

(2017) 04 MP CK 0167
In the Madhya Pradesh High Court
Case No : 308 of 2006

Dharamdas Panika, S/o? Bhaddelal Panika Vs The State of Madhya Pradesh

Date of Decision : 07-04-2017

Acts Referred:

Citation : (2017) 04 MP CK 0167

Hon'ble Judges : P.K. Jaiswal, Vivek Rusia

Bench : Division Bench

Advocate : A.K.Sethi, Chetan Jain, Girish Desai

Judgement

1. Appellant has filed the present writ appeal against the order dated 29/10/04 passed in writ petition No.459/98, by which, the writ petition was dismissed.
2. Facts of the case, in brief, are as under :- Appellant was appointed on the post of Upper Division Teacher against the vacant post of Lecturer in the pay scale of Rs.1400-2640/- vide order dated 16/01/96. Appointment order was issued by the Board of Secondary Education, Bhopal and thereafter she was posted in Government High School Jaora run by the Board of Secondary Education. The appointment order was issued on probation for a period of one year and the appellant gave joining on 01/03/96.
3. The probation period came to an end on 01/03/97. Respondent No.1 sent a letter dated 05/05/97 to respondent No.2 calling relevant records of all the UDT, PTIs and other teachers for the purpose of their regularization. The respondent No.2 sent the recommendation dated 18/10/97 certifying the working of the appellant as general. According to the appellant, she has completed satisfactorily one year of probation and, therefore, she was entitled for regularization in the services, but vide order dated 19/11/97 her services were terminated as no longer required without assigning any reason. Being aggrieved by the aforesaid order of termination, she preferred the writ petition bearing W.P. No.459/98. In the writ petition, notices were issued and after reply, placing reliance over various judgments of apex Court mainly Dayaram Dayal Vs. State of M.P. reported in (1997) 7 SCC 443, the writ petition was dismissed.

4. Being aggrieved by the dismissal of writ petition, the appellant preferred LPA No.147/05 which was dismissed vide order dated 08/09/05, but vide order dated 20/09/06, the same was revived and re-registered as W.A.No. 308/06.

5. Learned Senior counsel for the appellant submits that by virtue of Section 150 of the Board Employees Regulation, after completion of probation period, the services of the appellant has been confirmed w.e.f. 01/03/97, therefore, her services cannot be terminated treating her into on probation without holding any regular departmental enquiry. He drawn attention towards the reply submitted by the respondent Nos. 1 & 2, in which, it is alleged that appellant has passed the B.A. examination in the year 1990 from Ajmer University as a regular candidate and thereafter in the year 1992, she has passed the M.A. Examination from Vikram University, Ujjain as a regular candidate and in the same year i.e. 1992, she has passed the B.Ed examination from Ajmer University, therefore, in the same year, she cannot be appeared in two examinations as regular candidate, therefore, her mark-sheets are doubtful. It is submitted that services of the probationer can be terminated only on the ground that her work was not satisfactory, but not on the ground of allegation. It is further submitted that these allegations were foundation of termination of the appellant which is casting stigma in her future career, hence, she cannot be terminated, for which, the regular departmental enquiry is required to be done before passing the order of termination.

6. Learned counsel appearing on behalf of the respondent in support of the judgment passed by the writ Court and submitted that services of the appellant has not been confirmed and by virtue of Section 150 she was under probation and the probation cannot be continued automatic before two years and termination order does not cast any stigma on the appellant as no reason has been assigned in the said order.

7. We have heard the learned counsel for the parties.

8. The appellant has assailed the order of termination on two grounds firstly that after one year from the date of appointment, appellant has acquired the status of confirmed employee and the second ground is that if she was on probation, her services can be terminated due to unsatisfactory performance during probation. Section 150 which requires consideration by this Court is reproduced below :-
"150. Every appointment except to a temporary post, shall in the first instance be on probation for a period of six months. The period of probation may be extended by such further periods as the Board may deem fit, but in no case the total period of probation shall exceed two years. The confirmation shall take effect from the date of expiry of the probation period."

9. Vide order dated 16/01/96, the appellant was appointed on probation for a period of one year. Section 150 provides that every appointment shall in the first instance be on probation for a period of six months. The period of probation may be extended by such further period as the Board may deem fit. It is further

provided that total period of probation shall not exceed to two years. The simple interpretation of this Section 150 is that at the first instance the appointment order was to be issued for a period of six months on probation which is liable to be extended up to the period of two years. In the present case, initially, the appointment was made on probation for a period of one year instead of six months. Section 150 further provides that the confirmation shall take effect from the date of expiry of the probation period. The appellant has placed heavy reliance on this part of Section 150 that period of probation was for one year and after completing the probation period i.e. one year, the confirmation has taken place. Section 150 clearly provides that every appointment shall in the first instance be on probation for a period of six months and extendable up to the period of two years. In each and every case of total period of probation, would be of two years and after completion of two years, the confirmation shall take effect. No formal order is required to be issued if the period of two years has been completed successfully by the employee. Admittedly, in the present case, after the appointment order, there is no order of extension after one year of probation in favour of the appellant.

10. The apex Court in the case of *Kazia Mohammad Muzammil Vs. State of Karnataka* reported in (2010) 8 SCC 155 has held that it is the settled principles of law that it will be the facts and rules which will have to be examined by the Courts as a condition precedent to decide whether there was an automatic or deemed confirmation of service, there can be cases where the Rules require a definite act on the part of employer before officer on probation can be confirmed. Where the rules are of this nature the question of automatic confirmation would not even arise. In some other cases, where the Rules do not contemplate issuance of such a specific order in writing, but merely require that there there will not be any automatic confirmation or some acts other than issuance of specific order. In the case of *High Court of M.P. Vs. Satyanarayan Jhavar Vs. State of M.P.* reported in (2001) 7 SCC 161, the three Judges Bench of this Court has re-iterated the three lines of cases to examine the question of confirmation of a probationer. i. 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 or 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.

ii. The other line is cases is that 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.

iii. The last line of cases is where, though under the rules 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 merely because the said period has expired.

11. In light of the aforesaid, the case of the appellant falls in the second line of case where in the rule there is provision of initial probation period and extension thereof up to the maximum period is provided and beyond which, it is not extendable, such officer is deemed to have been confirmed upon expiry of the maximum period of probation i.e two years, but in the present case in hand before expiry of such two years of probation period, a termination order has been passed. Hence, it can be safely held that appellant has not been deemed confirmed after completing one year period of probation.

12. In view of the above, learned writ Court has not committed any error while holding that appellant has not been confirmed and her services has rightly been terminated before expiry of the probation period. The apex Court in the case of Kazia Mohammad Muzzammil (supra) has held that order of termination of probationer does not cast stigma and specially in the impugned order, no reason of termination has been assigned by respondents also. Before termination of employee on probation, no departmental enquiry is needed. Hence, second ground raised by learned Senior Counsel for the appellant deserves to be rejected. No interference is called for in the order passed by the learned writ Court. Accordingly, the appeal is dismissed. No order as to costs.