

(2010) 08 DEL CK 0301
In the Delhi High Court
Case No : LPA 342 of 2010

Dy. Director of Education and Another	APPELLANT
Vs	
Veena Sharma	RESPONDENT

Date of Decision : 16-08-2010

Acts Referred:

Central Services (Temporary) Services Rules, 1965 — Rule 5(1), 5(2)
Constitution of India, 1950 — Article 226
Delhi School Education Act, 1973 — Section 11, 8, 8(2), 9
Delhi School Education Rules, 1973 — Rule 105, 5

Citation : (2010) 08 DEL CK 0301

Hon'ble Judges : Dipak Misra, C.J.; Manmohan, J

Bench : Division Bench

Advocate : A.K. Bhardwaj, for the Appellant; M.Y. Khan, for the Respondent

Final Decision : Allowed

Judgement

Dipak Misra, C.J.—Questioning the defensibility of the order dated 25th March, 2010 passed by the learned Single Judge in WP(C) No. 10274/2009, the present appeal has been preferred under Clause 10 of the Letters Patent.

2. The factual expose" lies in a narrow compass. The respondent-petitioner was appointed as Upper Division Clerk on 17.12.2007 by the Air Force Children Education Society, the respondent No. 2 herein. While she was on probation, an order dated 19.3.2009 came to be passed dispensing with her services as the same were no longer required by the society. Being dissatisfied with the said order, the respondent invoked the jurisdiction of this Court under Article 226 of the Constitution of India for issuance of a writ of certiorari for quashment of the order dated 19.3.2009 and further for issuance of a writ of mandamus to command the respondents to take her back on duty and extend the continuity of service along with other benefits.

3. It was contended before the learned Single Judge that the impugned order was passed without following the due procedure of law inasmuch as the

respondent was a confirmed employee since she had completed the period of probation and the society had no authority to extend the period of probation. In essence, the proponement was that she was deemed to have been a confirmed employee. That apart, it was urged that the services were not dispensed with as per the terms stipulated in the letter of appointment.

4. The appellants, who were the respondents in the writ court, resisted the aforesaid stand of the respondent-writ petitioner contending, *inter alia*, that she was a probationer and the scanning of the provisions and the letter of appointment would not ensue or entail in deemed confirmation.

5. The learned Single Judge adverted to the submissions raised at the bar and came to hold that the respondent was a confirmed employee and, therefore, her services could not have been dispensed with in violation of the principles of natural justice and further the condition postulated in the letter of appointment was not satisfied. Being of this view, he directed the present appellants, the respondents in the writ petition, to reinstate her with benefit of continuity of service and full back wages.

6. Mr. A.K. Bhardwaj, learned Counsel appearing for the appellants, has raised the following contentions:

(a) The learned Single Judge has fallen into error by expressing the opinion that the respondent was a confirmed employee on the basis of the letter of appointment though there is nothing in the said letter which would justifiably lead to such a conclusion.

(b) The finding recorded by the learned Single Judge that there has been violation of the principles of natural justice is totally unsustainable inasmuch as the respondent was only a probationer and her services could be terminated during the probation.

(c) To confer the benefit of confirmation, an affirmative act was required to be done by the employer and when the same had not taken place by issuing a letter of confirmation on the basis of suitability and satisfactory performance, she could not have been treated to be a confirmed employee.

(d) The learned Single Judge has flawed by holding that even during probation her services could only be terminated after issuing one month notice or by making payment of a sum equivalent to the pay and allowance for the period of notice, for the same cannot be treated as a condition precedent.

7. Mr. M.Y. Khan, learned Counsel for the respondent, combating the aforesaid submissions, has propounded as follows:

(i) The conclusion arrived at by the learned Single Judge as regards the status of the respondent as a confirmed employee is absolutely warrantable and well-founded if the letter of appointment is read in juxtaposition with Section 8 of the Delhi School Education Act, 1973 (for short "the Act") and Rule 105 of the Delhi

School Education Rules, 1973 (for brevity "the Rules").

(ii) The provisions under the aforesaid Act and the Rules are to be construed in favour of the employee regard being had to the fact that the said Act and the Rules have been brought into existence for the benefit of the employees and the beneficent nature of the legislation and the Rules framed thereunder should not be fossilized by placing a narrow interpretation.

(iii) It was incumbent on the part of the employer society to comply with the condition stipulated in the letter of appointment itself and the same having not been satisfied, the order passed by the learned Single Judge is invulnerable and withstands scrutiny.

8. To appreciate the submissions raised at the bar, it is apposite to refer to Section 8 which occurs in Chapter IV of the Act. The said provision deals with the terms and conditions of service of employees of recognized private schools. It reads as follows:

8. Terms and conditions of service of employees of recognised private schools-(1) The Administrator may make rules regulating the minimum qualifications for recruitment, and the conditions of service, of employees of recognized private schools:

Provided that neither the salary nor the rights in respect of leave of absence, age of retirement and pension of an employee in the employment of an existing school at the commencement of this Act shall be varied to the disadvantage of such employee:

Provided further that every such employee shall be entitled to opt for terms and conditions of service as they were applicable to him immediately before the commencement of this Act.

(2) Subject to any rule that may be made in this behalf, no employee of a recognised private school shall be dismissed, removed or reduced in rank nor shall his service be otherwise terminated except with the prior approval of the Director.

(3) Any employee of a recognised private school who is dismissed, removed or reduced in rank may, within three months from the date of communication to him of the order of such dismissal, removal or reduction in rank, appeal against such order to the Tribunal constituted u/s 11.

(4) Where the managing committee of a recognised private school intends to suspend any of its employees, such intention shall be communicated to the Director and no such-suspension shall be made, except with the prior approval of the Director:

Provided that the managing committee may suspend an employee with immediate effect and without the prior approval of the Director if it is satisfied that such immediate suspension is necessary by reason of the gross misconduct

within the meaning of the Code of Conduct prescribed u/s 9, of the employee:

Provided further that no such immediate suspension shall remain in force for more than a period of fifteen days from the date of suspension unless it has been communicated to the Director and approved by him before the expiry of the said period.

(5) Where the intention to suspend, or the immediate suspension of an employee is communicated to the Director, he may, if he is satisfied that there are adequate and reasonable grounds for such suspension, accord his approval to such suspension.

9. Rule 105 of the Rules which deals with probation is as follows:

105. Probation - (1) Every employee shall, on initial appointment, be on probation for a period of one year which may be extended by the appointing authority with the prior approval of the Director and the services of an employee may be terminated without notice during the period of probation if the work and conduct of the employee, during the said period, is not, in the opinion of the appointing authority, satisfactory:

Provided that the provisions of this sub-rule relating to the prior approval of the Director in regard to the extension of the period of probation by another year, shall not apply in the case of an employee of a minority school:

Provided further that no termination from the service of an employee on probation shall be made by a school, other than a minority school, except with the previous approval of the Director.

(2) If the work and conduct of an employee during the period of probation is found to be satisfactory, he shall be on the expiry of the period of probation or the extended period of probation as the case may be, confirmed with effect from the date of expiry of the said period.

(3) Nothing in this rule shall apply to an employee who has been appointed to fill a temporary vacancy or any vacancy for a limited period.

[Emphasis supplied]

10. Clause 3 of the letter of appointment reads as under:

3. The above appointment for UDC is on the first instance, be on probation for 01 year. Afterwards a confirmation letter will be issued to you, subject to suitability and satisfactory services rendered by you. Your services can be terminated by giving one month's notice on either side without any reasons being assigned. However, the appointing authority reserves the right to terminate your service before the expiry of the stipulated period of notice by making payment of a sum equivalent to the pay and allowance for the period of notice or the un-expired portion thereof.

11. The issue that emerges for consideration is whether on the basis of the

provisions of the Act and the Rules and the letter of appointment, it can be construed that the respondent had become a confirmed employee under a deemed concept after the expiry of the period of probation. Mr. Bhardwaj, learned Counsel for the appellants, has commanded us to the decision in *State of Punjab Vs. Dharam Singh*, . Mr. Khan, learned Counsel for the respondent, submitted that it will depend on the scheme of the Act and the Rules and the facts and circumstances in each case and, hence, the said decision is distinguishable. The learned Counsel placed heavy reliance on *Wasim Beg v. State of Uttar Pradesh and Ors.* 1998 (78) F.L.R. 910. In *Dharam Singh (supra)*, the Apex Court was considering Rule 6 of the Punjab Educational Service (Provincialised Cadre) Class III Rules, 1961. In the said case, the Rule stipulated that the total period of probation including extensions, if any, shall not exceed three years. Their Lordships referred to the earlier view which had consistently stated 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. Under these circumstances, 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 specified period of probation, it is not possible to hold that he should be deemed to have been confirmed. After referring to the earlier view in *Sukhbans Singh Vs. State of Punjab*, , *G.S. Ramaswamy and Others Vs. Inspector-general of Police, Mysore*, and *State of Uttar Pradesh Vs. Akbar Ali Khan*, , the Apex Court interpreted Rule 6(3) of the Rules which arose for interpretation therein and expressed the view that when the service rules fixed 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, cannot be deemed to continue in that post as a probationer by implication. It is so as such an implication is negated by the service rule forbidding extension of the probationary period beyond the maximum period fixed by it.

12. In this context, we may refer with profit to a three-Judge Bench decision in *High Court of Madhya Pradesh thru. Registrar and Others Vs. Satya Narayan Jhavar*, . In the said case, the Apex Court was considering the effect and impact of Rule 24 of the Madhya Pradesh Judicial Service (Classification, Recruitment and Conditions of Service) Rules, 1955. Be it noted, their Lordships were considering the correctness of the decision in *Dayaram Dayal Vs. State of M.P.* and another [OVERRULED], , which was also a case under Rule 24 of the Rules wherein it was laid down that as no order of confirmation was passed within the maximum period of probation, the probationer judicial officer could be deemed to have been confirmed after the expiry of four years period of

probation. Their Lordships, after referring to the decisions rendered by the Constitution Bench in *Dharam Singh (supra)* and *Samsher Singh Vs. State of Punjab and Another*, and after scanning the anatomy of Rule 24, came to hold as follows:

11. The question of deemed confirmation in service Jurisprudence, which is dependent upon the language of the relevant service rules, has been the subject matter of consideration before this Court, times without number in various decisions and there are three lines of cases on this point. 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 of 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. The other line of 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. 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 confirmed merely because the said period has expired.

13. After so holding, their Lordships referred to the decision in *Sukhbans Singh v. State of Punjab (supra)* wherein the Constitution Bench was considering the question of confirmation under Rule 22 of the Punjab Civil Service (Executive Branch) Rules, 1930 which provided that a candidate on first appointment to the service shall remain on probation for a period of 18 months and the proviso thereto enabled the respondents not to extend the period of probation. Rule 24 of the said Rules provided that on completion of the period of probation prescribed or extended, a member of the service would be qualified for substantive appointment. The three-Judge Bench observed that the fact that a person is a probationer implies that he has to prove his worth and suitability for the higher post in which he is officiating and if his work is not found to be satisfactory, he is liable to be reverted to his original post even without assigning any reason.

14. Thereafter, their Lordships referred to the decision in *G.S. Ramaswamy and Ors. (supra)*, another Constitution Bench decision which was considering a case of promotion of Sub-Inspector of Police under Rule 486 of the Hyderabad District Police Manual which provided that all officers who are promoted will be on

probation for a period of two years and they would be reverted at any time during the aforesaid period if their work and conduct were not found to be satisfactory or they were found unsuitable for the appointment to which they had been promoted. The three-Judge Bench while discussing the ratio of the Constitution Bench came to hold that the Constitution Bench had repelled the contention and held that such a Rule does not contemplate automatic confirmation after the probationary period of two years, as a promoted officer can be confirmed under the Rules only if he has given satisfaction, which conduct of giving satisfaction must be fulfilled before a promoted officer can be confirmed under the Rules and the same obviously means that the authority competent to confirm an officer must pass an order to the effect that the probationer has given satisfaction.

15. After dealing with the ratio of the aforesaid two Constitution Benches, their Lordships proceeded to deal with the view expressed in *Akbar Ali Khan* (supra) wherein the Constitution Bench has held thus:

The law on the point is now well settled. 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. Unless the terms of appointment clearly indicate that confirmation would automatically follow at the end of the specified period, or there is a specific service rule to that effect, the expiration of the probationary period does not necessarily lead to confirmation. At the end of the 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.... The terms of appointment do not show that the appellant would be automatically confirmed on the expiry of the first six months of probation nor is any rule brought to our notice which has the effect of confirming him in the post after six months of probation. The position of the appellant, therefore, till the abolition of the post on 4.11.1958, was that he continued to be a probationer and has no right to the post. It, therefore, follows that when the tenure of the post came to an end, he was automatically reverted to his original post as an Inspector on which he had the lien.

16. At this juncture, we may state with profit that in *Satya Narayan Jhavar* (supra), their Lordships distinguished the decision in *Dharam Singh* (supra). After noting Rule 6(3) of the relevant Rules and reproducing a passage from the decision, their Lordships opined thus:

19. From the aforesaid passage, it would be clear that as Rule 6 did not require a person to pass any test or to fulfill any other condition before confirmation, this Court was of the view that upon the expiry of maximum period of probation the probationer could be deemed to have been confirmed which goes to show that if such provision would have been there in the Rules, the conclusion might have been otherwise.

17. Be it noted, the decision rendered in Wasim Beg (supra) was pressed into service which has also been heavily relied upon by Mr. Khan in the case at hand. While dealing with the ratio in the said case, their Lordships referred to the relevant Rule relating to confirmation, which is 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.

18. After referring to the said Rule, their Lordships referred to the facts and eventually came to hold as follows:

21. In the said case no maximum period of probation was prescribed either by the letter of appointment or the rules. The Rules laid down that an employee shall be deemed to have become a confirmed employee after he has successfully completed the period of probation. From the affidavit filed by the Corporation as well as from the report of the Managing Director, it was clear that the incumbent was considered by the Board as having satisfactorily completed his period of probation on 9.1.1979 i.e. before expiry of one year period of probation and was considered as a regular employee from 10.1.1979. From the affidavit filed by the Corporation it was clear that the services of the incumbent were satisfactory for the first few years and work was very good and only thereafter his work deteriorated as a result of which the Corporation suffered losses. Thus in view of the stand taken that the incumbent had successfully completed the period of probation, he was deemed to have become a confirmed employee, as enumerated in the Rules referred to above.

19. After distinguishing the said case, the three-Judge Bench referred to Municipal Corporation, Raipur Vs. Ashok Kumar Misra, , Jai Kishan Vs. Commissioner of Police and another, , State of Punjab Vs. Baldev Singh Khosla, and Chief General Manager, State Bank of India and Another Vs. Bijoy Kumar Mishra, and expressed the view as follows:

37. Ordinarily a deemed confirmation of a probationer arises when the letter of appointment so stipulates or the Rules governing service conditions so indicate. In the absence of such term in the letter of appointment or in the relevant Rules, it can be inferred on the basis of the relevant Rules by implication, as was the case in Dharam Singh (supra). But it cannot be said that merely because a maximum period of probation has been provided in the Service Rules, continuance of the probationer thereafter would ipso facto must be held to be a deemed confirmation which would certainly run contrary to the seven-Judge Bench judgment of this Court in the case of Shamsher Singh (supra) and the Constitution Bench decisions in the cases of Sukhbans Singh (supra), G.S. Ramaswamy (supra) and Akbar Ali Khan (supra).

20. In this context, it is apposite to refer to The Commissioner of Police, Hubli and Another Vs. R.S. More, wherein the Apex Court was addressing itself to the question whether the continuance of the probationer on the post beyond the

probation period or extended period, as the case may be, entitled him to have any claim to deemed confirmation in the absence of any specific order passed by the competent authority to that effect. Their Lordships referred to the decision in Satya Narayan Jhavar (*supra*) and held as follows:

8. In our view, the case at hand falls under category 3. As noticed, Sub-rule (2) of Rule 5 requires that a probationer shall not be considered to have satisfactorily completed the probation unless a specific order to that effect is passed. No specific order having been passed by any authority, certifying the satisfactory completion of probation period of the respondent, has been brought to our notice. Mr. Hegde, learned Counsel, submitted that no order as contemplated under Sub-rule (2) of Rule 5 has been passed by the competent authority. Admittedly, the order discharging the respondent, in exercise of powers under Rule 6, has been passed after the extended period of probation was over. In our view, however, that itself would not entitle the respondent to have claimed deemed confirmation in absence of the specific order to that effect. In service jurisprudence, confirmation of service on a particular post is preceded by satisfactory performance of the incumbent unless service rules otherwise prescribe. In the instant case, Sub-rule (2) of Rule 5 of the Rules provides that unless there is a specific order that the probationer has satisfactorily completed the period of probation, he shall not be entitled to be deemed to have satisfactorily completed the probation by reason of his being continued in service beyond the extended period of probation. The High Court has failed to consider this important aspect of the matter, resulting in miscarriage of justice. In our view, the High Court fell into error resulting in miscarriage of justice.

21. Coming to the obtaining factual matrix, as has been stated earlier, the learned Counsel for the respondent has drawn inspiration from Section 8 of the Act. On a reading of the said provision, we really perceive nothing therein which would be of any aid or assistance to the learned Counsel for the respondent. The said provision deals with the procedure how an employee of a recognized private school could be dismissed, removed or reduced in rank or terminated from service. Sub-section (2) of Section 8 provides that subject to any rule, no employee of a recognized private school shall be dismissed, removed or reduced in rank nor shall his service be otherwise terminated except with the prior approval of the director. Rule 105 of the Rules which deals with probation clearly stipulates that every employee shall, on initial appointment, be on probation for a period of one year which may be extended by the appointing authority with the prior approval of the director and the services of an employee may be terminated without notice during the period of probation if the work and conduct of the employee during the said period is not, in the opinion of the appointing authority, satisfactory. The second proviso to Rule 105 raises a postulate that no termination of the service of an employee on probation shall be made by a school, other than a minority school, except with the previous approval of the director. Sub-rule (2) of Rule 105 which is relevant for the present purpose, we think it appropriate to reproduce again:

(2) If the work and conduct of an employee during the period of probation is found to be satisfactory, he shall be on the expiry of the period of probation or the extended period of probation as the case may be, confirmed with effect from the date of expiry of the said period.

22. The submission of Mr. Khan, learned Counsel for the respondent, is that if the language of Sub-rule (2) of Rule 105 is properly appreciated, it would clearly convey that after the expiry of the period of probation or extended period of probation, there is deemed confirmation. On a scanning of the Rule, it is manifest that the concept of deemed confirmation does not arise on two counts, namely, there is no fixed period of probation and secondly, it is hedged by the condition that the work and conduct of an employee during probation or extended period of probation is satisfactory. Clause 3 of the letter of appointment postulates that the appointment is on probation for one year and afterwards, a confirmation letter would be issued subject to the suitability and satisfactory service rendered by the respondent. Thus, the employee was also made aware that the confirmation is not automatic but subject to the suitability and satisfactory service rendered by her.

23. The reliance placed on by Mr. Khan on the decision in Wasim Beg (supra) has been distinguished in Satya Narayan Javar (supra) because of the position of Rule in this regard and the affidavit filed by the Corporation which showed that the services of the incumbent were satisfactory for the first few years and the work was very good. In that case, he was deemed to have become a confirmed employee. It is apposite to note that the Rule which was under consideration in Wasim Beg (supra) clearly stipulated that 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 a period of probation. In the present case, the language employed in the Rule is quite different. It does not use the words "shall be deemed to have become a confirmed employee". That apart, a condition precedent is attached to the effect that the work and conduct of an employee during the period of probation has to be found to be satisfactory. Quite apart from that, in Wasim Beg (supra), the Apex Court had held that his work was satisfactory for number of years. In the case at hand, regard being had to the language employed and keeping in view the decision rendered in Satya Narayan Javar (supra), we are of the considered view that the employee could not be put in the compartment of confirmed employee after the expiry of one year of probation and accordingly, the finding recorded by the learned Single Judge on this score is set aside. We may also proceed to state that the learned Single Judge has opined that the services of a confirmed employee cannot be dispensed with in violation of principles of natural justice. As we have not concurred with the finding that the employee was a confirmed employee, the conclusion arrived at as an inevitable corollary relating to the violation of the doctrine of natural justice is also set aside, for there is no stigma attached to the order of termination.

24. The next issue that emanates for consideration is whether the order of termination is unsustainable as the condition incorporated in the letter of appointment was not fulfilled. The learned Counsel for the appellant submitted that non-compliance of such a condition would not vitiate the order of termination inasmuch as it is a curable irregularity. Mr. Khan, learned Counsel for the respondent, submitted with vehemence that the finding recorded by the learned Single Judge to the effect that once the condition incorporated in the letter of appointment is not satisfied while passing the order of termination, the same has to pave the path of vitiation is absolutely impeccable. To appreciate the said submission, it is apt to refer to the anatomy of Rule 105. The said Rule clearly postulates that the services of an employee may be terminated without notice during the period of probation if the work and conduct of the employee during the said period is not, in the opinion of the appointing authority, satisfactory. Thus, the Rule does not envisage any kind of issue of notice. In this context, we may fruitfully refer to a two-Judge Bench decision in Rakesh Kumar Singh Vs. Committee of Management, Raibarali, wherein the Apex Court was considering Regulation 25 framed u/s 16-G of the U.P. Intermediate Education Act, 1921 which stipulated that the services of a temporary employee (other than a probationer) or of a probationer during the terms of his probation may be terminated at any time by giving him one month's notice or one month's pay in lieu thereof. In the said case, neither one month's notice nor one month's pay in lieu thereof was given to the appellant therein. The High Court of Allahabad interpreting Regulation 25 held that it is not a condition precedent to exercise the power under the Regulation and even if one month's notice is not given or one month's pay is not paid at the time of termination, that would not render the order of termination invalid but would only make the employee entitled to one month's salary. The High Court had placed reliance on the decision in Director of Technical Education v. John Mohammad 1975 All LR 8. Before the Apex Court, reliance was placed on a Full Bench decision of the Allahabad High Court in Managing Committee, Sohan Lal Higher Secondary School v. Sheo Dutt Gupta 1974 All LJ 465 to buttress the submission that if one month's notice was neither given to the appellant nor was he paid one month's pay, termination of his service ought to have been held as invalid. Their Lordships took note of the decision in Senior Superintendent, R.M.S., Cochin and Another Vs. K.V. Gopinath, Sorter, wherein the Apex Court had interpreted Rule 5(1)(b) of the Central Services (Temporary) Services Rules, 1965 and the earlier decision in State of U.P. v. Dinanath Rai 1969 SLR 646 (SC) and thereafter expressed the view as follows:

9. Thus the consistent view of the Court is that where the rule permits giving of pay in lieu of the notice of termination and does not further provide as to when the payment is to be made, it only entitles the employee to pay for the period of the notice and payment of notice pay cannot be regarded as a condition precedent to the valid termination of service. But where the rule provides even by implication that payment to the employee of whatever is due to him should be

simultaneous with termination of his service then fulfillment of that requirement has to be regarded as a condition precedent to the valid termination. In view of the words "terminated forthwith by payment" in the proviso to Rule 5(1)(b) this Court held that payment was intended simultaneously with termination and that was pointed out as the essential difference between Rule 5(1)(b) with which it was concerned in Gopinath case and the rule which was considered in Dinanath case.

10. A bare reading of Regulation 25 indicates that it is more similar to the rule which fell for consideration in Dinanath case. It gives an option to the management either to give one month's notice or one month's pay in lieu thereof. It does not provide for the mode or time for payment. Thus the rule only entitles the temporary employee or the probationer to pay for the period of notice. As we are of the view that Regulation 25 does not provide payment of one month's pay in lieu of notice as a condition precedent to the effective termination of service, the High Court was right in setting aside the order of the Deputy Director who had taken a contrary view. The view taken by the High Court is correct and, therefore, this appeal is dismissed.

25. Tested on the touchstone of the aforesaid enunciation of law, there can be no trace of doubt that the condition incorporated in the letter of appointment is not a condition precedent. Quite apart from that, the Rule is silent on the said score. On the contrary, the Rule empowers the employer to terminate the services of a probationer at any time when his work is not found satisfactory. Thus, the conclusion arrived at by the learned Single Judge is not tenable as he has treated the said condition as a condition precedent and accordingly, we are unable to concur with the said view.

26. In view of our preceding analysis, we are of the considered view that the appeal deserves to be allowed and, accordingly, it is so ordered and as an inevitable corollary, the order passed by the learned Single Judge is set aside. In the facts and circumstances of the case, there shall be no order as to costs.