

(2011) 09 DEL CK 0227
In the Delhi High Court
Case No : Writ Petition (C) 1744 of 2001

Laloo Yadav

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 15-09-2011

Acts Referred:

Central Services Temporary (Service) Rules, 1966 — Rule 5(e)
Constitution of India, 1950 — Article 226, 227

Citation : (2011) 09 DEL CK 0227

Hon'ble Judges : Siddharth Mridul, J; A.K. Sikri, J

Bench : Division Bench

Advocate : None, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, J.—Aggrieved by the order of termination from service by the Respondent-Navodya Vidyalaya Samiti invoking Clause 2 of the appointment letter, the Petitioner had filed application u/s 19 of the Administrative Tribunal Act before the Central Administrative Tribunal, Principal Bench, New Delhi. The said O.A. has been dismissed vide impugned judgment dated 14th November, 2000 and this Writ Petition has been filed under Articles 226 and 227 of the Constitution of India wherein the said judgment is assailed.

2. During the pendency of this Writ Petition, Petitioner had passed away and his LRs were brought on record. Further, at the time of arguments in the case, nobody appeared on behalf of any of the parties.

3. The Petitioner was removed from service by the Respondent No. 2 w.e.f. 11.2.1999. The Petitioner was appointed as PGT (Biology) on probation for a period of two years which was stipulated in the appointment letter dated 12.09.1996:

2. You will be on probation for a period of two years from the date of appointment extenable as permissible under the rules at the discretion of the

Competent Authority. Failure to complete the period of probation to the satisfaction of the Competent Authority or found unsuitable for the post of during probation period, will render you liable to be discharged/terminated from services without assigning any reasons thereto.

4. Initial posting of the Petitioner was at Leh Laddakh. He was thereafter transferred to Poonch and then to Sangroor in Punjab. On 24.08.1997 the Petitioner joined at Sangroor, Punjab. The Petitioner had applied for Casual Leave for 5 days from 13.03.1998 to 17.03.1998 on the ground that his mother in his hometown in Ajamgarh, UP was sick and he had to attend to her. He, however, did not return after the expiry of the said leave and kept on sending the application for extension of the leave from time to time. The application for extension for leave was, however, rejected and he was specifically asked to join the duties. Various notices were sent in this behalf from time to time but the Petitioner did not join back the duties. Ultimately, order dated 11.02.1999 was passed invoking Clause 2 of the appointment letter and the Petitioner was terminated. This order was challenged by the Petitioner before the Tribunal and the said O.A. had been dismissed vide order dated 14.11.2000 as already stated.

5. The Tribunal has held that since the Petitioner was on probation and his work and conduct was not satisfactory, it was open to the Respondents to take recourse to Clause 2 of the appointment letter. It is also held that the order of termination which was simplicitor order of termination which is quite innocuous and No. stigma was attached to it and, therefore, the contention of the Petitioner that the impugned order of termination was punitive is not correct. We may record that specific plea was taken by the Petitioner that the order came to be passed because of the reason that the Petitioner continued to remain absent and such absence could be treated, if at all, his misconduct and without holding an enquiry, the Petitioner could not have been terminated from service. This contention of the Petitioner was neglected by the Tribunal referring to the judgment of a Co-ordinate Bench in the case of Kendriya Vidyalaya Sangathan v. Madan Lal in TA 41/99 which was decided on 31.8.2000. The Tribunal has noted that in the aforesaid judgment the Co-ordinate Bench had referred to the various judgments of the Supreme Court and had come to the conclusion that the reason of absence of the Petitioner was not punitive in passing of the termination order and it would only be a case of motive and on that ground the order is not bad in law. Apart from the other judgments, the Tribunal had taken note of judgment of Supreme Court in Radhey Shyam Gupta Vs. U.P State Agro Industries Corporation Ltd. and Another, , Chandra Prakash Sahi v. State of U.P. AIR 2000 SC 1706, Purushottam Lal Dhingra v. UOI, AIR 1958 SC 38.

6. After going through the record, we find ourselves in agreement in the aforesaid view taken by the Tribunal.

7. Therefore, we do not find any merit in the contention of the Petitioner that the impugned order was grossly arbitrary, illegal and bad in law.

8. Another contention raised by the Petitioner in the Writ Petition is that two years period of probation had expired and, therefore, it was not permissible for the Respondents to take recourse to Para 2 of the appointment letter. Reading of the aforesaid Para, however, clearly shows that two years period was the initial period which was extensible as permissible under the Rules at the discretion of the Competent Authority. It is not in dispute that No. order was passed by the Respondent stating that the Petitioner had completed probation period satisfactorily or confirming him in service. It is settled law that in the absence of any specific order, the Petitioner could not be treated as having become permanent and he would be deemed to be on probation.

9. In somewhat similar circumstances, the Supreme Court in the case of *Jai Kishan Vs. Commissioner of Police* and another, held such a probationer would not be treated as confirmed. That was a case where the services of temporary Constable were terminated under Rule 5(e) of the Central Services Temporary (Service) Rules, 1966. The Court was not convinced that the incumbent should be treated as confirmed as he had rendered five years of services as against maximum period of three years of probation. The Court held that the successful completion of probation is a condition precedent for confirmation as envisaged in the Rules. The governing rule therein and the discussion in this behalf reads as under:

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Rule 5(e) of the Rules reads as follows:

(e) (i) All direct appointments of employees shall be made initially on purely temporary basis. All employees appointed to the Delhi Police shall be on probation for a period of two years. WP(C) No. 6318 of 2010 Provided that the competent authority may extent the period of probation but in No. case shall the period of probation extend beyond three years in all.

(ii) The services of an employee appointed on probation are liable to be terminated without assigning any reason.

(iii) After successful completion of period of probation, the employee shall be confirmed in the Delhi Police by the competent authority, subject to the availability of permanent post.

4. A reading thereof clearly indicates that all direct recruits are required to be on probation for a period of two years and in No. case the probation would extend beyond the period of three years. During the period of probation the probationer is required to complete successfully the probation complying with the conditions of passing the test etc. Thereafter, they need be confirmed in the Delhi Police service. The confirmation into the service, therefore, is a condition precedent, to continue as a member of Delhi Police Service. In spite of giving repeated opportunities to improve himself he failed to improve his performance. So he was given notice on 14-9-1988 terminating his service by the impugned order.

5. It is contended by the learned Counsel for the Appellant, placing reliance on State of Punjab Vs. Dharam Singh, , that even if the Appellant was not confirmed by passing any order, on expiry of three years he must be deemed to have been confirmed as a member of the Service. Thereafter, the Respondents had No. jurisdiction to terminate his service. It is difficult to accept the contention. Dharam Singh's case bears No. relevance, as similar provision was not there in the concerned rule. Successful completion of probation is a condition precedent for confirmation as envisaged in Clause (iii) of Rule 5(e) of the Rules. The authorities have power to allow maximum period of 3 years of probation. In this case instead of giving him three years, they have giving long 5 years period so as to see whether the Appellant would improve his performance in the service. Since they found that there was No. satisfactory improvement, his probation was terminated and was removed from service as a probationer. Under these circumstances, we do not find any illegality in the action taken by the Respondents warranting interference.

6. The appeal is accordingly dismissed. No. costs.

10. The same issue has been discussed at much greater length by a recent judgment dated 16.08.2010 of the Division Bench of this Court in LPA No. 342 of 2010 in the case entitled Dy. Director of Education and Anr. v. Veena Sharma. The position in law based on various judgments of the Supreme Court was discussed holding that there was No. automatic confirmation even after the maximum period of probation and the Rule stipulates that the employee shall be confirmed only on satisfactory completion of probation period. The entire gamut of discussion contained in the said judgment is relevant for us and we reproduce the same:

12. In this context, we may refer with profit to a three-Judge Bench decision in High Court of Madhya Pradesh through 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 *Samsher Singh (supra)*, *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 W.P.(C) 1744/2001 Page 14 of 15 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.

11. As a consequence of the aforesaid discussion, the petition is devoid of merits.

12. The Petition is dismissed.