

(2006) 09 DEL CK 0147

In the Delhi High Court

Case No : LPA 1753 of 2006 and CM No. 11089 of 2006

Dr. Ajit Singh Nayyer

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 22-09-2006

Acts Referred:

Constitution of India, 1950 — Article 166

Citation : (2006) 09 DEL CK 0147

Hon'ble Judges : Mukul Mudgal, J; J.P. Singh, J

Bench : Division Bench

Advocate : K.K. Rai, Tarkeshwar Nath and P.K. Mishra, for the Appellant;

Final Decision : Dismissed

Judgement

Mukul Mudgal, J.

CM No. 11088/2006 (for exemption)

Allowed, subject to all just exceptions.

CM No. 11089/2006 (for condensation of delay)

The application is allowed. The delay in filing the appeal is condoned.

The application stands disposed of accordingly.

LPA No. 1753/2006

1. This appeal challenges the judgment of the learned Single Judge dated 8th November, 2005, by which the learned Single Judge had dismissed the writ petition filed by the appellant and held that the appellant did not automatically stand confirmed in the post of Deputy Secretary in the respondent No. 2, Medical Council of India (hereinafter referred to as MCI).

2. The brief facts of the case as per the case set up by the appellant are as follows:

a. On 25th April, 2001, the appellant joined the respondent No. 2, as Deputy Secretary on probation. The relevant clause with respect to the probation in the appointment letter reads as follows:

You will be on probation for a minimum period of two years. Confirmation to the post will be only after successful completion of the probation.

b. On 25th September, 2002, the appellant completed his probation. On 1st April, 2002, the appellant was given his first Annual increment and on 1st April, 2003 the appellant was given his second annual increment and his third annual increment on 1st April, 2004.

c. On 2nd September, 2002, he submitted a note on the issue of completion of probation period and confirmation of his services. The relevant extracts reads as follows:

As the matter of my completion of probation period and confirmation of services was discussed with the Administrator by undersigned and the Administrator after seeing the relevant documents and the said recruitment rules which were approved by the general body, was convinced that there is apparently a typing mistake of "two years" in the appointment letter issued to me by the officer whereas it should be only one year. It is further stated that since the probation period for the post of Deputy Secretary is one year and have already successfully completed the probation period of one year on 25.4.2002. As informed, my annual confidential report is good and satisfactory because I have served in MCI with full dedication and devotion towards my duties and moreover there is no adverse remark against me. As per practice in the Council Office, if annual confidential report and performance of a person is good and satisfactory then it is treated as deemed confirmed from the date of completion of probation period.

Therefore, keeping in view all above I may be considered and confirmed to the post of Deputy Secretary from the date of the completion of the probation period i.e. 25.4.2002.

d. Since the Secretary, MCI, respondent No. 2 was on leave, the note was dealt with by the Joint Secretary, who referred to a discussion between the appellant and the Administrator and put it up for approval. The note was approved by the Administrator. The Joint Secretary thereafter recorded the following note:

Discussed with Administrator who has instructed that Establishment Section may issue a letter to the effect that probation period is one year and not two years. In the meanwhile, a copy of the noting, if permissible, may be given to the concerned officer.

e. On 26th August, 2003, the respondent No. 2 issued a letter stating that the appellant's period of probation had been extended by one year with effect from 25th April, 2003.

f. On 2nd June, 2006, the appellant filed a writ petition in this Court against the

order of the respondent No. 2 dated 26th August, 2003, by which the appellant's period of probation was extended by one year with effect from 25th April, 2003 leading to the impugned judgment dismissing the writ petition.

3. The findings of the learned Single Judge are as under:

a. The petitioner was not confirmed to the post on 2nd September, 2002 on the basis of the note given by him on 2nd September, 2002, since it was mere self-appraisal by the petitioner without indication that the relevant documents appraising his performance were approved by the Administrator. Therefore, as per the mandate of Article 166 of the Constitution of India it was not an informed decision binding the MCI.

b. The appellant was not automatically confirmed to the post on 2nd September, 2002 in absence of any rule to the contrary, or a positive action, ending the period of probation. His status continued to be that of a probationer.

c. The decision of the Executive committee to keep him on probation cannot be said to be actuated by malafides because the appellant was aware of the minutes of the meeting of the Executive Committee in 2003 and 2004 which extended the period of probation and that no materials were shown during the course of hearing that the Executive Committee lacked the power to continue the appellant's probation or that the appellant was being harassed.

4. The principle plea raised by the learned Counsel for appellant Mr. Rai in this appeal is based on Medical Counsel of India - Recruitment Rules, which reads as follows:

1. The probation period for all posts shall be two years.

5. The learned Counsel for the appellant has contended that the said Rules which provided for probation period of two years for all posts clearly stipulated that any continuance on probation beyond the period of two years clearly indicated that an employee stood confirmed. In support of this, the learned Counsel for the appellant contended that the appellant was granted increment and for the said purpose has relied on a judgment of the Hon''ble Supreme Court in Ajit Singh and Others Vs. State of Punjab and Another, and in particular paragraph 17 thereof which reads as follows:

17. The fourth and fifth grounds for dispensing with the services of the petitioners were that the petitioners being probationers had no right to the posts, and their performance in the opinion of the appointing authority was not satisfactory are wholly untenable because the period of probation had expired and they were continued in service after allowing each one of them to earn an increment. It is a permissible inference that till allowing each petitioner to earn his increment, his service and work were deemed to be satisfactory and nothing is pointed out to us as to what occurred in respect of 11 petitioners simultaneously within hardly a period of less than six weeks since the release of increment to stigmatise each one of them that his work and conduct was not

satisfactory. Therefore, the conclusion is inescapable that none of the reasons assigned for dispensing with the services of the 11 petitioners is tenable.

6. The learned Counsel for the appellant has also challenged the impugned judgment on the ground that his case fell within the tests laid down by the Hon'ble Supreme Court in *Karnataka State Road Transport Corporation v. S. Manjunath* AIR 2000 SC 2070, in particular he had relied upon paragraph 12 thereof, which reads as follows:

12. The decision in *Wasim Beg's* case (supra) also purported to classify these type of cases into three categories, on a review of the entire gamut of law. It was observed therein as follows:

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 question. In those cases where Rules provided 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 a line of cases starting with the *State of Punjab Vs. Dharam Singh, M.K. agarwal v. Gurgaon Gramin Bank* : [1987]3SCR640 *Om Parkash Maurya Vs. U.P. Cooperative Sugar Factories Federation, Lucknow and Others*, ; *State of Gujarat Vs. Akhilesh C. Bhargav and Others*, .

7. The learned Counsel for the appellant relying upon the emphasized portion, contended that the Rules of the respondent did provide maximum period of probation of two years and the fact that the appellant had even been granted an increment clearly indicated that the appellant stood confirmed.

8. Having perused the aforesaid judgment, we are of the view that the judgment of the learned Single Judge cannot be faulted. The line of cases relied upon by the appellant by quoting *Karnataka State Road Transport's* case (supra) clearly indicates that the Rules which lead to a deemed confirmation clearly indicated a "maximum" period of probation beyond which the period of probation could not be extended. In the present case, the relevant Rule as extracted above merely states that the "probation shall be two years", which does not straight away indicates that there would be an automatic confirmation. The period of two years in the MCI recruitment Rule 1 extracted above cannot be construed as a maximum period as contended by the learned Counsel for the appellant. The learned Single Judge cannot be faulted in so far as the question of confirmation based on order of confirmation is concerned. In so far as *Ajit Singh's* case (supra) is concerned, it is not applicable to the present case since in *Ajit Singh's* case (supra) 11 petitioners who were highly qualified and had a back ground of long years of service in the other departments were selected by the Punjab Trust

Services Selection Committee for direct appointments to Class I, II and III posts of Trust Executive Officers and there was an abrupt en bloc termination of employees soon after their earning an increment and the Trust in which they were employed were dissolved but were reconstituted shortly after their termination. But in the present case, the appellant claims confirmation to the post of Deputy Secretary on the basis of the note dated 2nd September, 2002 submitted by him which stated that since the probation period for the post of Deputy Secretary was one year and he had already completed the probation period on 25th April, 2002, his annual confidential report was good and satisfactory, he should be considered and confirmed to the post of Deputy Secretary with effect from 25th April, 2002. This note was approved by the Administrator. In our view, this note is merely a self appraisal by the appellant and does not indicate any independent application of mind by the Administrator. Moreover, the appointment order issued to the appellant also prescribes that the period of probation was minimum of two years. Thus the decision in the Ajit Singh's case cannot be taken as a position of law which stipulates that if the probationer is granted an increment, he is deemed to be confirmed.

9. Further, in Sukhbans Singh Vs. State of Punjab, , the Hon"ble Supreme Court held that the mere prescription of a period of probation did not lead to an inference that upon the end of such period the incumbent would stand automatically confirmed and in State of Punjab v. Dharam Singh AIR 1968 SC 120, the Hon"ble Supreme Court held that there has to be a positive order of confirmation and that for an inference of deemed confirmation there has to be a specific rule prohibiting continuation of services of an employee on probation beyond the particular period. In the present case, there was no positive order by the respondent No. 2 confirming the services of the appellant and neither the recruitment rules of the respondent No. 2 provided for any rule prohibiting the continuation of the services of the appellant who was on probation beyond the particular period. Accordingly, there is no merit in the plea of the learned Counsel for appellant. The appeal is thus dismissed.