

(1991) 04 AHC CK 0119

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 10322 of 1991

Mool Chandra

APPELLANT

Vs

Uttar Pradesh Financial Corporation and Another

RESPONDENT

Date of Decision : 15-04-1991

Acts Referred:

State Financial Corporations Act, 1951 — Section 48

Uttar Pradesh Co-operative Societies Employees Service Regulations, 1975 —
Regulation 17, 18

Uttar Pradesh Financial Corporation (Staff) Regulations, 1961 — Regulation 15, 16, 17

Citation : (1991) 2 AWC 14

Hon'ble Judges : M.P. Singh, J

Bench : Single Bench

Advocate : Markanday Katju, for the Appellant; V.M. Sahai, for the Respondent

Final Decision : Allowed

Judgement

M.P. Singh, J.—The Petitioner was appointed on 8-7-1987 as Assistant Grade II in the service of the U.P. Financial Corporation on six months" probation. His probationary period was extended from time to time. He continued in service till 10-10-1990 when an order of discharge was passed against him by the Managing Director.

2. Under condition No. 3 of the appointment order the Petitioner was required to show typing speed of 40 words per minute in English for his confirmation on the said post. It has been stated in the impugned order that he has failed to show the said typing speed inspite of various opportunities given to him. Thus an order of discharge was passed under Regulation 16.

3. The U.P. Financial Corporation (Staff) Regulations, 1961 (in short "the Regulation") has been framed by the Board of Directors of U.P. Financial Corporation in exercise of the powers u/s 48 of the State Financial Corporation Act, 1961.

4. There is no dispute that the case of the Petitioner is covered by the said Regulations.

5. Regulation 15 provides that an officer directly recruited in the Corporation service shall be required to be on probation for a period which shall not be less than one year and not more than two years as may be fixed at the time of appointment.

6. Under Regulation 16 an employee on probation may be discharged by the Managing Director after one month's notice or by payment of substantive pay for one month in lieu thereof.

7. Regulation 17 empowers the Managing Director to extend the period of probation, but in no case it can be extended beyond the period of three years.

8. Heard Sri Markandey Katju, learned Counsel for the Petitioner and Sri V.M. Sahai on behalf of the respondents.

9. The learned Counsel for the Petitioner contended that after the expiry of three years which is the maximum period of probation, the Petitioner became a confirmed employee of the Corporation. Regulation 16 became in-application. Order of discharge under the Regulation can be passed only during the period of probation. His further contention was that after the expiry of maximum period of probation, the Petitioner did not require any specific order of confirmation. He became confirmed automatically after expiry of the said period.

10. Regulation 17 prescribed the maximum period of probation as three years. Now the question is if an employee continues for more than three years on probation, then what would be his status. Whether he acquires permanency or remains a probationer.

11. In support of his contention that after expiry of the maximum period of probation, the Petitioner became automatically confirmed, he relied upon a decision *Om Parkash Maurya Vs. U.P. Cooperative Sugar Factories Federation, Lucknow and Others*, . In that case the provisions of Regulations 17 and 18 of the U.P. Cooperative Societies Employees Service Regulations were under considerations. Under that provisions the maximum period of probation could not be extended beyond two years. Regulation 17 restricted the power of the appointing authority in extending the probationary period beyond that period. Though Regulation 18 stipulated confirmation of an employee by an express order on the completion of the probationary period, but there was no indication in the regulations as to what would be the status of an employee on the expiry of maximum period of probation where no order of confirmation has been issued and the employee is allowed to continue in service. The Supreme Court held that in such circumstances after expiry of the maximum period of probation the employee becomes confirmed by implication.

12. Same view has been taken by the Supreme Court in another case *M.K. Agarwal v. Gurgaon Gramin Bank* AIR 1988 SC 286. Similar is the controversy in

the instant case.

13. This Court has considered the effect of Regulations 15, 16 and 17 of the present Regulation in writ petition No. 34330 of 1990 Ramji Kaushal v. U.P. Financial Corporation decided by me on 9-11-1990. It has been held that in view of Regulation 17 under no circumstances the period of probation could be extended beyond three years. After expiry of the same, the employee becomes confirmed by implication.

14. Sri V.M. Sahai, appearing for the respondents, has again placed reliance upon the decision Sukhbans Singh Vs. State of Punjab, , and another case State of Punjab Vs. Dharam Singh, which have already been discussed by me in the case of Ramji Kaushal (supra). In view of the decisions of the Supreme Court in the case of Om Prakash Maurya (supra) and M.K. Agarwal, they are of no relevance

15. Relying upon the principle of law enunciated by the Supreme Court discussed in the preceding paragraphs I am of the view that U.P. Financial Corporation (Staff) Regulations, 1961 fixes three years maximum limit for a probationer. The employer has no right to extend the same even by one day. Under these circumstances, after the expiry of the aforesaid period, the Petitioner became confirmed automatically. The impugned order of discharge treating him on probation thus is erroneous.

16. In the result, the writ petition succeeds and is allowed with costs. The impugned order dated 10-10-1990 is hereby quashed. The Respondents are directed to reinstate the Petitioner with immediate effect and shall pay the entire amount of salary due to him within a period of one month from the date of his joining. The Respondents are further directed to pay the current salary to him as and when it becomes due. However, it will be open for the Respondents to pass afresh order in accordance with law treating Him as a confirmed employee.