

(1982) 08 GUJ CK 0004
In the Gujarat High Court

Smt. Charulataben M. Gohil

APPELLANT

Vs

Surendranagar Joint Municipality and Another

RESPONDENT

Date of Decision : 17-08-1982

Acts Referred:

Constitution of India, 1950 — Article 311(2), 311(2)

Citation : (1982) GLH 1090 : (1983) 1 GLR 93

Hon'ble Judges : V.V. Bedarkar, J

Bench : Single Bench

Judgement

V.V. Bedarkar, J.

This petition is a grievance of a probationer against termination of her service.

1. Petitioner Charulataben M. Gohil was appointed on 15-3-1979 as a Librarian run by respondent No. 1 Surendranagar Joint Municipality, Surendranagar. Initial appointment was for a period of six months on probation. On 26-10-1979 her probation period was extended for six months. Again on 30-9-1980 her probation period was extended for a further period of six months. It is her case that during the above period she worked satisfactorily and there was no grievance. However, in spite of that, by an order dated 12-1-1981 her probation period was extended for six months more. It is the contention that though the earlier period was over on 15-9-1980, and taking six months from that, her period of six months was over on 14-3-1981, but no immediate order was passed extending her probation from 14-3-1981. On 17-5-1981 when She went on duty, she was not allowed to resume duty and, therefore, she wrote a letter to the Collector, Surendranagar. It is her case that she was harassed by some members and respondent No. 2 (President of the Municipality) and they wanted to take resignation from her so as to enable them to appoint one Sahenaz B. Chunara, daughter of the member of the School Board of the respondent-Municipality. It should be noted that this petition was filed on 19-5-1981, when, according to the petitioner, she had not received any order of termination, but she suspected such a move. It is her case that because after her initial appointment was made on 15-3-1979, she

continued in service on probation for more than two years and, therefore, she is deemed to have become permanent. Then it is her case that with a view to harass her and obtain resignation from her, false memos were given to her for creating a ground for termination of her service and that the petitioner had replied those memos. It is again averred that from 1979 till April 1981 she was not given any memo and in April 1981 she was given 4 to 5 memos, and the petitioner had replied to those memos. All this was done with a view to create a charge of terminating her services. Then reliance is placed on the order dated 12-1-1981 (Annexure "D") showing that her work was found to be satisfactory, and that her probation period was extended.

2. Now, it is not in dispute that the services of the petitioner have been terminated and, therefore, leave to amend was granted and ad interim relief not to appoint any person vice the petitioner was continued. That order dt. 16-5-1981 of termination has been produced by the respondent-Municipality at Annexure "5" and it terminates the services of the petitioner from 16-5-1981 after office hours.

3. It is the contention of Mr. J.D. Ajmera, learned Advocate for the petitioner, that this is a punitive order by way of punishment and because it has been passed without making any inquiry or without following the rules of natural justice, it deserves to be set aside.

4. As against this, it is the contention of the respondents through the affidavit of Mr. J.C. Jhala, Officiating Chief Officer of the respondent-Municipality and also the affidavit of Mr. Ramniklal Raichand Shah respondent No. 2-President of the respondent-Municipality, that the petitioner's services were terminated because her work was not found satisfactory during the probation period.

5. It should be noted that it is the case of the petitioner in para 5 of the petition that till the earlier Chief Officer was there, there was no grievance about her work and no memo was given to her upto April, 1981. In April 1981 she was given 4 to 5 memos, and according to her, they were given by the Incharge Chief Officer with a view to create a ground for terminating her service. Before referring to the facts brought out in the affidavit of Mr. Jhala, I would like to make the point very clear.

6. The claim of the petitioner that her services were found satisfactory prior to the taking over by the new Incharge Chief Officer is not borne out, not only from any record, but also from the facts. The order (Annexure "A") produced by the petitioner, clearly shows that the petitioner who is at serial No. 6, was appointed initially on probation period of six months. The advertisement (Annexure T) produced alongwith the affidavit of the President of the Municipality, clearly shows that the Librarian, for whom the advertisement was given, if appointed, was to be on a probation period. Initially, though the petitioner was appointed on probation for six months, for four times the probation period was extended and the petitioner was not confirmed. This very clearly goes to show that the

Municipality or the employers were not completely satisfied with the work of the petitioner. If there was complete satisfaction, there was no reason for the Municipality to extend the period of probation and there was no reason for the petitioner to keep quiet even if her period was extended four times, in spite of her claim that her work was satisfactory. It cannot be gainaid that when the probation period of a servant is required to be extended oft and on, it raises the inference that the employer is not fully satisfied with the work of that employee and, therefore, the probation period is required to be extended. Therefore, the averment made by the petitioner that till 1981 her work was good, is not borne out from the record and cannot be accepted.

7. That apart, the Chief Officer, alongwith his affidavit, has produced one memo (Annexure "6") issued by the Chief Officer on 22-4-80 to the petitioner, wherein a grievance is made that there are complaints from the readers about the non-issue of magazines, etc., and the Librarian was directed to work regularly and properly. This I am observing because, according to the affidavit of Mr. Jhala, he joined the Municipality with effect from 24-4-81. So, he was not the Chief Officer upto 23-4-81. It is his clear case that before him, one Mr. J.L. Kothari was the Chief Officer with effect from 1-7-80 and he continued on the said post till 31-3-81 and in para 6 it is stated that the incharge Chief Officer Shri J.N. Shah has issued the memo on 22-4-80. This I am considering in order to consider the aspect of malice brought out by the petitioner and the Annexures produced alongwith the affidavit of Mr. Jhala would go to show that whatever was done against the petitioner was not done by the present Chief Officer who took charge on 24-4-81.

8. Annexure "2" is a note put up by Mr. Mahendra Sheth, Establishment Clerk of the Municipality, whose duty would be to draw the attention of the Chief Officer about the probationary employees. By this he requested the Chief Officer to pass necessary orders about the petitioner whose probation period was to expire on 15-3-81. Below this, there is an endorsement of the then Chief Officer dated 2-3-81 to the Chairman of the Executive Committee of the Municipality making a grievance that though the petitioner is on probation, office is not satisfied with her work and, even though she was directed in writing not to permit the outsiders in the Library, she was allowing them, etc., and that the Chief Officer had also informed her orally about this, and she cannot talk in disciplined manner. Her efficiency is less. Considering all these aspects, it was recommended that it was not in the interest of the Municipality to extend her period of probation and, therefore, the matter may pleased be placed before the Committee for further orders. This was on 2-3-81 when the new Incharge Chief Officer had not taken over.

9. Annexure "3" is the decision of the Municipality, being Resolution No. 9 passed in the Executive Committee Meeting on 17-4-81, and it recommended that the services of the petitioner should be terminated, and for that the matter be placed before the General Board. Annexure "4" is the decision of the General Board

which met on 15-5-81, and it was decided to terminate the services of the petitioner, for unsatisfactory work, behaviour, indiscipline and lack of efficiency.

10. At Annexure "7" there is a memo dated 8-4-81 pertaining to the same allegations about the petitioner's indisciplined behaviour, and allowing unauthorised persons to assemble in the Library, and specific reference to her husband is made. This also seems to have been issued by the Chief Officer who was incharge and not the present Chief Officer Mr. Jhala who took over only on 24-4-1981.

11. From the affidavit of Mr. Jhala, it is clear that this memo of 8-4-1981 was issued by Mr. J.V.H. Herma who was then Chief Officer. Mr. Herma also made a report (Annexure "8") on 8-4-1981. This Annexure "8" wipes out all the allegations of malice so far as the President and the new Chief Officer are concerned. Allegation of the petitioner is that in order to appoint Sahenaz B. Chunara, daughter of the member of the School Board of the respondent-Municipality, she was intimated to resign. But this Annexure "8" clearly shows that when the Chief Officer visited the Library on 7-4-1981 during office hours, he informed Miss Sahenaz B. Chunara about relieving her from service as per the discussion in the General Board meeting of 31-3-1981 on the strength of the circular dated 31-3-1981 of the Chief Officer. At that time he had also asked Librarian Charulataben (petitioner) as to why she did not execute the circular of the Chief Officer. At that time he found something and, therefore, made a report on 8-4-1981 against the petitioner. This report wipes out two main allegations of the petitioner about malice. First is that, Miss Chunara was already in service and she was relieved from service, and as per the affidavit of the President, she can never be appointed as a Librarian because she did not have the necessary qualifications. But as is common nowadays, in order to bring out a case of malice, allegation is made in the petition about Miss Chunara as well as the Incharge Chief Officer to impress upon the Court that this is a fit case wherein Rule should be issued because termination was out of malice. It is only after the other party appears and brings out on record the facts that the Court would know that all the allegations of malice are not true and just made out in the petition to give some credibility to the case of the petitioner. These allegations have now fallen to the ground because it clearly transpires that the new Incharge Officer had not done anything against the petitioner except serving the final order after the resolution of the Municipality which was passed on the report made by his predecessor.

12. Now, because the allegations of malice do not stand, Mr. Ajmera submitted that the order is still by way of punishment and, therefore, he wanted to rely on Annexure "4" produced alongwith the affidavit of Chief Officer Mr. Jhala, which is a Resolution of the General Board, wherein it has been decided to terminate the services of the petitioner, because as per the resolution of the Executive Committee, the work of the petitioner was found to be unsatisfactory and less in efficiency, and also because she was indisciplined. According to Mr. Ajmera, this

was by way of punishment.

13. Before considering this aspects I will have to deal with another argument advanced by Mr. Ajmera. I have considered the argument of malice and found that it has no substance. Then it is his contention that because the petitioner has served for two years, she should be deemed to have been confirmed. He could not show to me any rule or precedent whereby such an automatic confirmation could be available to an employee after having served for two years on probation. Mr. Ajmera could not produce any conditions of the petitioner's appointment to show that after the period of two years she should be deemed to be confirmed. He made out a grievance that it was for the respondents to bring on record such conditions and satisfy the Court that the respondents had the authority to continue the probation period even beyond two years and then to terminate the services. It was stated at the Bar by Mr. P.M. Raval, learned Advocate for the respondents, that no such rules, so far as the probation period is concerned, are there and therefore, he could not produce them. If there are no rules either in favour or against the petitioner, then the normal incidence of the probationary service shall operate and for that it will be necessary to see what are the precedents on this court, and whether there is any automatic confirmation after the period of two years. Mr. Ajmera could not cite before me any precedents whereunder such automatic confirmation can be presumed or would be available. It is true that if the service conditions or appointment order or rules provide that the appointing authority cannot extend the probation period after a particular time, and after that period is over, there would be automatic confirmation, then the Court have held it to be a case of automatic confirmation and there shall be no order of termination passed as in the case of such a Government servant, on the ground of his being a probationer. That is not the case here. Here there are no rules and, therefore, normal rules would be applicable.

14. The second ground is that the authority has no power to extend the period of probation after the period granted is over. According to Mr. Ajmera the period of probation which was extended for the fourth time was over on 14-3-1981, and it was not extended at that time, but was extended thereafter. The order Annexure "5" produced alongwith the affidavit of the Chief Officer was passed on 16-5-1981, wherein the probation period of the petitioner which was over on 15-3-1981 was extended from 16-3-1981 to 15-5-1981, it is, therefore, contended that as there is no authority to extend the period of probation, the petitioner should be deemed to have been confirmed. This argument is also based on assumption without considering the implication of the normal considerations pertaining to the tenure of a probationer. It has been laid down by the Courts that so far as probation period is concerned, there are three eventualities. First is, that the probation period may be for a fixed period and the employer would have no right to continue the probation period beyond that date, and in such cases if the employee is continued beyond that period, then there is automatic confirmation. Second eventuality is that there is a clause in service

condition or appointment order, that a person will be on probation upto a particular period and thereafter if his services are not terminated, he will be deemed to be confirmed. These two eventualities are not available to the petitioner and, therefore, by no stretch of imagination it can be said that there is automatic confirmation. The third eventuality is that a person is appointed on probation, and there is no rule not to continue him on probation and not to extend the probation period after a particular period or no rule about automatic confirmation, then in that case, even if a person continues in service, he is a probationer all throughout. For this, I shall be referring to two important rulings of the Supreme Court. But if the last eventuality is considered, then can it be said that merely because the period of probation was extended after it actually ended, the petitioner should be considered to have been confirmed? I am not impressed by this argument of Mr. Ajmera.

15. In *Bishan Lal Gupta Vs. The State of Haryana and Others*, , the Supreme Court had an occasion to consider the case of a Judicial Officer against whom inquiry was held and still after the inquiry his services were terminated because he was a probationer. On these facts, the Supreme Court observed that if an inquiry is held just to know whether the probationer should be continued or not, and the probationer was given ample opportunity to answer in writing whatever was alleged against him in the show-cause notices, the innocuous order of termination issued thereafter following such summary inquiry could not be said to be an order of punishment. It is also observed by the Supreme Court that if, in such a case, the innocuous order involved some reflection on the capabilities of the probationer, it could not be helped. In that case the petitioner was appointed in Judicial Service in December 1966. He was served with two show-cause notices, one on 22-10-1968 (before the period of two years was over) and another on 18-6-1969 (after the period of two years was over). By these notices, he was asked to explain certain allegations against him. In spite of this, the Supreme Court considered only the order and the form of the order. It is true that in para 11 the Supreme Court also considered the decision wherein the Division Bench of the Haryana High Court examined the cases which laid down that the form of the order was not decisive, but the court can go behind the ostensibly innocuous order and investigate the real nature of the proceedings. The Supreme Court also considered its observations in *Samsher Singh Vs. State of Punjab and Another*, wherein it has been observed:

No abstract proposition can be laid down that where the services of a probationer are terminated without saying anything more in the order of termination than that the services are terminated it can never amount to a punishment in the facts and circumstances of the case. If a probationer is discharged on the ground of misconduct or inefficiency or for a similar reasons without a proper inquiry and without his getting a reasonable opportunity of showing cause against his discharge it may in a given case amount to removal from service within the meaning of Article 311(2) of the Constitution.

After considering the aforesaid observations, in para 14, the Supreme Court observed that those observations are meant to cover those cases where, even though the probationer may have no right to continue in service, yet, the order terminating his services casts a stigma on his name. It was further observed that if, however, after going into the particular facts and circumstances of a case, the Court finds, as seemed to be the position in that case before the Supreme Court that the inquiry conducted and notices given were intended only to arrive at a finding on a desirability of continuing a person in service, and more serious action was not contemplated, it means that no stigma was intended to be cast.

16. In the instant case, Order (Annexure "5") produced alongwith the affidavit of the Chief Officer, does not cast any stigma, but because it refers to resolution No. 264 of the General Board, Mr. Ajmera wanted to rely on that resolution, which is Annexure "4" wherein the words "unsatisfactory", "indiscipline" and "lack of efficiency" are used and, therefore, according to him, if this resolution is read, that would be a stigma and, therefore, punishment. He also wanted to refer to the memo given to the petitioner by the Chief Officer on 8-4-1981 and also his report (Annex. "8") dated 8-4-1981, to show that this was a measure of punishment. As considered earlier, the Supreme Court in para 14 of Bishanlal's case (supra) clearly observed that if inquiry conducted and notices given were intended only to arrive at a finding in regard to his suitability to be continued in service, then it cannot be said to be a measure of punishment, Therefore, this argument would never be available to Mr. Ajmera to show that the impugned order of termination is by way of punishment.

17. Mr. Ajmera wanted to rely on the further observations of the Supreme Court in para 14 in Bishanlal's case (supra) which are to the following effect:

...To some extent the Courts are bound to take into account what the incontrovertible evidence disclosed. It may conclude that even if the reputation of a probationer was to some degree affected by what took place yet, if those facts could not reasonably be disputed by him, it provided a sufficient ground for terminating his services.

From this, it was argued by Mr. Ajmera that in the instant case the petitioner does not say that the facts alleged against her are undisputed. Therefore, if there is a dispute, then she should have been given an opportunity to answer the allegations, and if that opportunity is not given, the impugned order of termination is vitiated. Again he harps on the same thing, that the petitioner is entitled to proper inquiry even before the termination of her probation period. This is not the tenor of the observations of the Supreme Court in the aforesaid decision. The Supreme Court has clearly stated that so far as the termination is concerned, the order is to be seen and any preliminary inquiry made for considering the suitability or otherwise of a probationer would not be a ground to the probationer to say that the inquiry was not fulfilled. The Supreme Court in para 16 also gave a caution that it is impossible to lay down propositions which are so clear cut as to cover every conceivable case, otherwise it would make the

law too rigid, and thereafter in para 17 considered another point of view. In that case the Haryana High Court held that this was not really a case of punishment, and the Supreme Court observed that that was the right conclusion and accepted with approval all the observations of the High Court that there should be at least some difference, as to the nature of or depth of the inquiry to be held as between a probationer whose services can be terminated by a notice and a confirmed Government servant who has a right to continue in service until he reaches a certain age. The Supreme Court, therefore observed that it is true that neither can be "punished" without a formal charge and inquiry. But a less formal inquiry may be sufficient as it was in that case before the Supreme Court. From this Mr. Ajmera wanted to take advantage that if there is a punishment even a probationer cannot be punished without an inquiry. But the question to be considered is whether this order is in the form of punishment. If the order of termination cannot be said to be an order of punishment, then the question of inquiry would not arise. Further, because the Supreme Court has observed that a less formal inquiry may be sufficient, Mr. Ajmera wanted to say that this shows that some inquiry should be made, and if the order of termination is made without inquiry, that is bad. I am not prepared to accept this argument. In the case before Supreme Court some inquiry was made and the grievance was that the inquiry was not fullfledged and therefore, the Supreme Court answered the contention raised in view of the particular facts before it. That decision does not lay down the principle that even for the termination of services of a probationer it is necessary for the employer to hold even a formal inquiry. The Supreme Court says that if any inquiry is held, and even if it was formal, it was sufficient. Therefore, reliance of Mr. Ajmera on one word here or there from that judgment would not take out the basic principle that so far as the probationer is concerned, his services can be terminated without any inquiry, and before the termination if some inquiry is made, it should nor be fullfledged.

18. The aforesaid observations get support from another decision of the Supreme Court in State of Maharashtra v. Veerappa R. Saboji : (1979)IILLJ393SC . That was a case of a Judicial Officer initially appointed on probation on 31-10-1960. The order of appointment clearly stated that the appointee was to be on probation for a period of two years from the date on which he took charge, and during that period his appointment was liable to be terminated without notice, and after the period of probation his services were liable to be terminated on one month's notice. This judicial officer continued in service upto 31-1-1972, i.e. for a period of about more than 11 years. By an order dated 15-12-1971 his services were terminated from 1-2-1972, mentioning that his appointment was still temporary and that his services were liable to be terminated on one month's notice and, therefore, he was informed that he would cease to be in service with effect from 1-2-1972. This order was challenged by the officer concerned before the Bombay High Court by a writ petition, which was allowed. The State of Maharashtra, therefore, went in appeal to the Supreme Court. The Supreme Court considered Rule 4(2)(iv) of the Bombay Judicial Service Recruitment Rules,

1956, which was to the following effect:

Unless otherwise expressly directed, every person appointed under the last foregoing sub-rule shall be on probation for a period of two years and on the expiry of such period he may be confirmed if - (a) there is a vacancy; and (b) his work is found satisfactory.

It was urged by the officer concerned that he had become a confirmed Government servant and the order terminating his services simpliciter was by way of punishment. The Supreme Court from the said rule considered that there are two parts of Clause (iv) - (1) that it is imperative to put every person appointed under Sub-rule (2) on probation for a minimum period of two years "unless otherwise expressly directed", and (2) on the expiry of the said period of two years the person appointed may be confirmed if there is a vacancy and if his work is found to be satisfactory. The Supreme Court considered that Sub-rule (2) (iv) of Rule 4 of the said Rules comes under the ordinary and normal rule that without an express order of confirmation the Government servant will not be taken to have been confirmed in the post to which he was appointed temporarily and/or on probation. In coming to this conclusion, the Supreme Court referred to *Shri Kedar Nath Bahl Vs. The State of Punjab and Others*, wherein Palekar, J. observed:

The law on the point is now well settled. Where a person is appointed as a probationer in any post and a period of probation is specified, it does not follow that at the end of the said specified period of probation he obtains confirmation automatically even if no order is passed in that behalf. Unless the terms of appointment clearly indicate that confirmation would automatically follow at the end of the specified period, or there is a specific service rule to that effect, the expiration of the probationary period does not necessarily lead to confirmation. At the end of the period of probation an order confirming the officer is required to be passed and if no such order is passed and he is not reverted to his substantive post, the result merely is that he continues in his post as a probationer.

This was the subject-matter of review and the appeal was again dismissed. In that dismissal order, Bachawat, J. also observed:

This Court has consistently held that when a first appointment or promotion is made on probation for a specified period, and the employee is allowed to continue in the post after the expiry of the period without any specific order of confirmation, he should be deemed to continue in his post as a probationer only, in the absence of any indication to the contrary in the original order of appointment or promotion or the service rules.

In the judgment *Untwalia*, J. also considered the aspect where some allegations are made with a view to request the Court to make a probe and to find out what was behind the order. *Untwalia*, J. in para 10 observed as to what is the effect of such aspect and considered that if a Government servant is compulsorily retired

or one who is officiating in a higher posts is reverted to his parent cadre, or when the services of an officiating or temporary Government servant are dispensed with by an order of termination simpliciter, then problems arise in finding out whether it is by way of punishment. It was specifically observed that in different kinds of situation, different views have been expressed. Yet the underlying principle remains the same. One should not forget a practical and reasonable approach to the problem in such cases. It is further observed that ordinarily and generally, and there may be a few exceptions, any of the three courses indicated above is taken recourse to only if there are some valid reasons for taking the action against the Government servant. If a probe in the matter is allowed to be made in all such cases, then curious results are likely to follow. In a given case, there may be valid reasons, may be of a serious kind, which led the authorities concerned to adopt one course or the other as the facts of a particular case demanded. If one were to say in all such cases that the action has been taken by way of punishment then the natural corollary to this would be that such action could be taken if there was no such reason in the background of the action. Then the argument advanced is that the action was wholly arbitrary, mala fide and capricious and, therefore, it was violative of Article 16 of the Constitution. Untwalia, J., therefore, observed, where to draw the line in such cases, and held that ordinarily and generally the rule would be that you have to look to the order on the face of it and find out whether it casts any stigma on the Government servant. In such a case there is no presumption that the order is arbitrary or mala fide unless a very strong case is made out and proved by the Government servant who challenges such an order. In that case the termination was held to be justified. Therefore, if the order is an order of termination simpliciter terminating the services of a probationer, then it cannot be said to be an order by way of punishment merely because some inquiry is made earlier or some earlier observations are made which ultimately culminate into the order of termination simpliciter according to the normal rules or authority of a master, so far as the probationer is concerned. The Supreme Court has observed that ordinary and normal rule is that without an express order of confirmation the Government servant will not be taken to have been confirmed in the post to which he was appointed temporarily and/or on probation. So, if there are no rules, as in the instant case, this ordinary and normal rule shall be applicable.

19. Again, the Supreme Court in *Union of India v. P.S. Bhatt* AIR 1981 S C 957, considered the case of a person appointed to a higher post on probation. That person was reverted to his original post by an order which cast no stigma. It was held that the order was not by way of punishment even if the abusive language used by the employee against the superior was the motive or the inducing factor for passing the order.

20. In *Commodore Commanding Southern Naval Area, Commodore Commanding, Southern Naval Area, Cochin Vs. V.N. Rajan*, , the Supreme Court had an occasion to consider the services of a servant who was on probation. In para 8 the Supreme Court reproduced with approval the observations in *Oil and*

Natural Gas Commission and Others Vs. Dr. Md. S. Iskender Ali, , wherein it was observed:

As the respondent was a temporary employee on probation, it was open to the employer to terminate his services at any time before he was confirmed, if the employer was satisfied that he was suitable for being retained in service.

21. The Supreme Court in case of Commodore Commanding Southern Naval Area (supra), considered the argument of the learned Counsel for the respondent (employee) that the remarks made in the assessment roll went to show that the intention of the appointing authority was to proceed against the respondent by way of punishment, and observed:

...We are, however, unable to agree with this submission. It is obvious that a temporary employee is appointed on probation for a particular period only in order to test whether his conduct is good and satisfactory so that he may be retained. The remarks in the assessment roll, merely indicate the nature of the performance put in by the officer for the limited purpose of determining whether or not his probation should be extended. These remarks were not intended to cast any stigma.

Therefore, because a person during the period of probation was not found suitable, his termination was held to be justified without inquiry.

22. Now, if we again refer to the order of appointment of the petitioner (Annexure-"A") it clearly shows that the petitioner was appointed initially on probation. There are no conditions as to when the probation period will be deemed to have been over and what is the consequence after the period of probation is completed, nor there is any guideline as to when there should be confirmation. If that is so, normal rule that a probationer continue to be a probationer unless he is confirmed, shall have to be followed.

23. At this stage I would refer to one ingenious argument advanced by Mr. N. Ajmera. He has referred to Annexure "D". Now, this Annexure "D" is not specifically with reference to the petitioner alone, but it refers to various employees of the Municipality and refers to the resolution dated 9-1-1981 to the General Board. The heading or general caption refers to various employees who had completed the probation period and whose work was found to be satisfactory, and orders were made pertaining to them as stated therein. But so far petitioner Charulataben M. Gohil is concerned, she is at serial No. 4, and decision about her was taken by resolution No. 135 showing that her period of probation was extended by six months more. Therefore, the general caption in this resolution dated 12-1-1981 cannot be resorted to by Ajmera to show that the work of the petitioner was also found to be satisfactory. If that would have been so, she would have been definitely confirmed. But the fact that she is not confirmed, clearly goes to show that her work was not found to be satisfactory and mention of satisfactory work referred to in the caption of this order pertains to those whose work was found to be satisfactory.

24. Further, there is a decision of this Court in P.A. Mehta v. State of Gujarat Special Civil Application No. 724 of 1981, decided by P.D. Desai, J. on 17-4-1981. In that decision, P.D. Desai, J. took the view that if a person is appointed on probation and if he is continued in service after the expiry of probation period, it would not automatically follow confirmation.

25. In view of the discussions made above, the petitioner has no case to continue, in service and it cannot be said that the order of termination simpliciter of her service, which were the services of a probation would be a punitive order so as to attract the provisions of Article 311(2) of the Constitution of India. The petition is, therefore, dismissed with no order as to costs. Rule is discharged. Interim order vacated.