
(2011) 02 P&H CK 0465
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 2548 of 2009 (O and M)

Managing Committee, Arya High School	APPELLANT
Vs	
Atma Prashad Singh and Others	RESPONDENT

Date of Decision : 09-02-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Employees (Security of Service) Rules, 1981 — Rule 7(1), 7(6), 7(7)
Industrial Disputes Act, 1947 — Section 10(1)

Citation : (2011) 162 PLR 761

Hon'ble Judges : Mahesh Graver, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mahesh Graver, J.—This writ petition under Articles 226/227 of the Constitution of India has been filed by the Managing Committee, Arya High School, Mandi Phul (Bathinda) assailing the award of the Labour Court, Bhatinda passed on 12.11.2008.

2. Respondent No. 1 was employed by the Petitioner as Mali-cum-Chowkidar in the pay scale as admissible to such categories of employees under the Punjab Privately Managed Recognised Schools Employees (Security of Service) Rules, 1981 (hereinafter referred to as "the Rules". Pursuant to the appointment offered by the Petitioner by virtue of Annexure P-2, Respondent No. 1 joined the services on 1.10.2000.

3. The controversy hinges on the issue of termination of services of Respondent No. 1, according to whom, the termination was in complete violation of the provisions of the Industrial Disputes Act, 1947 compelling him to have recourse to the proceedings under the said Act by claiming a reference u/s 10(1)(c) thereof.

4. The Management pleads justification of the said termination in view of the

provisions of the Rules and in view of the unsatisfactory completion of probation period by Respondent No. 1.

5. While answering the reference, the Labour Court accepted the plea of the Respondent-workman and concluded that Rule 9 only visualises the probation period of one year and that Clause 11 contemplated the confirmation after such completion of one year. It then went on to conclude that Respondent No. 1 had completed 240 days of service with the Petitioner and in view of the Rules as also the appointment letter the Respondent was entitled to automatic confirmation and his termination could only be on account of any misconduct which could be established only after holding an inquiry. The termination was thus set aside and Respondent No. 1 was directed to be reinstated with continuity of service as also 30% of back wages from the date of demand notice.

6. Learned Counsel for the Petitioner while assailing the impugned award contends that the observation of the Labour Court that there would be automatic confirmation upon completion of period of probation of one year, is contrary to the provisions of Rule 8, which is extracted herein below:

8. (1) Persons appointed to the aided posts shall remain on probation for a period of one year:

Provided that in the case of an appointment by transfer any period of work in equivalent or higher rank prior to appointment to an aided post may, in the discretion of the appointing authority, be allowed to count 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 satisfactory, it may dispense with his services.

(3) On the completion of the period of probation of a person, the appointing authority may:

(a) if his work or conduct has in its opinion, been satisfactory:

(i) Confirm such person from the date of his appointment, if appointed against a regular vacancy: or

(ii) confirm such person from the date from which a regular vacancy occurs if appointed against a temporary vacancy; or

(iii) declare that he has contemplated his period of probation satisfactorily if there is no regular vacancy; or

(b) If his work or conduct has not been, in its opinion satisfactory, it may:

(i) dispense with his services; or

(ii) extend his period of probation by six months at a time and there after pass such orders as it could have passed on the expiry of the original period of

probation:

Provided that the total period of probation including extension, if any, shall not exceed two years.

7. He thus contends that after the period of one year the conduct of Respondent No. 1 was evaluated and upon finding it unsatisfactory, the period of probation was extended by another six months vide Annexure P-4 which was duly received by him as is evident from the signatures which appear on the said document, but before this period could expire, the services of Respondent No. 1 were terminated in view of his unsatisfactory conduct.

8. Learned Counsel for Respondent No. 1, on the other hand, has stated that the appointment letter did not contemplate any such condition of extension of probation period and thus after the period of one year he was entitled to be confirmed and should be deemed to have been confirmed. He thus contends that there is no infirmity in the findings recorded by the Labour Court.

9. After hearing the learned Counsel for the parties and upon due consideration of the matter, I find that the impugned award is erroneous and liable to be set aside. Respondent No. 1 was granted employment by the Petitioner by virtue of letter Annexure P-2 and merely because the condition of extension of period of probation has not been stated in the said appointment letter does not mean that the effect of Rules stands obliterated. The service condition of Respondent No. 1 would certainly be bound by the provisions of the Rules. Neither the plea that the said Rule has not been contained in the appointment letter nor ignorance thereof cannot be of any assistance to Respondent No. 1. A perusal of Rule 8 clearly reveals that in the eventuality of the work and conduct being found unsatisfactory, the Petitioner was very well within its right to either dispense with the services of such an employee or to extend the period of probation by six months at a time provided the total period of probation including the extension would not exceed two years. The termination was thus in complete adherence to the Rules.

10. The Labour Court has completely overlooked the effect of the Rules even though it makes a passing mention to them while making the observations. The Supreme Court in *State of U.P. and Ors. v. Rejendra Kumar Singh and Anr.* 1998 SCC L&S 1536 has observed that in the absence of any specific order regarding confirmation of an employee, there can be no inference to that effect and that the expiry of such period of probation automatically amounts to confirmation of an employee in service. Likewise, in *Director, Ministry of Coal and Others Vs. Bimlendu Kumar*, it has been observed in para 7 and 8 of the judgment as under:

7. A conjoint reading of Rules 7(1), 7(6) and 7(7) would show that Rule 7(6) is subject to the operation of Rule 7(7). It is, no doubt, true, as contended by Mr. P.P. Malhotra, learned Senior Counsel for the Appellants, that after the expiry of the period of two years, the Appellant has power to extend the period of probation for three years to enable the probationer to improve his efficiency in

the service so that he could improve his efficiency as may be pointed out, and improve his quality of service for confirmation. However, in view of the language in Sub-rule (7) of Rule 7, the operation of Rule 7 (6) is subject to the confirmation on satisfactory completion of the probation. In this case, there is no express order of confirmation of probation and substantive appointment, after completion of the probation. It must be deemed that, after the expiry of three years, he remained to be a probationer. Therefore, the declaration that he was a confirmed probationer is bad in law. The learned Counsel seeks to place reliance on the judgment of this Court in *Om Parkash Maurya v. U.P. Coop. Sugar Factories Federation*, in particular, in para 3 thereof. In that case, there was no provision similar to Sub-rule (7) of Rule 7. That relates to appointment by promotion and the period of probation was prescribed for two years. Under this situation, this Court had held that after the expiry of two years, he cannot be reverted to the substantive post but deemed to be confirmed. The ratio therein has no application to the fact-situation and the rule position in this case. The probationer appointed under Rule 7(1) requires to be appointed eventually to a substantive appointment by separate order. Therefore, satisfactory completion of the probation and the declaration of confirmation are two conditions precedent to eventual substantive appointment to the post in which he was recruited and appointed on probation.

8. In the above legal position, the view taken by the Division Bench is clearly in error. The learned Single Judge also was not right in directing to pay compensation for the period of three years and three months in view of the fact that probation was terminated in terms of Rule 7 (7) of the Rules.

11. To the similar effect are the judgments in *M. Venugopal Vs. The Divisional Manager, Life Insurance Corporation of India, Machilipatnam, Andhra Pradesh and another*, , *Anita Sharma S.S. Mistress v. State of Haryana and Ors.* 2009 (2) RSJ 153 and *The Management S.D. High School for Boys Nabha, District Patiala v. Presiding Officer, Labour Court, Patiala and Anr.* 2010 (1) S.C.T. 629.

12. Having regard to the aforesaid, there is little hesitation to hold that the services of Respondent No. 1 could not be deemed to have been confirmed in the absence of any specific order to that effect. The Labour Court thus committed a grave irregularity in observing so in favour of Respondent No. 1.

13. Consequently, the writ petition is accepted and the impugned award is set aside.