
(2017) 11 AHC CK 0039
In the Allahabad High Court
Case No : 10152 of 2007

O.P. Jatav

APPELLANT

Vs

New India Assurance Co. Ltd., & Ors.

RESPONDENT

Date of Decision : 17-11-2017

Acts Referred:

[General Insurance \(Conduct, Discipline and Appeal\) Rules, 1975](#),
[Rule 25](#), [Rule 23](#)

Citation : (2017) 11 AHC CK 0039

Hon'ble Judges : Bharati Sapru, Siddharth

Bench : Division Bench

Advocate : V.K. Singh, G.K. Singh, Parmatma Rai

Final Decision : Allowed

Judgement

1. Heard Sri Samarth Singh, learned Counsel for the petitioner and Sri S.C. Dubey, Advocate holding brief of Sri Kartikey Saran, learned Counsel for the respondents.

2. The above noted writ petition has been filed by the petitioner challenging the order dated 19.10.2006, passed by the respondent no.3, Deputy General Manager, New India Assurance Co. Ltd., Kanpur, whereby, he has been reverted to Class-II Cadre of Development Officer, Marketing from the Class-I, cadre of Assistant Administrative Officer with development assignment.

3. The petitioner's case is that he was working in Class-II cadre of Development Officer, Grade-I (Marketing). Vide office circular dated 29.07.2002, he was selected for promotion to the Class-I cadre of Assistant Administrative Officer with development assignment and an order dated 12.09.2002 was passed by the Assistant General Manager in this regard. It was specifically mentioned in the promotion order dated 12.09.2002 that the petitioner would be on one year's promotion and during this period he can be reverted to Lower Cadre without any notice or opportunity. It was further mentioned that the period of probation

might be extended by the Management, but in no case the total period of probation shall exceed 2 years.

4. The petitioner started functioning as Assistant Administrative Officer and on 29.05.2006, while reviewing the performance of the petitioner for the year 2005-2006, a notice was issued by the Regional Manger of the Company, respondent no.2, stating that his performance is not satisfactory and he should show cause and the petitioner complied the same vide reply dated 30.06.2006. Thereafter, on 21.07.2006, similar notice regarding review of performance of the petitioner for the first quarter of the year 2006-2007, was issued to the petitioner which too was replied by him on 23.08.2006.

5. By the order dated 29.10.2006, the respondent no.2 reverted the petitioner to the post of Class-II cadre of Development Officer, Grade-I (marketing) without issuing any notice or grant of opportunity of hearing.

6. The respondents have filed their Counter Affidavit stating that there is no deeming clause in the order of promotion as such until the service of the petitioner was confirmed, he was deemed to be on probation and has been rightly reverted. In Condition No.5 of the Promotion Order, it is clearly mentioned that confirmation will be subject to satisfactory performance. When after waiting for long time, the work of the petitioner was not found satisfactory he was reverted. During probation, he issued an insurance policy of Vehicle, which had already met with an accident. He was charge sheeted and vigilance case is pending against him. Moreover, he could not complete the target of Rs.25,00,000/- premium and could procure business of only 15.81 lacs.

7. The learned Counsel for the petitioner has argued that in the promotion order dated 12.09.2002, it is clearly mentioned that the initial period of probation would be one year and might be extended at the discretion of the management, but in no case it shall exceed 2 years. In the present case, the petitioner was allowed to continue after 2 years period, expiring in the year 2004. He was permitted to work up to 18.10.2006 and therefore, his services would be deemed to have been confirmed on the promotional post.

8. He has further argued that there is no recital in the promotion order that the petitioner shall be confirmed by means of specific order after completion of 2 years period of promotion. Since he was deemed to be confirmed, his reversion without following Rule-25 of the General Insurance(Conduct, Discipline & Appeal) Rules, 1975 is bad. Major penalty of reversion has been imposed upon him which can not be done without following the procedure of enquiry laid down therein.

9. The learned Counsel for the respondents has argued, in reply to the arguments of the petitioner, that since the services of the petitioner on the promotional post were not confirmed, because of his unsatisfactory performance, therefore, there was no requirement of following the procedure prescribed under Rule-25. He has further argued that the petitioner has committed misconduct

and he was charge sheeted and vigilance case is pending against him.

10. The learned Counsel for the petitioner has placed reliance on the judgment of the Constitution Bench of Supreme Court, passed in the case of *Rajinder Singh Chauhan and others Vs. State of Haryana and others*, (2005) 13 SCC 179, wherein, it has been held in paragraph no.11 and 12 as follows:

"11. The stand of the respondents was that the appellants were not confirmed employees. The appointment order of each of the appellants contains the stipulations which are as follows:

"1. Your appointment as salesman is purely temporary.

2. During the period of probation, your services are liable to be terminated without giving any notice or assigning any reason.

3. You shall be governed by the terms and conditions contained in the Staff Service Rules of the Federation, amended from time to time."

This is a case where the period of probation is fixed having regard to Rule 4(b) read with Rule 10 as quoted above. Rule 10(6) no doubt provides that no employee shall be deemed to have been confirmed in the service unless specific order in this regard is issued. Relying on this provision, learned counsel for the fourth respondent submitted that there were no specific orders of confirmation and, therefore, the appellants should be deemed to have continued as probationers till the date of termination of their services. A similar stand was considered in *Om Prakash Maurya v. U.P. Coop. Sugar Factories Federation*. A Constitution Bench of this Court in *State of Punjab v. Dharam Singh* noted as follows: (SCR pp.5 G-6 B).

" Where, as in the present case, the service rules fix a certain period of time beyond which the probationary period cannot 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 cannot 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."

12. In *High Court of M.P. v. Satya Narayan Jhavar* this Court categorized the provisions for probation as follows: (SCC p.169.page 11).

"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 can not 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 can not be deemed to have been confirmed merely because the said period has expired."

11. The learned Counsel for the respondent has relied upon the Judgment of the Supreme Court in the case of Pravesh Kumar Gupta Vs. L.I.C. of India, Meerut and another. In this case the same Judgment of the Constitution Bench of Supreme Court, in the case of State of Punjab Vs. Dharam Singh (supra) and High Court of M.P. Vs. Satya Narayan Jhavar (supra) considered in the case of Rajinder Singh Chauhan and others Vs. State of Haryana and others (supra) has been relied upon. The case of Pravesh Kumar Gupta has been found to be the case of third category enumerated in the case of High Court of M.P. Vs. Satya Narayan Jhavar (supra), which is again being reproduced, "The last line of cases where, though under the Rules, a 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 the person concerned passed the requisite test, he can not be deemed to have been confirmed merely because the said period has expired"

12. The Constitution Bench Judgment of the Supreme Court, in the case of State of Punjab Vs. Dharam Singh (supra) also supports the case of the petitioner, as clear from the paragraph no.11 thereof quoted above.

13. None of the parties have brought on record the relevant service rules regarding promotion of the petitioner. The learned counsel for the respondent has not disputed that the promotion was granted to the petitioner as per the Rules. Therefore, the irresistible conclusion is that the stipulation in the promotion order that the period of probation of the petitioner will, in not case exceeded two years was covered by the Rules of the respondents.

14. Therefore, in view of the factual and legal position of the case and also in

view of the fact, that there is no stipulation in the promotion order dated 12.09.2002 of the respondent no.2, that after the completion of the maximum period of confirmation, the petitioner shall not be confirmed without an express order, the impugned reversion order dated 19.10.2006 can not be sustained and is liable to be quashed. The reversion of the petitioner clearly amounted to "major penalty" defined under the Rule-23 of the General Insurance (Conduct, Discipline & Appeal), Rules, 1975 and the respondents were required to follow the procedure given under Rule- 25 aforesaid.

15. Another aspect of the case is that there is averment of allegation of Charge Sheet and pendency of vigilance enquiry against the petitioner in the Counter Affidavit and therefore, if the conduct of the petitioner was not satisfactory and he was reverted on this account, enquiry should have been conducted against him by the respondents, instead of reverting him to a lower post and justifying the same on the ground that he was not confirmed on the promotional post.

16. The impugned reversion order dated 19.10.2006 passed by the Deputy General Manager, New India Assurance Co. Ltd., Kanpur (Annexure No.6 to the writ petition) is hereby quashed. The writ petition is allowed with costs of Rs.25,000/- following the Judgment of the Apex Court in the case "Rameshwari Devi Vs. Nirmala Devi, (2011) 8 SCC 249, which provides as follows:

"54.While imposing costs we have to take into consideration pragmatic realities and be realistic what the defendants or the respondents had to actually incur in contesting the litigation before different courts. We have to also broadly take into consideration the prevalent fee structure of the lawyers and other miscellaneous expenses which have to be incurred towards drafting and filing of the counter affidavit, miscellaneous charges towards typing, photocopying, court fee etc."

17. The aforesaid amount shall be paid to the petitioner within a period of one month from the date of production of certified copy of this order before the respondent no.3.

18. The writ petition is allowed with the costs stated above.