

(2015) 05 P&H CK 0157
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 13525 of 2010

Gurinder Singh

APPELLANT

Vs

Punjab Agro Industries Corporation Limited

RESPONDENT

Date of Decision : 07-05-2015

Acts Referred:

Citation : (2015) 05 P&H CK 0157

Hon'ble Judges : Deepak Sibal, J

Bench : Single Bench

Advocate : Vivek Sethi, for the Appellant; I.S. Sidhu, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Deepak Sibal, J.—Vide order dated 18.05.2007 (Annexure P-6), the petitioner was promoted as Senior Manager (G) in the respondent - Punjab Agro Industries Corporation Limited (hereinafter referred to as - the Corporation). As per his promotion order, he was initially on probation for a period of one year which could be further extended at the discretion of the Management. The petitioner's probation period, through order dated 15.05.2009 (Annexure P-7), was extended for a further period of six months up to 18.11.2009 and again, through order dated 12.11.2009 (Annexure P-8), for a further period of six months w.e.f. 18.11.2009. Through the impugned order dated 17.05.2010 (Annexure P-9), considering the petitioner to be on probation, he was reverted back to the post of Manager (G). It is against the above said order of reversion dated 17.05.2010 (Annexure P-9), that the petitioner has preferred the present writ petition.

2. I have heard counsel for the parties and with their able assistance, have also gone through the record of the case.

3. Learned counsel for the petitioner has submitted that Rule 11 provides that for an employee of the rank of the petitioner, the maximum period of probation, which is prescribed is two years. Thus, after the period of two years, the

petitioner would be deemed to be confirmed, and therefore, the order of reversion, having been passed after two years of the date of promotion of the petitioner, without any inquiry, was liable to be set aside.

4. A perusal of the promotion order dated 18.05.2007 (Annexure P-6) shows that on promotion, the petitioner was initially put on probation for a period of one year. However, as per the terms and conditions of the order of promotion, the period of probation could be further extended at the discretion of the Management. It was further provided that during the probationary period or the extended probationary period/periods, the petitioner could be reverted without any notice and without assigning any reason.

5. Rule 11 of the Punjab Agro Industries Corporation Limited Recruitment and Promotion Rules, 1991 (hereinafter referred to as - the Rules), which is relevant, as it pertains to the probation period of the employees of the respondent Corporation, is reproduced below:-

"11. Probation of persons appointed to service:

The persons so appointed to the service shall remain on probation as under:-

- i) Officials below Managers shall be on probation for a period of six months in first instance extendable upto eighteen months.
- ii) Above Managers shall be on probation for a period of one year in the first instance and extendable one year more.

PROVIDED THAT:

- a) any period, after such appointment, spent on deputation on a corresponding or a higher post shall count towards the period of probation.
- b) In the case of appointment by transfer, any period of work in equivalent or higher rank, prior to appointment to the service may in the discretion of the appointing authority be allowed to count towards the period of probation.
- c) any period of officiating appointment to the Service shall be reckoned as period spent on probation, but no person who has so officiated shall, on the completion of the prescribed period of probation be entitled to be confirmed unless he is appointed against a permanent vacancy and
- d) any period of leave not exceeding six months during or at the end of probation shall be counted towards the period of probation.

2. If, in the opinion of the appointing authority the work or conduct of a person during the period of probation is not found satisfactory, or if has failed to pass the prescribed departmental examination within a period not exceeding two years from the date of appointment, it may,

- a) if such person is recruited by direct appointment, dispense with his services or revert him to a post which he held prior to his appointment to the service by

direct appointment, and

b) if such person is recruited otherwise deal with him in such other manner as the terms and condition of his previous appointment permit

3. On the completion of the period of probation of a person the appointing authority may;

i) confirm such person from the date of his appointment if appointed against a permanent vacancy or

ii) confirm such person from the date from which a permanent vacancy occurs if appointed against a temporary vacancy."

6. A perusal of the above rule shows that the maximum period of probation, so prescribed for an officer holding the rank above the post of Manager, is two years. However, as per Rule 11(3) of the Rules, on the completion of the period of probation of an employee, the appointing authority is required to pass a specific order confirming such employee from the date of his appointment, if that employee has been appointed against a permanent vacancy or to confirm such employee on the date, from which a permanent vacancy occurs, if appointed against a temporary vacancy.

7. It is the undisputed position that through the order dated 18.05.2007 (Annexure P-6), the petitioner was promoted as Senior Manager (G) in the respondent Corporation. After expiry of two years, no order of confirmation under Rule 11(3) of the Rules was passed and as per the terms of his promotion, his probation period was extended vide order dated 15.05.2009 (Annexure P-7) for a period of six months and again, through order dated 12.11.2009 (Annexure P-8), his period of probation was further extended for a period of six months w.e.f. 18.11.2009. It was before the expiry of the last extension that the petitioner was reverted. It is the admitted position that when the period of probation of the petitioner was extended beyond two years through two separate orders, for a period of six months each, none of these orders were ever challenged by the petitioner. Thus, the extension in the period of probation, in the case of the petitioner, was through specific orders, as per the terms of his promotion, which he had never objected to and he has been reverted within the extended period of probation before any order confirming his promotion, as contemplated under Rule 11 (3) of the Rules had been passed.

8. A perusal of Rule 11 (3) shows that the service of an employee, who is on probation, would be considered to be confirmed only after passing of an order by the appointing authority.

9. In view of the above facts, there would be no deemed confirmation in the case of the petitioner after two years of his promotion. In this regard, a judgment by the Apex Court in Shri Kedar Nath Bahl Vs. The State of Punjab and Others, AIR 1972 SC 873 : (1973) 27 FLR 20 : (1974) 3 SCC 21 : (1972) 4 UJ 681 may be usefully referred to, wherein it was held as under:-

"9. It was next contended that even if it is assumed that he was confirmed by the Government in the post, it must be held that he was automatically confirmed in the post after the first sixth months of probation. He was a Government servant before he accepted this post and under the terms of appointment already referred to, he was on probation for six months. The period of probation was over on 5-5-1955. It is the contention of the appellant that on the expiry of this period of probation he was automatically confirmed. The record, however, shows that the probationary period was extended by the Govt. from time to time though the orders were made with retrospective effect. The appellant contends that these orders extending the period of probation were irregular and illegal. Either he should have been discharged within the first six months of probation, or, if he was not so discharged he was entitled to automatic confirmation. We do not think that this contention is correct. 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 See; Narain Singh Ahluwalia v. The State of Punjab and Anr. Civil Appeal No. 492 of 1963 decided on 29-1-1964, The Accountant General M.P., Gwalior v. Bern Prasad Bhatnagar Civil Appeal No. 548 of 1962 decided on 23-1-1964, G.S. Ramaswamy and Ors. v. The Inspector General of Police, Mysore State Civil Appeal No. 972 to 977 of 1963 decided on 21-1-1964. 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 had 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 which he had the lien."

10. The ratio laid down in Kedar Nath Bahl's case (supra) was followed by the Apex Court in the case of Mohd. Salman Vs. Committee of Management and Others, (2011) 10 SCALE 251 : (2011) 12 SCC 308 : (2011) 11 SCR 237 : (2011) 5 UJ 3285 , wherein it was observed as follows:-

"16. In the case of Shri Kedar Nath Bahl Vs. The State of Punjab and Others, AIR 1972 SC 873 : (1973) 27 FLR 20 : (1974) 3 SCC 21 : (1972) 4 UJ 681 , this Court clearly laid down the proposition of law that 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 on that behalf. It was also held in that decision that unless the terms of appointment clearly indicate that confirmation would automatically follow at the end of the specified period or that there is a specific service rule to that effect, the expiration of the probationary period does not necessarily lead to confirmation. This Court went on to hold that 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 if he is not reverted to his substantive post, the result merely is that he continues in his post as a probationer.

17. In our considered opinion, the ratio of the aforesaid decision is also clearly applicable to the facts of the present case. In the present case, in the appointment letter issued to the appellant, it was specifically mentioned that his service would be regularised only when his performance during the probation period is found to be good/satisfactory."

11. To the same effect is another judgment of Apex Court in High Court of High Court of Madhya Pradesh thru. Registrar and Others Vs. Satya Narayan Jhavar, (2001) 6 AD 179 : AIR 2001 SC 3234 : (2001) 91 FLR 626 : (2001) 6 JT 368 : (2001) LabIC 3281 : (2001) 5 SCALE 233 : (2001) 7 SCC 161 : (2001) SCC(L&S) 1087 : (2001) 3 SCT 1114 : (2001) 2 UJ 1281 : (2001) AIRSCW 3112 : (2001) AIRSCW 4587 : (2001) 6 Supreme 106 : (2001) 5 Supreme 240 : (2001) 5 Supreme 713 , wherein it was held as under:-

"38. Ordinarily a deemed confirmation of a probationer arises when the letter of appointment so stipulates or the Rules governing service condition 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 Service Rules, continuance of the probationer thereafter would ipso facto must be held to be a deemed confirmation

which would certainly run contrary to Seven Judge Bench Judgment of this Court in the case of Samsher Singh (supra) and Constitution Bench decisions in the cases of Sukhbans Singh (supra), G.S. Ramaswamy (supra) and Akbar Ali Khan (supra)."

12. In view of the above position of law and facts, finding no merit in the present writ petition, the same is ordered to be dismissed.

13. No costs.