment or promotion or the service rules. In such a case, an express order of confirmation is necessary to give the employee a substantive right to the post, and from the mere fact that he is allowed to continue in the post after the expiry of the specific period of probation it is not possible to hold that he should be deemed to have been confirmed. This view was taken in *Sukhbans Singh Vs. State of Punjab*, : *Sukhbans Singh Vs. State of Punjab*, G.S. Ramaswamy and Others Vs. Inspector-general of Police, Mysore, at pp. 179-180; *Accountant General, Madhya Pradesh Gwalior v. Bent Prasad Bhatnagar* Civil Appeal No. 548 of 1962, dated 23-1-1964 (SC), *D.A. Lyall v. Chief Consenator of Forests*, U.P. Civil Appeal, No. 259 of 1963 dated 24-2-1965 (SC) and *State of Uttar Pradesh Vs. Akbar Ali Khan*, at pp. 825-826 : AIR 1966 SC 1842 at p 1845. The reason for this conclusion is that where on the completion of the specified period of probation the employee is allowed to continue in the post without an order of confirmation, the only possible view to take in the absence of anything to the contrary in the original order of appointment or promotion or the service rules, is that the initial period of probation has been extended by necessary implication In all these cases, the conditions of service of the employee permitted extension of the probationary period for an indefinite time and there was no service rule forbidding its extension beyond a certain maximum period.

(5) In the present case, Rule 6(3) forbids extension of the period of probation beyond three years. Where, as in the present case, the service rules fix a certain period of time beyond which the probationary period cannot be extended, and an employee appointed or promoted to a post on probation is allowed to continue in that post after completion of the maximum period of probation without an

express order of confirmation, he cannot be deemed to continue in that post as a probationer by implication. The reason is that such an implication is negated by the service rule forbidding extension of the probationary period beyond the maximum period fixed by it. In such a case, it is permissible to draw the inference that the employee allowed to continue in the post on completion of the maximum period of probation has been confirmed in the post by implication.

7. The ratio of the judgment in the case of Dharam Singh (*supra*) is that whether an employee gets confirmed automatically depends upon the terms and conditions of his appointment as well as the rules by which he is governed. If there is a condition in the appointment letter or a rule forbidding extension beyond a certain maximum period, the employee is deemed to be confirmed even if no specific order of confirmation is passed by the competent authority. On the other hand, if the maximum period of probation is not prescribed, the employer has got the authority to extend the probation for a period as prescribed in the rules or as required in the interest of service but it should be reasonable and the employee does not get confirmed automatically.

8. Applying the law settled by the Supreme Court to the facts of the present case, it cannot be said that Umawati was deemed to be confirmed on the expiry of the initial period of probation of one year as held by both the Courts below. In the absence of any rule or condition in the appointment letter fixing the maximum period of probation or forbidding extension of probation after a fixed period, the School authorities had the authority to extend her probation period for Anr. year as they have done in the present case. Extension was for one year as admitted by the Principal (D.W. 1) in her statement as well as in the reply Ex. CD, filed before the District Conciliation Officer, though in the extension letter Ex. P-D it was mentioned that the probation period was extended till further orders. Since the services of Umawati were terminated within one year of the extended period of probation, no fault can be found with the termination order as the matter was placed before the local Managing Committee of the School which took the decision in its wisdom, as is clear from the proceedings of its meeting held on 15th May, 1987, a copy whereof is placed on record as Ex. D-D. Moreover, it cannot be denied that the authority which has the power to make appointment on a fixed period of probation, has got the inherent power to extend it also unless provided otherwise. Therefore, the order of extension of probation, Ex. P-D, was not bad as held by the Courts below.

9. Sh. A.K. Goel, learned Counsel for Umawati, has tried to raise Anr. point that the confirmation of an employee cannot be kept in abeyance *ad-infinitum* by extending the period of probation as has been done in the present case. This argument is misconceived and is not attracted in the facts and circumstances of the present case. The probation was extended only once for a period of one year before the expiry of which the services of Umawati were terminated, therefore, it cannot be said that her probation period was extended without any limit.

10. The result of the above discussion is that there is merit in the appeal which is

accepted and the decree and judgment dated 15th January, 1993 of the Additional District Judge, Bilaspur and the decree and judgment dated 28th November, 1990 of Senior Sub-Judge, Bilaspur, are set aside and the suit is dismissed. In the facts and circumstances of the case, the parties are left to bear their own costs.