
(2004) 10 MP CK 0031

In the Madhya Pradesh High Court

Case No : Writ Petition No. 459 of 1998

Mrs. Rajlaxmi Chandrawat

APPELLANT

Vs

The Board of Secondary Education and Another

RESPONDENT

Date of Decision : 29-10-2004

Acts Referred:

Madhya Pradesh Board of Secondary Education Regulations, 1965 — Regulation 150

Citation : (2005) 105 FLR 94 : (2005) 1 MPHT 257 : (2005) 1 MPLJ 152

Hon'ble Judges : S.K. Gangele, J

Bench : Single Bench

Advocate : A.M. Mathur and P. Saraf, for the Appellant; Shekhar Bhargava and Ritu Bhargava, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Gangele, J.

The main question involves in this petition is with regard to termination of probationer during the maximum period prescribed in the service Rules for probation, although in the appointment order the period was mentioned as one year and subsequent order has not been issued extending the period of probation.

Facts of the case are that the petitioner was appointed on the post of Upper Division Teacher against a vacant post of Lecturer in the pay scale of Rs. 1400-40-1440-50-2340-60-2640 vide order dated 16-1-96. The order has been issued by the Secretary, Board of Secondary Education, Bhopal. She was posted in Government Model High School, Jaora run by the Board of Secondary Education. It is mentioned in the order that the said appointment is on probation for a period of one year. The petitioner in pursuance to the said order joined services on 1-3-96. She further submits that vide the letter dated 19-11-97 the Principal, Govt. Higher Secondary School, Jaora has mentioned that the working of the petitioner is general.

However, vide impugned order (Annexure P-12), dated 19-11-1997 the services of the petitioner have been terminated as no longer required. No reason has been assigned in the order.

The respondent Nos. 1 and 2 filed the return and submitted that the petitioner was appointed by the Selection Committee and she was appointed against the post of Lecturer on the instructions of the then Minister in-charge of a school education and thereafter because her appointment was against the post of Lecturer hence the Board has examined the matter and taken a decision to terminate the services of the petitioner who was on a probation.

The learned Senior Counsel has vehemently argued that as per the appointment order the petitioner was on probation for a period of one year and thereafter no order has been passed extending the period of probation, hence she be deemed to be confirmed on the post of Upper Division Teacher and her services can not be terminated simpliciter. The learned Counsel has submitted that the service conditions of the petitioner is governed by the regulations named as regulations of the Board of Secondary Education, M.P., Bhopal. Regulations Chapter XX Conditions of Board employees of Regulation 150 deals with the period of probation which reads as under :-

"150. Every appointment except to a temporary post, shall in the first instance be on probation for a period of six months. The period of probation may be extended by such further periods as the Board may deem fit, but in no case the total period of probation shall exceed two years. The confirmation shall take effect from the date of expiry of the probation period."

Learned Counsel relied on the decision of Hon^{ble} the Supreme Court in Dayaram Dayal Vs. State of M.P. and another [OVERRULED], . He further relied on State of Punjab Vs. Dharam Singh, and Karnataka State Road Tpt. Corporation and Another Vs. S. Manjunath, and High Court of Madhya Pradesh thru. Registrar and Others Vs. Satya Narayan Jhavar,

On the basis of said decisions the learned Senior Counsel has submitted that in the appointment order it was mentioned that the petitioner will be on a probation for a period of one year and thereafter no order has been passed, hence she be deemed to be confirmed on the post and her services can not be terminated vide order dated 19-11-97 within a period of two years as prescribed in the service rules. It is specifically mentioned in the service rules quoted above that in no case the total period of probation shall exceed two years and confirmation shall take effect from the date of expiry of the probation period.

The legal position on this point is very clear as discussed by Hon^{ble} the Supreme Court in Dayaram Dayal v. State of M.P. (supra), as under:-

"In first line of cases, it has been held that if in the rule of order of appointment, a period of probation is specified and a power to extend probation is also specified and the officer is continued beyond the prescribed period of probation,

he can not be deemed to be confirmed. In such cases, there is no bar against termination after the expiry of the initial period of probation. The other line of cases are those 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 a probation. The inference in such cases is that the candidate concerned is deemed to have been confirmed on expiry of maximum period of probation. Even in such type of cases, there may be special provision in the relevant rules to negative such inference."

The learned Counsel for the respondent No. 1 Board submitted that maximum period for probation as per rules is two years and service of a probationer can be terminated within the period of two years even no written order has been passed extending the period of probation. Before two years completing service the probationer can not be deemed to be confirmed on the post hence her service has rightly been terminated by the Board within two years period of probation treating the petitioner as probationer.

First case with regard to confirmation of probationer is Sukhbans Singh Vs. State of Punjab, . It has been held in the aforesaid case that a probationer can not automatically acquired the status of permanent member of service unless of course the rules under which the expressly provided for such a result. Another Constitution Bench decision is G.S. Ramaswamy and Others Vs. Inspector-general of Police, Mysore, . It is also on the same line. Again another Constitution Bench decision in the case of State of Uttar Pradesh Vs. Akbar Ali Khan, , has considered a clause of confirmation of a probationer and has held the same.

These are the first line of cases and in the second line of cases it has been held that is State of Punjab Vs. Dharam Singh, , the Constitution Bench decision, that where the service rules fixed the certain period of time beyond which a probationary period can not be extended and an employee appointed or promoted to the post of probation is allowed to continue on the post after completion of the maximum period of probation without express order of confirmation, he can not be deemed to be on that post as a probationer by implication. The reason is that such an implication negated by the rules :-

"Where, the service rules fix a certain period of time beyond which the probationary period can not be extended, and an employee appointed or promoted to a post on probation is allowed to continue in that post after completion of the maximum period of probation without an express order of confirmation, he can not be deemed to continue in that post as a probationer by implication. The reason is that such an implication is negated by the service rule forbidding extension of the probationary period beyond the maximum period fixed by it. In such a case, it is permissible to draw the inference that the employee allowed to continue in the post on completion of the maximum period of probation has been confirmed in the post by implication."

The view taken in the Dharam Singh's case (supra) has been consistently

followed in the cases of Om Parkash Maurya Vs. U.P. Cooperative Sugar Factories Federation, Lucknow and Others, M.K. Agrawal v. Gurgaon GraminBank , State of Gujarat v. Akhilesh C. Bhargava (1987) 4 SCC 483. The Hon''ble Supreme Court in H.F. Sangati etc. Vs. R.G. High Court of Karnataka and Others etc., , has further held with regard to the right of the probationer is as under:-

"It is well settled by a series of decisions of this Court including the Constitution Bench decision in Parshottam Lal Dhingra v. Union of India and seven-Judge Bench decision in Samsher Singh v. State of Punjab, that services of an appointee to a permanent post on probation can be terminated or dispensed with during or at the end of the period of probation because the appointee does not acquire any right to hold or continue to hold such a post during the period of probation. In Samsher Singh case, it was observed that the period of probation is intended to assess the work of the probationer whether it is satisfactory and whether the appointee is suitable for the post; the competent authority may come to the conclusion that the probationer is unsuitable for the job and hence must be discharged on account of inadequacy for the job or for any temperamental or other similar grounds not involving moral turpitude. No punishment is involved in such a situation."

The case of the petitioner is squarely covered by the decision of the Hon''ble Supreme Court in Bharatiya Gramin Punarrachana Sanstha Vs. Vijay Kumar and Others, . In the aforesaid case, the provision with regard to probation has been quoted. The relevant service rule Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and subsection 5(2) of the Act deals with the probation which is as under :-

Every person appointed to fill a permanent vacancy shall be on probation for a period of two years. Subject to the provisions of Sections 4 and 5, he shall on completion of his probation period, be deemed to have been confirmed.

The Hon''ble the Supreme Court has held that only when an employee has completed successfully a period of two years he shall be deemed to have been confirmed.

In the present case also, it is clear that the petitioner has not completed two years of probationary period. Her services were terminated within the period of two years prescribed in the service rules. However, as per the appointment order she was appointed for a period of one year on probation and thereafter no order of extension of probation period has been passed. She would not deemed to be confirmed on the said post because as per the service rules the maximum period of probation is two years and thereafter if no order has been passed an employee will be entitled to be confirmed on the said post that is not the position in the present case.

On the basis of above analysis of the case laws, facts and circumstances of the the petitioner has no case and petition filed by the petitioner is hereby dismissed without any orders as to case. All the interim orders passed during pendency of

the petition are hereby vacated.