

(2012) 08 CHH CK 0042
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 6967 of 2009

Smt. Shraddha Akash Shrivastava

APPELLANT

Vs

State of C.G. and Another

RESPONDENT

Date of Decision : 30-08-2012

Acts Referred:

Citation : (2012) 4 CGLJ 615

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : V.G. Tamaskar and Mr. Ashok Swarnakar, for the Appellant; Y.S. Thakur, Dy. A.G. and Shri Sanjay K. Agrawal, Advocate General, for the Respondent No. 2., for the Respondent

Judgement

Satish K. Agnihotri, J.—The batch of petitions viz. W.P. (S) Nos. 6967, 7131 and 7255 of 2009, involve common facts and common question of law and, as such, they are being considered and decided by this common order. For adjudication of these petitions, the documents filed in WP (S) No. 6967 of 2009 are being referred, as the facts and documents of all these petitions are identical. By these petitions, the petitioners seek quashing of the order dated 06.11.2009 (Annexure-P/5 to WP (S) No. 6967 of 2009) by which the petitioners were discharged from the services while working on probation as Civil Judge Class II. The petitioners in W.P. (S) Nos. 6967 & 7255 of 2009 also seek quashing of the order dated 09.11.2009 (Annexure - P/6 to WP (S) No. 6967 of 2009) by which the respondent No. 2 endorsed the order dated 06.11.2009 passed by the respondent No. 1.

3. The indisputable facts, which are in narrow compass, as projected by the petitioners, are that the petitioners were appointed by order dated 22.09.2006; (Annexure-P/2 to WP (S) No 6967 of 2009) as Civil Judge Class II in the pay scale of Rs. 9000-250-10750-300-13150-350-14550. Thereafter, vide order, dated 07.10.2006 (Annexure-P/3 to WP (S) No. 6967 of 2009), the petitioners were directed to report at their respective place of posting on or before

26.10.2006. The petitioners joined on 18.10.2006, 13.10.2006 & 11.10.2006, respectively. Subsequently, the petitioners were not confirmed on probation and discharged from the service by the impugned order dated 06.11.2009.

4. According to the petitioners, during their tenure, they were never served with any show cause notice and even no order was passed extending the probation period of the petitioners. However, all of a sudden, by order dated 06.11.2009 (Annexure-P/5 to WP (S) No. 6967 of 2009) in exercise of the powers conferred by sub-rule (4) of Rule 11 of the Chhattisgarh Lower Judicial Service (Recruitment and Conditions of Service) Rules, 2006 (for short "the Rules, 2006") on the recommendation of the respondent No. 2 the petitioners were discharged from service on the ground of not being found suitable for confirmation in the service. Subsequently, by order dated 09.11.2009 (Annexure-P/6 to WP (S) No. 6967 of 2009) the respondent No. 2 endorsed the order dated 06.11.2009. Thus, these petitions.

5. Shri Tamaskar & Shri Swarnakar, learned counsel appearing for the respective petitioners, would submit that the discharge of the petitioners after completion of three years of service is bad in law on the ground that it ought to have been done immediately after the period of probation of two years, as such it was a case of "deemed confirmation". The impugned discharging order is an unreasoned and non-speaking order.

6. The petitioners have produced a copy of comparative chart showing disposal of cases by the judicial officers indicating that the disposal of the petitioners were better than others, who have been confirmed on probation.

7. On the other hand, Shri Thakur, learned Dy. Adv. General appearing for the State/respondent No. 1 while supporting the impugned orders, would submit that the employee has no right before his services are terminated during the period of probation.

8. Shri Agrawal, learned Advocate General appearing for the respondent No. 2 would submit that the overall performance and entire service records of the petitioners were considered by the Full Court, before taking decision of not suitable for confirmation and accordingly recommendation has been made by the respondent No. 2 to the respondent No. 1. Consequently, the respondent No. 1 has discharged the petitioners from the service by order dated 6-11-2009. Therefore, the question of deemed confirmation does not arise. The petitioners have been discharged from the service as not found suitable for confirmation and, as such, the question of service of show cause notice does also not arise.

9. In respect of comparative chart produced by the petitioners indicating the disposal of the judicial officers, Shri Agrawal would submit that disposal governs only disposal of cases, not quality of judgment and other qualifications namely; integrity, behaviour, etc. The disposal alone is not the criteria to confirm the petitioners on probation. However, they were graded "poor" in one year, "average" in other year.

10. Shri Agrawal would further submit that mere completion of a period of two years service by the petitioners does not result in automatic confirmation in service or post as the petitioners were not found suitable for confirmation on the post of Civil Judge Class II. Shri Agrawal would next submit that sub-rule (4) Rule 11 of the Rules, 2006 provides that the High Court may recommend termination of service of the probationer Civil Judge. From the impugned order, it is manifest that the respondent No. 2 has made recommendation for discharging the petitioners from the service on the ground of not being suitable.

11. Shri Agrawal would also submit that without there being a confirmation order, it is not necessary to pass the order extending the period of probation from two years to three years. In fact, since no confirmation order was passed or any certificate to the effect of confirming the probation was passed, accordingly, the probation period of the petitioners was extended for one more year.

12. I have heard learned counsel appearing for the parties, perused the pleadings and the documents appended thereto.

13. The respondent No. 2 took a decision not to confirm the services of the petitioners on probation and further decided to discharge them from the service and accordingly on the basis of recommendation made by the respondent No. 2, the respondent No. 1 passed the orders separately in respect of each of the petitioner on the same day i.e. 06.11.2009.

14. The contention of the learned counsel appearing for the petitioners that since the Rules, 2006 were not mentioned in the appointment order, the same cannot be made applicable in case of the petitioners. It is found that in the appointment order, there was no mention of any rules, however, Rules, 2006 was in force by way of notification dated 7-4-2006. The appointment order was passed under the prevailing Rules, 2006. Thus, the aforesaid contention of the petitioners is rejected.

15. As per the directions of this Court, entire original papers in respect of the petitioners were produced by the respondent No. 2. On perusal of the records of Smt. Shraddha Akash Shrivastav, it was found that the District Judge of the concerned district was informed by memo dated 6-11-2007 to communicate the officers concerned to improve their disposal of cases. The District Judge was further informed on 11-2-2008, 16-5-2008 & 30-6-2009. Thus, it cannot be held that the Smt. Shraddha Akash Shrivastav has no notice about her judicial work and remarks in the Annual Confidential Reports (for short "the ACRs").

16. In respect of Ku. Dwarika Tidke & Yashpal Singh Tandon the District Judge of the concerned district was informed by memo dated 22-8-2007 to communicate observations in respect of their performance. On 6-11-2007 again the District Judge was informed to communicate the remarks with an advice to improve their disposal. On 16-5-2008, 10-11-2008, 30-6-2009 & 22-9-2009 similar memos were sent.

17. Thus, the contention of the petitioners that they were never informed even to improve their conduct is based in incorrect facts, as on perusal of the documents, it has been found that the petitioners have been informed time to time about their performance and no step was taken by the petitioners to improve their performance.

18. I have also perused the proceedings of the Full Court meeting. It is manifest that the remarks and other observations were considered. Smt. Shrivastava was graded "D" in the year 2007-08 and grade "E" in the year 2008-09. Ku. Tidke & Shri Tandon were graded "E" in the year 2007-08 and grade "D" in the year 2008-09. When in case of other Judicial Officers they were graded as "D" i.e. "average" and in case of the petitioners one year it was "average" and another year it was "below average" i.e. "poor". Thus, comparatively the performance of the petitioners was not good, as pleaded by the petitioners. On perusal of the minutes of the full court proceedings held on 27-10-2009, it is manifest that the over all performance and entire service records of 60 Civil Judges who were considered for confirmation were examined and it was found that four officers including the petitioners were not found suitable for confirmation.

19. On careful consideration of the material, the evaluation made by the Full Court, forming their unanimous opinion cannot be held as arbitrary or capricious and irrational. In view of that, judicial review of the Full Court's unanimous opinion is impossible except in an extraordinary case when the Court is convinced that some real injustice has been done.

20. In *Rajesh Kohli Vs. High Court of J. and K. and Another*, , the Supreme Court observed as under:

18. During the period of probation an employee remains under watch and his service and his conduct is under scrutiny. Around the time of completion of the probationary period, an assessment is made of his work and conduct during the period of probation and on such assessment a decision is taken as to whether or not his service is satisfactory and also whether or not on the basis of his service and track record his service should be confirmed or extended for further scrutiny of his service if such extension is permissible or whether his service should be dispensed with and terminated. The services rendered by a judicial officer during probation are assessed not solely on the basis of judicial performance, but also on the probity as to how one has conducted himself.

21. In *Rajendra Singh Verma (Dead) through L.Rs Vs. Lt. Governor of NCT of Delhi and Another*, observed as under:

218. On a careful consideration of the entire material, it must be held that the evaluation made by the Committee/Full Court, forming their unanimous opinion, is neither so arbitrary nor capricious nor can be said to be so irrational, so as to shock the conscience of this Court to warrant or justify any interference. In cases of such assessment, evaluation and formulation of opinions, a vast range of multiple factors play a vital and important role and no one factor should be

allowed to be blown out of proportion either to decry or deify an issue to be resolved or claims sought to be considered or asserted. In the very nature of things, it would be difficult, nearing almost an impossibility to subject such exercise undertaken by the Full Court to judicial review except in an extraordinary case when the Court is convinced that some real injustice, which ought not to have taken place, has really happened and not merely because there could be another possible view or someone has some grievance about the exercise undertaken by the Committee/Full Court.

22. It is not the case of the petitioners, as neither pleaded nor argued, that the impugned order dated 06.11.2009 is a stigmatic order and, as such, show cause notice was necessary.

23. In *Khazia Mohammed Muzammil Vs. The State of Karnataka and Another*, the Supreme Court observed as under:

9. A bare reading of the above impugned notification shows that it is *ex facie* not stigmatic. It simply discharges the appellant from service as having been found unsuitable to hold the post of District Judge. Until and unless, the appellant is able to show circumstances supported by cogent material on record that this order is stigmatic and is intended to overreach the process of law provided under the Rules, there is no occasion for this Court to interfere on facts. As far as law is concerned, the question raised is with regard to the applicability of the concept of "deemed confirmation", to the present case under the service jurisprudence.

24. Rule 11 of the Rules, 2006 reads as under:

Probation.--

(1) A person appointed to category (a) of sub-rule (1) of Rule 3 shall be posted on probation for a period of two years.

(2) A person appointed to a post in category (a) of sub-rule (1) of Rule 3 shall undergo a judicial training for a period of one year in accordance with the scheme prepared by the High Court and shall also include training in the State Judicial Officers' Training Institute.

(3) The High Court may, at any time before the completion of probation period extend the period of probation, but the total period of probation shall not exceed three years.

(4) The High Court, may at any time, before the completion of period of probation, recommend termination of the services of Civil Judge appointed to the category (a) of sub-rule (1) of Rule 3.

(5) On successfully completion of probation, a probationer shall be confirmed in the Service or post, to which, he has been appointed and if no permanent post is available, a certificate shall be issued in his favour by the High Court to the effect that the probationer would have been confirmed, but for the non-availability of the permanent post and as soon as a permanent post becomes available, he

shall be confirmed.

(6) A person appointed on probation shall continue as such until terminated or confirmed under sub-rule (4) or sub-rule (5) as the case may be.

(7) When a probationer is confirmed, he shall be allowed to draw annual increment for the whole of the period of probation.

25. On perusal of the entire Rule 11 of the Rules, 2006, which deals with the probation, under sub-rule (6) a person appointed on probation shall continue as such until terminated or confirmed under sub-rule (4) or sub-rule (5) as the case may be. Sub-rules (1) & (3) also provide that the official shall be posted on probation for a period of two years and thereafter, before the completion of probation period extend the period of probation, but the total period of probation shall not exceed three years.

26. The identical issue arising out of the provisions of the M.P. Judicial Service (Classification, Recruitment and Conditions of Service) Rules, 1955 came into consideration before three Hon'ble Judges of the Supreme Court in High Court of High Court of Madhya Pradesh thru. Registrar and Others Vs. Satya Narayan Jhavar, , wherein the Supreme Court observed that there is no concept of "deemed confirmation" under the rules. It requires proper orders for confirmation even if the employee has continued without confirmation. The Supreme Court further observed as under:

38. Apart from sub-rule (1) of Rule 24 of the Rules, the effect of sub-rule (3) may also be considered. Under sub-rule (3), if a probationer has been found unsuitable for the service during the period of probation or he has failed to pass the prescribed departmental examination then the Governor at any time thereafter may dispense with his services. The power for dispensing with services has been conferred upon the Governor, to be exercised at any time after the period of probation if the probationer is found unsuitable or if he has failed to pass the prescribed departmental examination. If the interpretation given by this Court in the case of Dayaram Dayal to sub-rule (1) of Rule 24 is held to be correct then this power of the Governor under sub-rule (3) would become otiose inasmuch as a probationer would acquire a deemed confirmation on the expiry of the maximum period of probation provided in sub-rule (1). Sub-rule (3) of Rule 24, therefore, is another inbuilt provision in the Rules which can be held to be a special provision to negative the inference of deemed confirmation on the expiry of the maximum period of probation indicated in sub-rule (I), as has been observed by this Court in the case of Dayaram Dayal also and which is in conformity with the decisions of this Court in the cases of Samsher Singh, Sukhbans Singh, G.S. Ramaswamy and Akbar Ali Khan. Rule 24, on a plain grammatical meaning being given to the words used therein does not provide for a deemed confirmation on expiry of the maximum period of probation, and on the other hand it contemplates a positive order of confirmation to be passed by the appropriate authority, if the authority concerned is satisfied about the fitness

of the probationer for confirmation, and if the probationer has passed the departmental examination, as prescribed. Mere continuance of the probationer after considering his case for confirmation during the period of probation and finding him unsuitable for confirmation by the decision of the Full Court, by no stretch of imagination can be construed to be a confirmation by implication, as was held by this Court in the case of Dharam Singh and that can never be the intention of the rulemaking authority. If the Full Court would not have considered the suitability of the probationer for confirmation while the probation period was continuing, the matter might have stood on a different footing.

27. In the cases on hand, the petitioners were continued in service, but no order of confirmation was passed and, as such, the contention of the learned counsel for the petitioners that since the petitioners have worked for more than two years without any order for extension of probation that may be deemed as confirmation, is unsustainable in the eyes of law and accordingly the aforesaid contention of the petitioners is rejected.

28. The Supreme Court in Registrar, High Court of Registrar, High Court of Gujarat and Another Vs. C.G. Sharma, observed as under:

26. A large number of authorities were cited before us by both the parties. However, it is not necessary to go into the details of all those cases for the simple reason that sub-rule (4) of Rule 5 of the Rules is in pari materia with the Rule which was under consideration in the case of State of Maharashtra v. Veerappa R. Saboji and we find that even if the period of two years expires and the probationer is allowed to continue after a period of two years, automatic confirmation cannot be claimed as a matter of right because in terms of the Rules, work has to be satisfactory which is a prerequisite or precondition for confirmation and, therefore, even if the probationer is allowed to continue beyond the period of two years as mentioned in the Rule, there is no question of deemed confirmation. The language of the Rule itself excludes any chance of giving deemed or automatic confirmation because the confirmation is to be ordered if there is a vacancy and if the work is found to be satisfactory. There is no question of confirmation and, therefore, deemed confirmation, in the light of the language of this Rule, is ruled out. We are, therefore, of the opinion that the argument advanced by learned counsel for the respondent on this aspect has no merits and no leg to stand. The learned Single Judge and the learned Judges of the Division Bench have rightly come to the conclusion that there is no automatic confirmation on the expiry of the period of two years and on the expiry of the said period of two years, the confirmation order can be passed only if there is vacancy and the work is found to be satisfactory. The Rule also does not say that the two years' period of probation, as mentioned in the Rule, is the maximum period of probation and the probation cannot be extended beyond the period of two years. We are, therefore, of the opinion that there is no question of automatic or deemed confirmation, as contended by the learned counsel for the respondent. We, therefore, answer this issue in the negative and against the

respondent.

29. It is well settled that no opportunity of hearing is required to be given to the probationer, if the probationer is dismissed/ terminated from the service during the period of probation.

30. The Supreme Court in *Om Prakash Mann Vs. Director of Education (BASIC) and Others*, observed as under:

10.....It is well settled principle of law that if the probationer is dismissed/ terminated during the period of probation no opportunity is required to be given and, therefore, the question of violation of principle of natural justice does not arise in the given facts of this case.

31. The decision of Supreme Court in *Amar Pal Singh Vs. State of U.P. and Another*, , cited by the petitioners, is not relevant to the facts of the case, as the said decision deals with making unwarranted comments or extravagant criticism and usage of intemperate language against subordinate judicial officers in judgments of High Courts.

32. The reliance of the petitioners upon the decision of the Supreme Court in *Registrar General, High Court of Registrar General, Patna High Court Vs. Pandey Gajendra Prasad and Others*, , is of no assistance, in the facts of the present petitions, as the Supreme Court was dealing with recording of the ACRs in the service record of the Judicial Officers.

33. The Supreme Court in *High Court of High Court of M.P. Vs. Mahesh Prakash and others*, , having regard to the status of the Full Court, which cannot be disbelieved lightly, held that it is undesirable and unsafe for one Full Court to revise the decision taken by the earlier Full Court, particularly in cases of promotion, confirmation, super session and the like. It is holding the field. However, in an extraordinary case when the Court is convinced that some real injustice, which ought not to have taken place, has really happened and not merely because there could be another possible view or someone has some grievance about the exercise undertaken by the Full Court, review may be possible.

34. For the reasons mentioned hereinabove and applying the well settled principles of law to the facts of the present petitions, I have not noticed any injustice or violation of any statutory rules. As a sequel, the writ petitions, being bereft of merit, are liable to be and are hereby dismissed, leaving the parties to bear their own costs.