

(1998) 08 AHC CK 0087
In the Allahabad High Court
Case No : C.M.W.P. No. 36916 of 1993

Rakesh Kumar

APPELLANT

Vs

Senior Superintendent of Police, Saharanpur and others

RESPONDENT

Date of Decision : 18-08-1998

Acts Referred:

Uttar Pradesh Police Regulations, 1948 — Regulation 17, 18, 541
Uttar Pradesh Temporary Government Servants (Termination of Service) Rules, 1975
— Rule 3, 4, 5

Citation : (1999) 1 AWC 313

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : Suresh Chandra Dwivedi, for the Appellant;

Final Decision : Allowed

Judgement

D.K. Seth, J.—The petitioner was appointed as a police Constable on 1.1.1987. According to him, after completion of the probation period, the petitioner continued to serve in the Department until his services were terminated by an order dated 12.7.1993, namely, almost after six and a half years. The said order of termination dated 12.7.1993 indicates that service of the petitioner was terminated under the U. P. Temporary Government Employees (Termination of Service) Rules, 1975 on the ground that the petitioner's service was no more required. This order has since been challenged in this writ petition.

2. Mr. Rakesh Pandey, learned counsel for the petitioner contends that under Regulation 541, the period of probation is fixed at two years for constables other than posted directly in the Criminal Investigation Department or transferred to the Mounted Police as contained in clauses (a) and (b) of clause (1) thereof. The petitioner does not fall in any of these two categories as such according to him, the petitioner should be deemed to be confirmed on the expiry of the probationary period by reason of the decisions cited by him which will be dealt with at appropriate stage. In support of his contention, he submits that by

reason of clause (2) of the said Regulation, the petitioner could be discharged at the end of probation provided an opinion was formed by the superintendent of police that the petitioner was unsuitable either during or at the end of the period of probation. In the present case there was no such formation of opinion and that the petitioners service was not dispensed with on the ground that he was unsuitable at the end of the probation period. Whereas he was allowed to continue for almost four and a half years after the end of the probationary period. He contends further that since the petitioner, by reason of his deemed confirmation, was nor more a temporary employee, therefore, the provisions of the U. P. Temporary Government Employees (Termination of Service) Rules, 1975 (hereinafter referred to as Temporary Government Employees Rules), cannot be applied. Alternatively he contends, assuming but not admitting, that the petitioner was not confirmed but still then if his service is terminated on the ground of unsuitability, then it is incumbent upon the respondent to inform him about his deficiency and his service could not have been terminated under the provisions of the Temporary Government Employees Rules. According to him, the provisions can be applied, only when the termination is a termination simpliciter without any stigma. The termination on the ground of unsuitability is definitely a stigma which has since been made out in the counter-affidavit. He argues the above point alternatively but ultimately stuck to his submission with regard to deemed confirmation by reason of the decisions cited by him. The petitioner having been confirmed by reason of deeming clause, there was no scope of treating him as a temporary employee and as such before termination of his service it is required that he should be given an opportunity. For all these reasons according to him, the order of termination should be quashed and the writ petitioner should be declared to be in service with all consequential benefits during this period.

3. Mr. V. K. Rai, learned brief holder of the State, on the other hand, contends that by reason of the conditions contained in clause (1), Regulation 541, the petitioner could have been confirmed only when there was a specific order of confirmation and not otherwise. In view of the existence of such clause, the question that the period of probation was fixed is immaterial. Clause (2) of Regulation 541 was related to the question of discharge at the end of probation. The existence of said clause does not take away the effect of clause (1) which requires a specific order of confirmation by the Superintendent of Police. Though a recruited may not be discharged but still then by virtue of his continuation he does not become a confirmed employee. On the other hand according to him he continues to be a temporary employee until specific order of confirmation is issued in terms of clause (1) of the Regulation 541. Therefore, according to him, the provisions of Temporary Government Employees Rules, 1975 is very much applicable in the case of the petitioner. He next contends that under the said Rules, a person can be terminated even on the ground of unsuitability. But the ground of unsuitability does not find mention in the order of termination. Disclosing of the ground in the counter-affidavit would not change the character

of the order which do not impose any stigma and therefore the ground of stigma cannot be available in the present case to the petitioner. Since the petitioner had suffered a number of minor punishment therefore on the ground of unsuitability his service can still be terminated under the said Rules. He relies on a decision in the case of State of Punjab Vs. Baldev Singh Khosla, , and contends that even if the probation period is over, the same would not confer any right on the petitioner to be treated as confirmed automatically. His continuation is subject to confirmation provided he performs satisfactory work during this period. Therefore, according to him, there is no infirmity in the order impugned. The writ petition is therefore, liable to be dismissed.

4. I have heard both Mr. Rakesh Pandey and Mr. V. K. Rai, learned counsel for the respective parties at length.

5. The question that have been raised is as to whether in interpreting Regulation 541, the petitioner could be said to be still on probation on temporary service or confirmed. In order to appreciate the situation, it is necessary to refer to Regulation 541 of the U. P. Police Regulations which runs as follows ;

"541. (1) A recruit will be on probation from the date he begins to officiate in a clear vacancy. The period of probation will be two years except in the following cases :

(a) those recruited directly in the Criminal investigation Department or District intelligence Staff will be on probation for three years, and

(b) those transferred to the Mounted Police will be governed by the directions in paragraph 84 of the Police Regulations.

If at the end of the period of probation conduct and work have been satisfactory and the recruit has been approved by the Deputy inspector General of Police for service in the force, the Superintendent of Police will confirm him in his appointment.

(2) in any case in which either during or at the end of the period of probation, the Superintendent of Police is of opinion that a recruit is unlikely to make a good police officer he may dispense with his service. Before, however this is done the recruit must be supplied with specific complaints and grounds on which it is proposed to discharge him and then he should be called upon to show cause as to why he should not be discharged. The recruit must furnish his representation in writing and it will be duly considered by the Superintendent of Police before passing the orders of discharge.

(3) Every order passed by a Superintendent under sub-paragraph (2) above shall, subject to the control of the Deputy Inspector General be final."

6. The very expression used in clause (1) shows that the period of probation will be two years excepting in cases contemplated in clauses (a) and (b) of clause (1). The expression used in the said Regulation clearly indicates that the period

of probation is fixed. There is nothing in the said regulation to contemplate that the said period of probation could be extended beyond two years. This conclusion finds support from the clauses included in clause (1) itself normally that at the end of the period of probation, the Superintendent of Police will confirm the recruit provided the conduct and the work of the recruit have been satisfactory and the recruit has been approved by the Deputy Inspector General of Police for service in force. The clause does not use the expression that at the end of the period of probation or after such extended period. On the other hand, it only expresses at the end of the period of probation. Clause (2) also uses similar expression that either during or at the end of the period of probation. Clause (2) also does not use the expression that at the end or such extended period of probation. On the other hand, it is abundantly clear that the whole scheme of the said Regulation clearly indicates that no where it was conceived of any extension of the period of probation which is for a fixed period of two years in case of all recruits except those mentioned in sub-clauses (a) and (b).

7. Thus, if the period of probation is fixed, what would be the effect after the expiry of the period of probation? Whether on the expiry of such period of probation, the recruit would be deemed to have been confirmed automatically even though no order of confirmation is issued? Whether he will continue to be on probation? Or whether his continuance will be that of a temporary nature?

8. Mr. Rakesh Pandey vehemently argued that the effect would be an automatic confirmation even without such order. He relied on a decision in the case of Om Parkash Maurya Vs. U.P. Cooperative Sugar Factories Federation, Lucknow and Others, . He also relied on the decision in the case of M. K. Agarwal u. Gurgaon Gramin Bank and others : AIR 1988 SC 286. He had referred to another decision of this Court in the case of Pramod Kumar Singh v. State of U. P. 1991 (18) ALR 610, in support of his such contention.

9. So far as the decision in the case of Pramod Kumar Singh (supra), is concerned, the question involved was the interpretation of the Regulation 541 of the U. P. Police Regulations. While interpreting the said Regulation relying on the decision in the case of Om Prakash Maurya (supra), as well as in the case of State of Punjab Vs. Dharam Singh, , this Court had laid down that on the expiry of the maximum probationary period of two years, the recruit cannot be deemed to continue on probation, instead he stood confirmed in the post by implication and that the appellant acquired the status of a confirmed employee. In the case of Dharam Singh (supra), the Apex Court had held as follows :

"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."

10. In the case of *Om Prakash Maurya (supra)*, it was held that the Regulations has provided a period of probation of one year which could be extended for another period of one year. The proviso to Regulation 17 of the U. P. Co-operative Societies Employees Service Regulations (1975) had restricted the power of appointing authority in extending the period of probation beyond the period of one year. An employee appointed against a regular vacancy cannot be placed on probation for a period of more than two years and if during the period of probation the appointing authority is of opinion that the employee has not made use of opportunity afforded to him, he may discharge him from service but there was no power to extend the period of probation beyond the period of two years. Regulation 18 thereof stipulates confirmation of an employee by an express order on the completion of the probationary period, but the Regulation do not expressly lay down as to what would be the status of an employee on the expiry of a maximum period of probation when no order of confirmation is issued and the-employee is allowed to continue in service. Relying on such provision, the Apex Court had held that since Regulation 17 did not permit continuation of an employee on probation for a period of more than two years the necessary result would follow that after the expiry of two years probationary period, the employee stands confirmed by implication and this is implicit in the scheme of Regulations 17 and 18.

11. Similarly relying on the decision in the case of *Dharam Singh (supra)* and *Om Prakash Maurya (supra)*, the Apex Court in the case of *M. K. Agarwal (supra)*, took similar view on the basis of *Gurgaon Gramin Bank (Staff) Services Regulations, 1980*. In the said Regulations as the period of probation was one year which could be extended for six months more and provided that at the end of such probation period, the probationer should either be confirmed or discharged. There also nothing was laid down as to what would happen if either of these two contingencies have not come into being. In such circumstances, the Apex Court had held that such a situation renders an inference inescapable that if the probationer was not discharged at or before the expiry of maximum period of probation then there would be an implied confirmation since there was no statutory indication as to what should follow in the absence of express confirmation at the end of even the maximum permissible period of probation. In cases where, these conditions coalesce, there would be confirmation by implication.

12. Applying the ratio decided in the said decisions, we may look into Regulation 541 which also provides in sub-clause (1) that if the conduct and work of the probationer is satisfactory and he has been approved by the Deputy Inspector General of Police for service in the force, then he will be confirmed in his appointment. Such confirmation is to come at the end of the period of probation.

By virtue of clause (2), if the Superintendent of Police is of opinion that the recruit is unlikely to make a good police officer, he may dispense with his service at the end of the period of probation. Such opinion is to be formed either during or at the end of the period of probation. The expression used both in clause (1) and clause (2) are "at the end of the period of probation." The phrase "at the end" indicates a particular specific point of time. The end period cannot be extended to mean a period of four and half years. At the end should mean a period which is reasonably proximate or close to the expiry of the period immediately on the hill of expiry of such period. It cannot extend for a period longer than as reasonable with proximity. By no stretch of imagination, the period of four and half years can be said to be a period at the end of the period of probation. Regulation 541 has also not made any provision with regard to a situation where neither the service is dispensed with nor any order of confirmation has been passed. Therefore, the ratio decided in the cases cited above in all likelihood applies in full force.

13. Mr. V. K. Rai, brief holder has, however, submitted that it has been specifically provided in clause (1) that the confirmation is depended on the satisfactory conduct and work and the approval of the Deputy Inspector General of Police that the recruit is a person fit for service in the force, then only Superintendent of Police will confirm in his appointment. This condition according to him points out that there must be an overt and specific act of confirmation. According to him, unless there is an order or confirmation, the deeming clause cannot operate in view of the specific provisions expressed in Regulation 541, which is distinct and different in its expression and scheme from the Regulations which were dealt with in the decision in the case of Om Prakash Maurya (supra) and M. K. Agarwal (supra). Therefore, according to him the said ratio cannot be attracted in the present case and the petitioner could be treated either to be on probation or to be continuing temporarily. He relied on the decision in the case of Municipal Corporation, Raipur Vs. Ashok Kumar Misra, and State of Punjab Vs. Baldev Singh Khosla, .

14. The decision in the case of Ashok Kumar Misra (supra), points out that where the rule empower the authority to extend a probation beyond the prescribed period in such cases if there is no confirmation after the initial period of probation in the absence of any express provision or order of confirmation, the continuation of an employee would mean extension of probation period and in such situation, termination after initial period of probation would mean termination of probationary service. The said decision has also relied on the decision in the case of Dharam Singh (supra). Om Prakash Maurya (supra) and M. K. Agarwal (supra). It had also relied on the decision in the case of State of Gujarat Vs. Akhilesh C. Bhargav and Others, , in paragraphs 4 and 5 while dealing with those decisions, it was observed that the Apex Court had reiterated the same view in all these four decisions that if under the Regulations probationary period could not be extended beyond maximum period of two years then on the expiry of maximum period of probation, the services of the

incumbent stands confirmed and he could not be treated to be on probation and be reverted to a lower post. Therefore, this decision in the case of Ashok Kumar Misra (supra), has affirmed the decisions in the case of Dharam Singh (supra), Om Prakash Maurya (supra) and M. K. Agarwal (supra). Thus, the distinction that has been made in the said decision is to the extent that where there are provisions empowering the authority to extend the period of probation, in such situation, the expiry of the period of probation would not result into confirmation by implication. In the present case, there being no authority to extend the period beyond two years, the said decision cannot help Mr. Rai since the decisions in the case of Dharam Singh (supra), Om Prakash Maurya (supra). M. K. Agarwal (supra) and Akhilesh Bhargava (supra), have been followed by this Court in the case of Dharmvir Singh Rana, while interpreting the Regulation 541 rendering the same to be a stare decisis.

15. Mr. Rai also relied on a decision in the case of Baldev Singh (supra), but the said judgment has not taken note of any of the judgment cited above. But then the facts of the said case are also different from the facts of this case. On the other hand, the said facts of the said case fits in the facts of the case of Ashok Kumar Misra (supra), inasmuch as Rule 10 (3) of the Punjab. State Co-operative Service (Class II) Rules. (1958) provided that on conclusion of the period of probation if vacancy exists, the service may be confirmed, if his work or conduct has in its opinion not been satisfactory, the authority may extend the period of probation by such period as it may think fit and thereafter pass such order as could have been passed on the expiry of his period of probation. Thus in this case, the authority was empowered to extend the period of probation, as it might think fit and the order of confirmation could be passed only after such period. Thus, the facts of this case also contemplates authority to extend the period of confirmation which is distinguishable from the decisions cited by Mr. Rakesh Pandey.

16. Thus, the decision in the case of Pramod Kumar Singh (supra), stares on the face on the contention of Mr. V. K. Rai having regard to the decisions in the cases of Om Prakash Maurya (supra), Dharam Singh (supra), M. K. Agarwal (supra) and Akhilesh Bhargava (supra). I do not find any reason to differ with the view taken in the case of Framed Kumar Singh (supra), by this Court. I am, therefore, respectfully in agreement with the said decision that in the absence of any specific provision as to what would happen if either of the two procedures contemplated in Regulation 541, namely, either to confirm or to dispense with services are not taken at the end of probation in that event, the recruit, stands confirmed by implication. This view finds support from the fact it was open to the authority either to dispense with the service of the incumbent or to refuse confirmation on the ground that the conduct and work of the petitioner was not satisfactory or that he was not approved by the Deputy Inspector General of Police for service in the force. If despite having such power, the respondents refrain from exercising such power, in that event by reason of period of probation being fixed, there is no scope for treating the period of probation to have been

extended by implication. On the other hand, the presumption would be adverse to that of the respondents and would be in favour of the incumbent.

17. Since by reason of my aforesaid observations, I have come to the conclusion that the petitioner has been confirmed after the expiry of period of probation. Therefore, it is not necessary to deal with the other contention and counter contention raised by Sri Rakesh Pandey and Sri V. K. Rai respectively with regard to the alleged continuation of the petitioner as a temporary employee and application of the termination of Temporary Government Servant Service Rules.

18. Thus, the questions formulated at the beginning of the discussion are answered as hereinafter having regard to the facts and circumstances of this case in relation to Regulation 541 aforesaid. Under Regulation 541, there being no authority to extend the period of probation after the period fixed, if neither the incumbent is confirmed nor discharged and no opinion is formed or the recruit is not disapproved by the Deputy Inspector General of Police at the end of the probation within its reasonable proximity, then the incumbent will not be continuing on probation nor he would be continuing as in temporary service but he would be deemed to have been confirmed automatically by implication.

19. Once the petitioner as held above, is confirmed, he cannot be subject to the said U. P. Temporary Government Service (Termination of Service) Rules, 1975 and as such his service could not have been terminated under the said provisions.

20. In the result, the writ petition succeeds and is allowed. The impugned order dated 12th July, 1993, terminating the service of the petitioner hereby stands quashed. Let a writ of certiorari do accordingly issue. The petitioner shall be deemed to have been in service continuously and shall be entitled to all service benefits, as would have been available to him, under the law as if he were in service, provided the petitioner satisfies the authority that he was not gainfully employed elsewhere during the said period. There shall however, be no order as to costs.