

(1987) 03 KAR CK 0034
In the Karnataka High Court
Case No : Writ Petition No. 5613 of 1984

Dr. R. Srinivasan

APPELLANT

Vs

Karnataka State Industrial Investment and Development
Corporation Ltd.

RESPONDENT

Date of Decision : 19-03-1987

Acts Referred:

Karnataka State Industrial Investment and Development Corporation Limited Service
Rules, 1977 — Rule 15, 16, 17

Citation : (1987) ILR (Kar) 2567

Hon'ble Judges : K.A. Swami, J

Bench : Single Bench

Advocate : M.S. Nagaraj, for the Appellant; S.G. Sundaraswamy and S.S.
Ramadas, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Swami, J.—In this Petition filed under Article 226 of the Constitution, the petitioner has sought for a declaration that the communications bearing No. Secy. & AO 12792/83-84 dated 17-3-1984 (Annexure-K) & No. Per ADMN/1297/83-84 dated 23-3-1984 (Annexure-M) are null and void. Subsequently, the petitioner has amended the Writ Petition including an additional prayer for a further declaration that Rule 17 of the Karnataka State Industrial Investment and Development Corporation Ltd., Service Rules of 1977 (for short "the Rules") are null and void and are inoperative and to strike down the same.

2. The petitioner was appointed as a Project Executive (Engineering) by Respondent-1. The appointment was made by way of an offer pursuant to the application made by the petitioner. By a communication dated 15-12-1982, (Annexure-B), Respondent-1 informed the petitioner that he has been appointed as Project Executive (Engineering) on the basis of his application and subsequent interview for the post originally in the pay scale of Rs. 1700-75-2000-100-2300

plus admissible allowances subject to the following terms and conditions :

"(The Scale has since been revised to Rs 2175-75 2250-100-2650 you will be eligible to the new scale).

1. You will be on probation for a period of one year from the date of reporting for duty. On successful completion of probation, you will be appointed on contract basis for a period of five years. You will execute an agreement with the Corporation in this behalf.

2. During the period of probation, your appointment will be subject to termination on giving one month's notice on either side. In lieu of the notice, the termination can become effective on either side paying one month's pay and other allowances.

3. During the period of service in the Corporation, you will be governed by the Service Rules and other relevant rules and regulations of the Corporation.

4. You will produce a physical Fitness Certificate from a Government Doctor of a rank not less than that of a District Medical Officer before joining duty."

Pursuant to the aforesaid letter of appointment, the petitioner sent a communication dated 18-12-1982 to Respondent-1 (Annexure-C). The relevant portion of it reads as :

"1. It has been mentioned in the letter that after successful completion of probation of one year, I would be appointed on contract basis for five years. The advertisement for the post clearly mentions that this is a regular appointment. Even in the interview also it was not mentioned that the appointment would be on contract basis. Hence I would request you to make the necessary correction to this clause and issue an appointment letter complete in all respects, to the effect that this is a regular appointment and that the services would be confirmed after completion of the probationary period of one year."

Taking into consideration the aforesaid letter of the petitioner dated 18-12-1982, Respondent-1 clarified by another communication of the same date, addressed to the petitioner, that he will consider the request of the petitioner of making a regular appointment rather than a contract appointment as indicated in his letter and he will be informed of the same at the time of joining.

3. By a communication dated 10-3-1983 the petitioner acknowledged the letter of Respondent-1 and intimated him that he will be joining Respondent-1-Corporation on 17-3-1983. By a communication dated 17-3-1983 Respondent-1 also intimated the petitioner that his appointment will be on a regular service in the Corporation. Preceded by all these communications, the petitioner reported for duty on 17-3-1983.

4. The case of the petitioner is, that since the time he joined Respondent-1, he had not been entrusted with the project work required to be entrusted to him and the relationship between him and Respondent-2 was not cordial and the

approach of Respondent-2 from the beginning towards him was one of fault finding. Therefore the case of the petitioner is that he was inducted only to be removed from service.

5. It is also necessary to refer to certain events which preceded the impugned communication dated 23-3-1983 (Annexure-M). In respect of the work entrusted to the petitioner, Respondent-2 being the Chairman and Managing Director of respondent-1 used to examine the same and point out the deficiencies in the work and also used to ask him to improve the work. The communications between the two in respect of the work of the petitioner have gone on for a considerable length of time. The replies given by the petitioner to several communications addressed to the petitioner pointing out the deficiencies in his work are produced during the course of arguments. They are dated 29-7-1983, 10-10-1983, 22-12-1983 and 13-2-1984. These are the replies to Annexures R1, R3, R4 & R6 produced by the respondents.

6. Apart from the factual contentions, the legal contentions of the petitioner are that the Board has no power to extend the period of probation and in fact, the Board has not extended it and that the termination is made after the expiry of period of probation, therefore the same is bad in law. Rule 17 of the Rules is unconstitutional, that the impugned order is stigmatic therefore, it is not an order of discharge simpliciter. Hence, it could not have been passed without holding an enquiry.

7. The factual contentions are that the work of the petitioner has not; been properly appreciated ; the relationship between him and respondent-2 had not been cordial ; the approach of respondent No. 2 was not fair and objective and therefore the whole proceeding which has culminated in the passing of the impugned order is vitiated.

8. It may be mentioned here that by the communication dated 17-3-1984 (Annexure-K), the petitioner was informed that the Managing Director and the Chairman has extended the period of probation of the petitioner from 17-3-1984 for a further period of one year. Accordingly, he will continue to be on probation upto 17-3-1985.

9. On 21-3-1984, the petitioner wrote back to the Chairman and the Managing Director of respondent-1 in the following terms :

March 22, 1984.

CONFIDENTIAL

Dear Sir,

Sub : Order extending the probation of Dr. R. Srinivasan, Project Executive (Engg).

Please refer to the confidential letter No.Secy & AC/ 2792/ 83-84 dated (given to me on 19 3-1984) of Sri C.V.S. Murthy, Secretary & Administrative Officer,

communicating your directions to extend my probation by one year from 17-3-1984.

It is not known whether my letter dated 15-3-1984, has been considered by you, before the decision to extend my probation was taken.

I have made it clear beyond doubt, that the order extending my probation would be technically unsound, legally untenable, administratively and morally unjustified.

First, my appointment was on a regular basis.

Second, according to Service Rule 15, the maximum period of probation shall not extend one year.

Third, my appointment and the terms and conditions were approved by the Board. Therefore, your action is contrary to Service Rules applicable to me and is without authority and jurisdiction.

Fourthly, your action is malafide and not based on objective assessment of my work and performance.

Fifthly, as could be seen from the series of correspondence, there was a preplanned, predetermined attempt to harass and injure my reputation, by depriving me of the reasonable opportunity to explain my case.

In view of the aforesaid, I request you to kindly place the matter before the Board for their kind consideration and just orders. The series of correspondence and my reply dated 15-3-84, may also kindly be placed before the Board, so that the Board may have an objective total view and arrive at just decision.

I am ready at any time to explain to the Board or to any authority, any deficiency or lapse if any, pointed out to me.

At present, your action amounts to punishing me without telling specifically and concretely what my lapses are and therefore untenable.

I feel terribly hurt at the injustice illegally inflicted on me on extraneous considerations.

I, appeal to the Board, through you to undo the injustice inflicted on me.

Thanking you,

Yours faithfully,

Sd. (R. SRINIVASAN) Project Executive (Engg)"

10. Pursuant to the aforesaid communication, the matter was brought before the Board of Directors of respondent-1 and it was considered on 23-3-1984. The Board has held that the petitioner is unsuitable to hold and continue in the post of Project Executive (Engineering) and in accordance with the terms and

conditions of appointment of service rules, by which the petitioner was appointed the Board as an Appointing Authority has further found that his continuation in the post does not serve and promote the interest of the organisation. The Board has accordingly found him unsuitable to the post. As a result, it has terminated the services of the petitioner on paying a sum equivalent to six weeks salary in lieu of notice provided under Clause No. (2) of the order of appointment referred to supra.

11.1. As per the rules, the petitioner was put on probation for a period of one year. He reported to duty on 17-3-1983 and accordingly the period of one year came to an end on 17-3-1984. Therefore, the contention of the petitioner is, that as per Rule 15 of the Rules, an employee directly recruited to the service of the Corporation shall be required to be on probation for a maximum period of six months which may be extended at the discretion of the Appointing Authority upto a maximum period of one year from the date of appointment. Therefore, on the expiry of the period of one year as per the contention of the petitioner he became the permanent employee of the Corporation and his services must be deemed to have been confirmed, as such, he could not have been terminated from service treating him as probationer. It is also further contended that Rule 17 of the Rules which gives arbitrary powers to the Corporation is opposed to Article 14. Hence, it is unconstitutional,

11.2. On the contrary, it is the case of the respondents that there is no comparison between respondent-2 and the petitioner and there is no reason whatsoever for respondent-2 to be biased against the petitioner and that confirmation or otherwise of the petitioner in the service of respondent-1 has no bearing on the service of respondent-2. Therefore, the allegations of mala fides made against respondent-2 are unfounded. An affidavit of respondent-2 is also filed denying the allegations made by the petitioner. On the legal aspect of the matter, it is the case of the respondents that unless the petitioner is confirmed he continues to be a probationer and on the expiry of 17-3-1984, he did not become a confirmed employee of respondent-1 having regard to the facts and circumstances established in the case - in as much as from time to time during the period of one year the petitioner has been told, that his service is not satisfactory, and he has not been discharging his duties properly and that he is required to improve only go to show that at no point of time the respondents have indicated that the service of the petitioner was satisfactory. Therefore, even by the conduct of respondents, it is not possible in the instant case, to draw an inference that on the expiry of the period of one year, and on continuation of the petitioner for a few more days, he must be deemed to have been confirmed in the service. It is contended that, in fact just prior to the expiry of the period of probation, respondent-2 had intimated the petitioner that as his service was unsatisfactory, the only way was to extend the probationary period and accordingly by Annexure K, his probationary period was extended. As the petitioner was not satisfied with the same he wanted the matter to be considered by the Board. The Board also considered the matter on 23-3-1984, within a

week, on the expiry of one year and held that the service of the petitioner was unsatisfactory and he was not suitable for the post. Therefore, it is the case of the respondents that the petitioner continued to be a probationer, and as such, he was discharging his duties as a probationer.

12.1. Regarding the validity of Rule 17, it is contended that as in the instant case, the respondents have exercised the power under Rule 15 of the Rules and not under Rule 17 of the Rules, the question of validity of Rule 17 of the Rules does not arise therefore, it need not be considered.

12.2. Having regard to the contentions urged on both the sides, the following points arise for consideration :

1. Whether on 23-3-1984, the petitioner must be deemed to have been confirmed in the regular service of the Corporation?
2. If not, whether the termination of the service of the petitioner as probationer is valid in law ?
3. Whether the order of termination has cast a stigma on the petitioner ?
4. Whether Rule 17 of the Rules is unconstitutional ?

POINT NOS 1 and 2 :

13. These two points are inter-connected. Therefore, they are considered together. The contention of the petitioner is, that having regard to the wordings contained in Rule 15 of the Rules, on the expiry of the period of one year, the employee of the Corporation appointed directly to the Corporation service, must be deemed to have been confirmed. Rule 15 of the Rules reads thus :

"15. Period of probation :

An employee directly recruited to the Corporation's service shall be required to be on probation for a minimum period of six months which may be extended at the discretion of the appointing authorities upto a maximum period of one year from the date of appointment."

There is no doubt that this rule provides for a minimum and maximum period of probation. The minimum period is six months and the maximum period is one year. The question for consideration is, whether in the presence of the aforesaid rule, on the expiry of the probationary period of one year, the petitioner could be deemed to have been confirmed. There is no doubt, in this case, the petitioner was directly appointed in the regular service of the Corporation. This is amply borne out from the document produced by the petitioner, the correctness of which is not disputed by the respondents. The petitioner joined the service on 17-3-1983. The period of one year expired on 17-3-1984. His services were terminated on 23-3-1984. The law on the point has been explained by the Supreme Court in its various decisions. At this stage, some of those decisions on which reliance is placed by both the sides may be referred to.

14. In the case of *The Management of the Express Newspapers (Private) Ltd. Madurai Vs. The Presiding Officer, Labour Court, Madurai and Another*, , which is a decision by three Judges of the Supreme Court, it is held that an employee appointed for six months on probation continues as probationer even after six months if the services are not confirmed or are not terminated.

15. In *Jagdish Mitter Vs. The Union of India (UOI)*, , decided by five Judges, an order of discharge, was held to cast a stigma on the discharged official. The order of discharge read as follows :

"Sri Jagdish Mitter a temporary Second Division Clerk of this office having been found undesirable to be retained in Government is hereby served with a month's notice of discharge with effect from 1-11-1949 "

The Supreme Court took objection to the expression "undesirable" used in the order and held that it cast a stigma on the petitioner. However, at several places in the Judgment, specially in paragraphs 10 and 11, it has been held that a temporary Government servant or a probationer can be terminated without assigning any reason.

16. Next comes the case of *State of Punjab Vs. Dharam Singh*, decided by five Judges. In paragraph 5 of the Judgment, it is held thus :

"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 negatived by the service rule forbidding extension of probationary period beyond the maximum period fixed by it. In such a case, it is permissible to draw the inference that the employee has been confirmed in the post by implication."

17.1 In *Samsher Singh Vs. State of Punjab and Another*, , decided by seven Judges, the decision in *Dharam Singh*'s case was approved and it was held that confirmation by implication was permissible; that on the facts and circumstances of each case, confirmation by implication could be inferred.

17.2 In *Dhanjibhai Ramjibhai Vs. State of Gujarat*, , it has been held that there is no right in the probationer to be confirmed merely because the period of probation is completed. Confirmation implies exercise of judgment by the confirming authority on the overall suitability of the employee for permanent absorption in service. There is no distinction between a probationer whose services are terminated on the expiry of the period of 2 years and a probationer who has completed the normal span of two years and whose services are terminated sometime after he had put in further service on the expiry of the period of probation.

18. In *Om Parkash Maurya Vs. U.P. Cooperative Sugar Factories Federation*,

Lucknow and Others, , quoting para 5 of the decision in State of Punjab Vs. Dharam Singh, which is reproduced in para 16 above and having regard to Regulations 17 and 18 of the U.P. Co-operative Societies Employee's Service Regulation, it was held thus :

"Regulations 17 and 18 read together, provide that appointment against a regular vacancy is to be made on probation for a period of one year, this probationary period can be extended for a period of one year more. The proviso to Regulation 17 restricts the power of the Appointing Authority in extending period of probation beyond the period of one year. An employee appointed against a regular vacancy cannot be placed on probation for a period more than two years and if during the period of probation the Appointing Authority is of the opinion that the employee has not made use of opportunity afforded to him, he may discharge him from service or revert him to his substantive post but he has no power to extend the period of probation beyond the period of two years. Regulation 18 stipulates confirmation of an employee by an express order on the completion of the probationary period. The regulations do not expressly lay down as to what would be the status of an employee on the expiry of maximum period of probation where no order of confirmation is issued and the employee is allowed to continue in service. Since Regulation 17 does not permit continuation of an employee on probation for a period more than two years, the necessary result would follow that after the expiry of two years probationary period, the employee stands confirmed by implication This is implicit in the scheme of Regulations 17 and 18."

In the instant case, as it is already pointed out, Rule 15 provides for minimum and maximum period of probation. There is no rule enabling respondent-1 to extend the period of probation nor there is any specific provision contained in the Rule that on the expiry of the maximum period of probation, the confirmation must follow.

19. Having regard to Rule 16 of the Rules, which relates to termination of service and provides for termination during the period of probation and after confirmation, it can be gathered that the Rules do contemplate an order of confirmation. As held by the Supreme Court in Dhanjibhai Ramjibhai Vs. State of Gujarat, , confirmation implies exercise of judgment by the confirming authority on the overall suitability of the employee for permanent absorption in the service. The contention of the petitioner is that as there is no provision for extending the period of probation and as his service had not been terminated before the expiry of the period of probation, the only inference that could be drawn is that the service of the petitioner must be deemed to have been confirmed. There is no doubt, that in law, having regard to the facts circumstances of each case and especially in a case where minimum and maximum period of probation is fixed, it is possible and permissible to hold that a probationer in the absence of an order of confirmation is deemed to have been confirmed, but the circumstances necessary for such a declaration must exist.

The circumstances must be such, that they must lead to one and the only inference that the petitioner must be deemed to have been found suitable in order to hold by implication that the probationer must be deemed to have been confirmed. The service during the period of probation must have been found satisfactory, and there must not have been any occasion or a circumstance which militates against drawing of such inference. In other words, the service of a probationer during the entire period of probation must have been satisfactory. In such a case, where rules fix minimum and maximum period of probation, even in the absence of an order confirmation, it is permissible and possible to hold that by implication, the service of a probationer has stood confirmed.

20.1 According to the case of the respondents the service of the petitioner during the period of probation, was not satisfactory in as much as he did not discharge his duties to the satisfaction of respondent-1 in the manner in which Project Executive (Engineer) was expected to do. From the manner of correspondence that has gone on between the respondents and the petitioner starting from 19-7-1983 ending with 21-2-1984, it is not possible to hold that the respondents at any time found the service of the petitioner satisfactory. The contents of Annexures 1 to 7, and the replies to that given by the petitioner which are produced during the course of arguments and taken on record, bear ample testimony. I do not want to burden the Judgment by quoting the correspondence because they are the part of the records, suffice it to note that at every stage, respondent-2 has pointed out the deficiency in the working of the petitioner. Ultimately, on February 21, 1984, as per Annexure-R7, which is equivalent to Annexure-H, produced by the petitioner, it is pointed out by respondent-2 as follows :

" KARNATAKA STATE INDUSTRIAL INVESTMENT & DEVELOPMENT CORPORATION LTD, MSIL HOUSE, 36 Cunningham Road, Bangalore-560 052

Ref. No. PS/C-1/Conf. 127/83-84 Date : February, 21 1984

CONFIDENTIAL

Dear Dr. Srinivasan,

You will kindly recall that since you joined this Corporation as a Project Executive, I have been advising you from time to time that you must strive hard to improve the quality of your work and to be able to make substantial and tangible contributions to the Corporation's activities. I am sorry to have to observe that so far your performance has not come up to the desired standards.

It is regrettable that none of the reports prepared by you thus far has been of a standard suitable to be presented to the Board. Your report on the monitoring of Electrocarbonium prepared some months ago was not upto the mark and I have had to refer this to the General Manager for a complete revision. Your appraisal memorandum of Sri Devi Textiles had many deficiencies and lacked an indepth analysis. Consequently, I had to give it to Sri C.V.S Murthi for a total revision and

redrafting. Your appraisal memorandum of Rasel Electronics is again not completely satisfactory and I have kept it with me to suggest a total recast. In this, I am sorry to have to remark that the various comments given by the General Manager on the draft were neither carefully looked into nor were the required changes incorporated. Likewise, the appraisal memorandum on KND Foundries had to be returned to you for a total revision. As a result of this, I have been having difficulties in placing these term loan subjects before the Board on the targetted dates which means that I will also face difficulties in reaching the business performance targets. You will agree that this is not in the overall interest of the Corporation whose performance is subject to a critical review not only by IDBI but also by the State Government.

I should also mention with considerable regret that your discussion without adequate background with Mr. Peter Jacob of the World Bank have caused me acute embarrassment with IDBI and the World Bank Mission. Infact, in the situation created by you in which the World Bank Mission has taken on record certain observations directly related to your talks, I have not been able to send an appropriate report to IDBI.

I do hope that you will appreciate the fact that quite frequently I have been advising you in regard to the kind of aptitude and the style of functioning that you would have to develop to be a part of this Corporation.

Again it is with extreme regret that I will have to mention that your contribution to this Corporation's activities was considered by the Board of Directors in its meeting today when similar contributions by other executives were considered. I am afraid that I was not able to explain and justify your performance to the entire satisfaction of the Board.

In the circumstances, it will be extremely difficult for me to justify your confirmation in service on the expiry of your probationary period and thus, I may be forced to extend your probation period for a further tenure. I thought I should bring these facts to your notice so that you will, atleast from now onwards, show qualitative and quantitative improvement in your performance.

Yours sincerely Sd/- (K.S.N. MURTHY)

The petitioner has also sent his reply dated 15-3-1984 to Annexure-H which is also produced Annexure R-7. The Reply is marked as Annexure-J.

20.2. Having regard to the allegations made by the petitioner that respondent-2 had not been fair to him and was only interested in finding fault with him, I got the files relating to Sridevi Textiles, Rasel Electronics Ltd., and K.N.D, Foundries Private Ltd., produced for perusal in order to find out whether Respondent-2 had applied his mind to the work done by the petitioner or whether he had passed the remarks only for the sake of passing, and whether he had been unfair to the petitioner. The petitioner who was present in the Court was also asked to point out the remarks made by Respondent-2. He also pointed out several remarks

made by Respondent-2, which demonstrated application of mind by Respondent No. 2. Thus this is not a case in which the 2nd respondent, only with a view to get rid of the petitioner from the service of Respondent-1, was trying to find fault with him. This is a case in which respondent-2 in the best interest of Respondent-1 was trying to find out whether the work done by the petitioner was satisfactory.

20.3. At this stage itself, it is appropriate to dispose of the contention relating to the bias alleged against Respondent-2. The petitioner and Respondent 2 never worked together in any office, earlier to the relevant period in question. In fact, the petitioner was serving at Hyderabad before he was appointed in the service of Respondent-1. Respondent-2 does not belong to respondent-1 service. He is an officer belonging to the cadre of I.A.S. appointed as Chairman and the Managing Director of Respondent-1. The rise or fall of the petitioner and the recognition of his merit in the service of Respondent-1 has no bearing on the service of Respondent-2. The grievance made by the petitioner is that Respondent-2 was apprehensive of the fact that if the petitioner's services were to be appreciated and confirmed Respondent-2 was likely to be affected. The apprehension appears to be without any basis as there is no comparison between the two as there is no reason whatsoever for Respondent-2 to spoil the career of the petitioner. Respondent-2 has also filed an affidavit in this regard, denying the allegations made against him and further affirming that he has acted in the best interest of the Corporation. There is no reason to discard his affidavit, that too when it is borne out from the records that he has acted bonafide and in the best interest of the Corporation. Taking into consideration all the facts and circumstances of the case, it is not possible to accept the bias attributed to Respondent-2 by the petitioner. This contention is accordingly rejected. Consequently, the Court has to proceed on the basis that the approach of Respondent-2 had been normal and it was only intended to find out whether the service of the petitioner was satisfactory so as to protect and safeguard the interest of respondent-1 in order to enable respondent-1 to retain the petitioner in service.

21. Thus, in this case, it is established that upto the expiry of the period of probation there was no indication whatsoever that the service of the petitioner was satisfactory. On the contrary the evidence in the case establishes that the service of the petitioner was found to be unsatisfactory. Therefore, by the communication dated 17-3-1984 (Annexure-K) the petitioner was intimated that his probation was extended for a further period of one year. As the petitioner challenged the validity of such extension and requested that the matter be considered by the Board, the Board took into consideration the overall performance of the petitioner and held that the service of the petitioner was unsatisfactory. In this context it is submitted that it was not permissible for the Board to consider, the question as to whether the service of the petitioner during the period of probation was satisfactory and terminate the service of the petitioner after the expiry of the probationary period. The acceptance of this

submission depends upon the answer to the question as to whether the petitioner was a probationer on the expiry of the period of one year. It is already pointed out that confirmation of the service of a probationer is necessary; such confirmation may be by an express order or by necessary implication. It would have been possible to hold that there is confirmation of the service of the petitioner, by implication only if the performance of the petitioner during the period of probation had been found to be satisfactory.

22. It has also been pointed out that having regard to the provisions contained in Rule 16 of the Rules there should be a confirmation of the service of a probationer. In *State of Punjab Vs. Dharam Singh*, , the Supreme Court has held that confirmation by implication can be drawn on the facts and circumstances of each case if the probationer is continued beyond the period of probation and there is no rule for extending the period of probation. In the instant case, no doubt, there is no rule for -extending the period of probation, beyond the period of one year. But the absence of such a rule does not make a probationer, a confirmed employee unless the circumstances are such, as to lead to an inference that the confirmation is deemed to have been made. Even in the case of *Om Parkash Maurya Vs. U.P. Cooperative Sugar Factories Federation, Lucknow and Others*, the Supreme Court confirmed the view expressed in *State of Punjab Vs. Dharam Singh*, , and on the wordings contained in Regulations 17 and 8 of the U.P. Co-operative Societies Employees Service Regulation and in the facts and circumstances of that case it was held that the employee must be deemed to have been confirmed on the expiry of two years probationary period. In that case, there was no occasion to doubt the satisfactory discharge of duties during the period of probation. Therefore, an inference as to confirmation of service was drawn applying the principles laid down in *State of Punjab Vs. Dharam Singh*, . Having regard to the facts and circumstances established in the case, as the service of the petitioner during the period of probation was found to be unsatisfactory, the petitioner continued to be a probationer even after the expiry of the period of one year. The question as to whether the service of the petitioner could be considered as satisfactory and as to whether he should be confirmed was taken up for consideration on the date on which he completed one year of probation. Not being satisfied with the service of the petitioner, the period of probation was extended by the communication dated 17-3-1984 Annexure-K- the date on which the petitioner completed one year.

23. In *Dhanjibhai Ramjibhai Vs. State of Gujarat*, , it has been pointed out that there is no distinction between a probationer whose services are terminated on the expiry of the period of two years and a probationer who has completed the probationary period of two years and whose services are terminated sometime later after he has put in a further period of service. It is that situation which is obtaining in the present case. The matter was taken up on the date on which the petitioner were to complete one year of probation to consider the question whether the petitioner could be confirmed or not and the respondents having not been satisfied with the Performance of the petitioner, the period of probation was

extended The petitioner was not satisfied with the decision. Therefore, on his request the Board of Directors considered the matter on 23-3-1984 just within a period of one week from the date of expiry of one year of probation. The Board terminated the service of the petitioner for the reasons stated in Annexure "M". The consideration of the matter by the Board on 23-3-1984 is continuation of the process that began on 17-3-1984. Therefore, the petitioner must be held to have been continued as probationer even on 23-3-1983, and his termination, having regard to the facts and circumstances obtained in the case is justified.

24. For the reasons stated above, point Nos. 1 and 2 are answered as follows :-

Point No. 1. On 23-3-1984, the petitioner continued to be a probationer as there was no order of confirmation and as the facts and circumstances of the case are riot such as to lead to an inference of confirmation of service by implication. Therefore, he cannot be deemed to have been confirmed on 23-3-1984 in the regular service of the Corporation.

Point No. 2. The termination of the service of the petitioner on the ground that his service was unsatisfactory is valid because it is done during the period when the petitioner must be held to have been continued as probationer.

25. Point No. 3 :

It is contended by Mr Nagaraj, learned Counsel for the petitioners that as the expression "unsatisfactory" is used in the order of termination of service, it casts a stigma on the petitioner. It is not possible to accept this contention. No doubt, learned Counsel has placed reliance on a decision of the Supreme Court in Jagdish Mitter Vs. The Union of India (UOI), . The expression "undesirable" used in Jagdish Mitter Vs. The Union of India (UOI), has many implications, as pointed out by the Supreme Court itself. It will have a bearing on the character and conduct of the official which makes him undesirable even in the Society. Therefore, such an expression adversely affect the personality of the person concerned and makes him unacceptable for any other job or by the society itself. Such is not the situation in the instant case. In order to confirm the service of the probationer, his service during period of probation must be found satisfactory. If his service is not satisfactory he has to be terminated. The expressions used in the order of discharge are "unsatisfactory", and "unsuitable". In other words, it means unsuitable to the service in question. It does not mean that he is not suitable to any other post. It will not have any adverse effect on his competency to hold any other post and discharge the duties of any other post. Thus the order is termination simpliciter and it does not cast any stigma. Point No. 3 is answered accordingly.

26. Point No. 4 :-

Having regard to the conclusions reached by me on point Nos. 1 to 3, in the normal course, it would not have been necessary to pronounce upon the validity of Rule 17 of the Rules. But Rule 17 of the Rules is worded in such a vulnerable

manner, that no Court of conscience invested with the power and charged with the duty to declare law as unconstitutional if it contravenes the provisions of the Constitution, can spare such a Rule. Therefore, I have considered the validity of this Rule. The question is no more res- integra. The Supreme Court in Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, has considered similar Rule and has held that such a rule is unconstitutional being violative of Article 14 of the Constitution. Accordingly Rule 17 of the Rules is held unconstitutional, being violative of Article 14 of the Constitution. Point No. 4 is answered accordingly.

27. For the reasons stated above, Rule 17 of the Rules is declared as unconstitutional and it is struck down. In all other respects the petition is dismissed.