

**(2013) 07 DEL CK 0014**  
**In the Delhi High Court**  
**Case No : Writ Petition (C) 19823 of 2004**

Raju Kapoor

APPELLANT

Vs

Mangt. of M/s. Janata Coop. Bank

RESPONDENT

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**Date of Decision :** 01-07-2013

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227

Industrial Disputes Act, 1947 — Section 2(oo), 2(oo)(bb), 25F, 25G

**Citation :** (2013) 139 FLR 29 : (2013) LabIC 3202 : (2013) LLR 839

**Hon'ble Judges :** Vipin Sanghi, J

**Bench :** Single Bench

**Advocate :** H.K. Chaturvedi, Ms. Anjali Chaturvedi and Mohd. Aqil Saifi, for the Appellant;

**Final Decision :** Dismissed

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## Judgement

Vipin Sanghi, J.—By the present writ petition preferred under Articles 226 /227 of the Constitution of India, the petitioner seeks quashing of the award dated 27.03.2004 passed in I.D. No. 163/1998 passed by Presiding Officer, Labour Court No. VI, Karkardooma Courts, Delhi ("Labour Court" for short). The impugned award answered the following reference made by the appropriate government on 22.01.1998 against the petitioner workman:

Whether the services of Sh. Raju Kapoor have been terminated illegally and/or unjustifiably by the mgt. and if so, to what relief is he entitled and what directions are necessary in this respect?

The case of the petitioner before the Labour Court was that he was appointed as a Clerk with the respondent management on 12.07.1995-though he was issued an appointment letter only subsequently on 21.11.1995. The petitioner claimed that he was made to work overtime and was harassed by the manager of the respondent bank, Mr. P.S. Pathania who issued several baseless memos to the petitioner. He further claimed that when he complained to the Managing Director and Manager, he was directed to submit his resignation and he was forced to sign

blank papers. The petitioner claimed that he was issued a letter of termination on 28.04.1997 and that he was not allowed his earned medical and casual leaves, and that the respondent also withheld the wages of the petitioner for the month of April and December 1996. The submission of the petitioner was that he was appointed on probation for a period of six months which was extendable for another six months, and the petitioner having completed one year on probation, he was deemed to be a regular employee. It was also argued that the petitioner had been appointed against a regular vacancy and, therefore, the provision of Section 2(oo)(bb) would not be attracted. The workman claimed that his termination was in violation of principles of natural justice, and Section 25F of the Industrial Disputes Act, 1947 ("Act" for short).

2. The stand of the respondent management was that the petitioner had been appointed as a Clerk vide appointment letter dated 24.11.1995 and that the petitioner could be confirmed only after completion of the probation period. The respondent claimed that the petitioner remained absent unauthorisedly during the period of his probation and that the petitioner was a habitual late comer. The respondent submitted that the petitioner had put the respondent management to serious embarrassment on various occasions by wrongly sending local cheques for out station clearance which resulted in delay and inefficiency. It was submitted that on an assessment of the performance of the petitioner during probation, it was found that his habitual late coming and unauthorized absence was detrimental to the business of the bank, which depended on customer satisfaction. Hence, the services of the petitioner were dispensed with in terms of his employment. The respondent also raised a preliminary objection to the maintainability of the reference.

3. The Labour Court held the issue of maintainability of reference against the respondent, and held the reference to be maintainable. As regards the date of appointment of the petitioner, the Labour Court observed that as per Ex. WW1/3- which was the appointment letter dated 21.11.1995 issued to the workman, the date of appointment of the petitioner was with effect from 01.11.1995. On the aspect of the alleged harassment meted out to the petitioner by the manager Shr. P.S. Pathania, the Labour Court observed that the petitioner could not prove the said allegation.

4. The Labour Court observed that the petitioner was negligent in his duties and the management had issued to the petitioner several notices for his unauthorised absence as well as non performance of his duties. Ex. MW1/2 was a notice issued to the petitioner for unauthorised absence and Ex. MW1/4 was a notice issued to the petitioner for negligent performance of duties. The Labour Court observed that the workman admitted his guilt in his reply to the aforesaid notices which were also on record and, therefore, the action of the respondent management in terminating his services could not be said to be arbitrary. As regards the submission of the petitioner that Section 2(oo)(bb) was not attracted in the present case, the same was repelled by the Labour Court. The Labour Court also

held that the petitioner could not be deemed to have become a permanent employee. The Labour Court observed as follows:

12. .... This argument of AR of the workman does not find favour with me as he was appointed on probation and has not been confirmed so he does not acquire the status of a regular employee. If contract on the expiry of its original period is not renewed and the services are terminated as the consequences of that period it would not amount to retrenchment. The workman has not placed on the file any document to show that after completion of probation period he became regular employee.

13. ...

14. ....

15. It is not in dispute that the workman was appointed initially on probation for a period of six months which was liable to be further extended for a period of six months. The workman has not been confirmed nor his probation has been extended. In this regard reliance can be placed on a judgment reported as *Oswal Pressure M/s. Oswal Pressure Die Casting Industry, Faridabad Vs. Presiding Officer and Another*, wherein it has been held that from the letter of appointment it is quite clear that the respondent was appointed on probation. The High Court did not agree with the finding of the Labour Court that the order of termination is not an order of discharge simpliciter as it was stated in it that "you are not found fit to confirm" and, therefore, it was necessary to hold a departmental enquiry. The Hon'ble Supreme Court came to the conclusion that the appellant has examined two witnesses to prove that the work was not satisfactory so it was not correct to say that no evidence has been led by the appellant to prove that the work of the respondent was not satisfactory. In this case also the management have examined MW1 to prove that the work of the workman was not satisfactory, whereas it was found that the assessment made by the employer not baseless, immaterial and was not malafide. It is not proper for the court to interfere and substitute its satisfaction with the satisfaction of the employer.

16. Another submission which has been made by AR of the workman is that even after completion of the probation period for a period of more than one year the workman should be deemed to be permanent employee. He has a right to be confirmed after completion of period of probation. This argument of AR of the workman also does not find favour with me in view of the law laid down by Hon'ble Supreme Court in *Dhanjibhai Ramjibhai Vs. State of Gujarat*, . It is perfectly possible that during the initial period of probation the confirming authority may be unable to reach the definite conclusion on whether the candidate should be confirmed or its services should be terminated. Such candidate should be allowed to continue beyond the initial period of two years in order to allow the confirming authority to arrive at definite opinion. It seems difficult to hold that the candidate enjoys any greater right to confirmation if he is allowed to continue beyond the initial period of probation ...

5. The Labour Court further held that no material had been produced to show that the petitioner was confirmed after the completion of probationary period or that there was any rule applicable-which conferred automatic confirmation of the petitioner on completion of the probationary period. Accordingly, the petitioner was held not entitled to any relief.

6. The first submission of learned counsel for petitioner is that the probation period of the petitioner workman was for a period of six months from 01.11.1995, being the date of appointment, and the said probation period expired on 30.04.1996. It is submitted that the management did not extend the probation period of the workman in writing and, therefore, the petitioner was not on probation during the period 01.05.1996 to 28.04.1997-which was his date of termination. It is submitted that during the aforesaid period, the workman was either a temporary or a permanent employee. In support of this view, reliance is placed on the decision in Mohan Lal Vs. Management of Bharat Electronics Ltd., . In this case, the appellant was given temporary appointment on 08.12.1973-whose service could be terminated without notice and compensation on either side. The appointment terms did not mention any period of probation. However, the respondent took the stand that the appellant had been appointed as a probationary salesman. On the aspect of employment status of the appellant, the Supreme Court observed-

Thus, if the initial appointment which was described as temporary is treated on probation, even according to the respondent the period of probation was six months, it expired on June 8, 1974. Even if by the letter dated July 10, 1974, the period of probation was said to have been extended, on its own terms it expired on Sept. 8, 1974. The service of the appellant was terminated with effect from October 19, 1974. What was the nature and character of service of the appellant from September 8, 1974 when the extended period of probation expired and termination of his services on October 19, 1974?

He was unquestionably not on probation. He was either temporary or permanent but not a probationer.

7. The next decision relied upon by counsel for petitioner is that of this Court in Council for Advancement of People's Action & Rural Technology (CAPART) v. Shri Ramesh Chander, in W.P. (C.) No. 894/2007 decided on 24.01.2013.

8. This was a case where the respondent workman was initially appointed as a Peon on daily wages w.e.f. 01.04.1986 and he worked in that capacity till 30.09.1988. Thereafter he was appointed to the post of L.D.C. on daily wages w.e.f. 01.10.1988. He was issued an appointment letter dated 20.06.1996, appointing him to the post of L.D.C. and his services were regularized as L.D.C. w.e.f. 02.09.1996 in the prescribed pay scale. The appointment memorandum stated that the appointment would be on probation for a period of two years which will be extended at the discretion of the Competent Authority. This Court, in the background aforesaid, held that the termination of the services of the

respondent tantamounted to retrenchment. Reliance was placed on the decision of the Division Bench in Delhi Cantonment Board Vs. Central Govt. Industrial Tribunal and Others, . The Court also considered the submission of learned counsel for the respondent that, in any event, the respondent was entitled to protection u/s 25-F of the Act, since he had continuously been serving for 12 years-earlier as a Peon and, thereafter, as L.D.C.

9. On the other hand, the respondent bank has contended in its reply that the petitioner was still on probation when his services were terminated. No order for confirmation which could have been issued on completion of successful probation, was issued.

10. The Supreme Court in M. Venugopal Vs. The Divisional Manager, Life Insurance Corporation of India, Machilipatnam, Andhra Pradesh and another, , Escorts Limited v. Presiding Officer, (1997) 11 SCC 521 , and Kalyani Sharp India Ltd. Vs. Labour Court No. 1, Gwalior and Another, , held that the termination of the services of a probationer does not tantamount to retrenchment as the same is covered by exception to Section 2(oo) contained in clause (bb) thereof.

11. The submission of the petitioner that the service of the petitioner stood confirmed as temporary or permanent workman upon completion of the extended probationary period has no merit. The appointment letter issued to the petitioner on 21.11.1995, inter alia, stated that.

(1) That you would be appointed as a clerk w.e.f. 1-11-95 on probation of 6 months, which period can be extended by further 6 months, if deemed necessary. On successful completion of aforesaid probationary period you would be confirmed in the Bank's service as regular clerk.

x x x

(5) That you would be enrolled a member of Employees-Compulsory Deposit Scheme of the Bank on successful completion of your probation period.

12. It is not the petitioner's case that the respondent, at any stage, confirmed the petitioner in the bank's service as a regular Clerk. No communication to that effect has been placed on record. It is also not the petitioner's case that in compliance with clause 5 of the appointment letter the petitioner was enrolled as a member of the Employees Compulsory Deposit Scheme of the bank at any stage. The said enrollment would have taken place only upon successful completion of the probation period by the petitioner. Had the petitioner completed the probation period successfully, he would have been so enrolled which, admittedly, has not been done. Therefore, it cannot be said that the petitioner stood confirmed, or enjoyed temporary or permanent status. The Supreme Court has recently dealt with the aspect of confirmation, post completion of probation, in Head Master, Lawrence School Lovedale Vs. Jayanthi Raghu and Another, . From the terms of employment, it cannot be said that after completion of the probation period of six months or one year, the service of the

petitioner was deemed to have been confirmed.

13. I have today rendered my decision in W.P. (C.) No. 5311/2000 and two other writ petitions, wherein I have rejected the submission of the petitioners therein that the termination of the services of a probationer tantamount to retrenchment within the meaning of Section 2(oo) of the Act, since the same is covered by clause (bb) thereof. I have rejected the reliance placed by the petitioners on the Constitution Bench judgment of the Supreme Court in Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others, and the decision of the Division Bench of this Court in Delhi Cantonment Board (supra) in the light of the judgments of the Supreme Court in M. Venugopal (supra), Escorts Limited (supra), and Kalyani Sharp (supra) and the Division Bench judgment of this Court in Management of Apparel Export Promotion Council Vs. Surya Prakash, . Therefore, I find no merit in the petitioner's submission that the termination of the petitioner's service, while on probation tantamounted to retrenchment as defined in Section 2(oo) of the Act. The same did not amount to retrenchment as it is a case covered by clause (bb) of Section 2(oo) of the Act. In the light of the aforesaid decision, the submission of the petitioner that termination of the services of a probationer tantamount to retrenchment-is rejected.

14. So far as the decision in Council for Advancement of People's Action & Rural Technology (CAPART) (supra) is concerned, there are two aspects which need to be noticed. Firstly, the appointment of the respondent had initially taken place on 01.04.1986. He continued on daily wages initially as Peon and thereafter as L.D.C. for a period of ten years before being appointed on probation on the basis of L.D.C. in the regular pay scale. Therefore, the employer could not have bypassed the provision contained in Section 25-F of the Act by simply issuing an appointment letter claiming that the appointment was being made on probation and thereafter terminating the services of the workman. This Court, inter alia, observed as follows:

28. The respondent was initially appointed as a Peon on daily wages w.e.f. 01.04.1986 and worked in that capacity till 30.09.1988. Thereafter, he was appointed to the post of L.D.C. on daily wages w.e.f. 01.10.1988. Vide appointment letter dated 20.06.1996, he was regularly appointed as LDC w.e.f. 02.09.1996 in the relevant pay scale. Merely because the petitioner made the respondent's appointment to the post of LDC on probation, it would not mean that the respondent could, firstly, be continued in probation for an indefinite period and, secondly, even if his probation was continued indefinitely, and his services were found to be unsatisfactory, his services could have been terminated without compliance of Sections 25-F & 25-G. In any event, he would, in that eventuality, be entitled to revert to his original position as a Peon.

29. The submission of Mr. Rungta that because the respondent was a probationer, his services could be dispensed with any time, cannot be accepted in absolute terms. The right vested in the respondent on account of his having

worked for more than 240 days initially as a Peon between 01.04.1986 to 30.09.1988 and, thereafter, as LDC w.e.f. 01.10.1988 till the date of his termination, in a calendar year and in the year preceding his termination, by virtue of Section 25-F could not be taken away merely on account of the fact that the respondent was a probationer. Pertinently, the so-called probation of the respondent continued from 02.09.1996 till the date of his termination, i.e., 14.08.1998. In all, the respondent served the petitioner for a period of about 12 years-initially as a Peon and, thereafter, as LDC. I agree with learned counsel for the respondent that even a probationer is a workman under the Act. This is clear from the various decisions cited by the respondent including the decision of the Division Bench in Delhi Cantonment Board (supra).

15. From the aforesaid, it would be seen that on the facts Council for Advancement of People's Action & Rural Technology (CAPART) (supra) was very different from the case in hand.

16. Secondly, in Council for Advancement of People's Action & Rural Technology (CAPART) (supra) this Court relied upon the judgment of the Division Bench in Delhi Cantonment Board (supra). It was not pointed out to this Court that the said decision of the Division Bench in Delhi Cantonment Board (supra) runs contrary to the earlier decisions of the Supreme Court in M. Venugopal (supra), Escorts Limited (supra) and Kalyani Sharp (supra). Consequently, reliance placed by the petitioner on Council for Advancement of People's Action & Rural Technology (CAPART) (supra) is misplaced and rejected. In the light of the aforesaid discussion, I find no merit in this petition and dismiss the same leaving the parties to bear their respective Costs.