
(2011) 05 P&H CK 0045
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 7501 of 2010 (O and M)

Iqbal Singh and Another

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 27-05-2011

Acts Referred:

Punjab Police service Rules, 1959 — Rule 10, 8

Citation : (2011) 05 P&H CK 0045

Hon'ble Judges : Mohinder Pal, J; Hemant Gupta, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Ms. Kohli has filed an affidavit dated 26.5.2011 of Mr. A.S. Talwar, IAS, Principal Secretary to Government of Punjab, Department of Home

Affairs & Justice, inter alia, pointing out that there is no provision in the Punjab Police Services Rules, 1959 (for short the "Rules") ""requiring the

passing of a specific order of confirmation or to the effect of having satisfactorily completed the probation"". It is further stated out ""that on the

expiry of maximum stipulated period of probation, an order in respect of satisfactory or unsatisfactory clearance of probation not been passed

within the reasonable period, or if passed in this respect after the retirement of the Officer, or if any probationer is unfavorably recommended but

not reverted to his substantive rank of Inspector, such orders or recommendations have no meaning and is of no use"". The affidavit also relies upon

the judgment of this Court reported as Dr. Shiva Mathur v. State of Haryana, 1998 (4) RSJ 221, to assert that by operation of legal fiction, the

officer is entitled to be deemed to have been confirmed. Para 8 and 9 of the

affidavit read as under:

8. That as Rule 10 of the Punjab Police service Rules, 1959 contemplates that the seniority has to be assigned by the date of confirmation (and not from the date of confirmation as mentioned in interim orders dated 20.5.2011) there was no requirement to reflect the date of confirmation in the seniority list.

9. That as maximum stipulated period of probation expired and not present no order in respect of confirmation stands. No one was reverted to his substantive post even if was unfavorably reported/recommended. In such circumstances, based on the principles of natural justice and by operation of legal fiction, no order in the absence of the officer can be passed which would adversely affect the services rendered by the officers who had since been retired or expired. An officer who has crossed the maximum prescribed period of probation without any adverse order passed within reasonable period thereafter has been considered to be deemed confirmed from the date of existence of substantive vacancies for him within his quota as prescribed under the rules....

2. The stand of the Home Secretary in the affidavit is contrary to the Supreme Court judgment reported as Paramjit Singh and Others Vs. Ram

Rakha and Others, . The court was interpreting the same Rules which are the subject matter of these writ petitions and held to the following effect:

9. It was contended on behalf of the direct recruits that once a specific period of probation is fixed and a fetter is put on the power of the

Government to extend probation only by a specific period at the end of such extended period either the service of the direct recruit is to be

dispensed with on the ground that he was unfit for appointment of if he is continued thereafter he must be deemed to have been confirmed and the

date next after the date of his confirmation. This Court has consistently held 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 communication to the contrary in the original order of

appointment or promotion or the Service Rules. In such a case 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 specific period of probation it is not possible

to hold that he should be deemed to have been confirmed.

x x x x

12. The recruitment to Punjab Police Service is from two sources. Recruits from both the sources have to be on probation. Adopting the

construction as canvassed for and on behalf of direct recruits that the proviso to Rule 8(b) permitting a maximum period of probation of three years

at the end of which the direct recruit would automatically be confirmed unless his services are dispensed with simultaneously enjoying seniority from

the date of such automatic confirmation without applying quota rule at the time of confirmation, would put the promote to an unintended

disadvantage who may be continued in an officiating capacity without confirming him and consequently denying or relegating him down in seniority

for years as has happened in the case of Respondents 1 and 2. Appellants who were recruited to the Service after Respondents 1 and 2, came to

be confirmed at the end of two years" period of probation while Respondents 1 and 2 were not confirmed after more than 11 years of officiating

service and there is not the slightest suggestion that the services of Respondents 1 and 2 were not satisfactory and that the confirmation was denied

on any such ground thereby directly affecting their place in the seniority list. Such an approach would be wholly unreasonable.

3. The above extract shows that the concept of deemed confirmation as stated in the affidavit was raised before Hon"ble the Supreme Court and

negated. In view of the said judgment, which is basis of the Division Bench judgment of this Court in Gurpreet Singh Bhullar's case, the affidavit

filed by the Home Secretary shows that the CWP No. 7501 of 2010 (O&M) (and other connected cases. 4) orders passed by Hon"ble the

Supreme Court and this Court have been intentionally and willfully not complied with.

4. In view of the said fact, Let Mr. A.R. Talwar, IAS Home Secretary, Punjab, appear in person on 2.6.2011 to show cause as to why contempt

proceedings be not initiated for violation of the orders passed.

5. Ms. Kohli seeks some time to enable the Home Secretary to appear in person and file his reply affidavit, if any.

6. A copy of this order be given to Ms. Kohli, learned Addl. \A G, Punjab, under the signatures of the Special Secretary to the Bench.