

(2011) 07 KAR CK 0205

In the Karnataka High Court

Case No : Writ Petition No. 21847 of 2004 (GM-RES)

Sri K.B. Krishnamurthy and Judicial Magistrate First Class

APPELLANT

Vs

The State of Karnataka and The Hon'ble High Court of
Karnataka

RESPONDENT

Date of Decision : 22-07-2011

Acts Referred:

Karnataka Civil Services (Probation) Rules, 1977 — Rule 2 (2), 3, 4, 5, 5 (1)
Karnataka Judicial Service (Recruitment) Rules, 1983 — Rule 2

Citation : (2011) 07 KAR CK 0205

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : K. Subba Rao, for M. Subramanya Bhat, for the Appellant; Revathy Adinath Narde, High Court Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Anand Byrareddy

1. The facts are as follows: The petitioner practised as an Advocate at Bangalore. He was selected and appointed as a Civil Judge (Junior Division) in the Karnataka Judicial Service in the year 1998. He underwent three weeks of training and thereafter was posted as Additional Civil Judge (Junior Division) and JMFC at Bailhongal in Belgaum District. He worked there for one year and one month. He thereafter was transferred to Ramadurg in the same capacity and from Ramadurg, he was transferred as Civil Judge (Junior Division) and JMFC, Malavalli in Mandya District. He served there for two years and from there, he was transferred to Mundargi in Gadag District. Without any preamble or earlier proceedings, the petitioner was served with an Office Order dated 24.5.2004 by the District and Sessions Judge, Gadag and the petitioner was informed that he has been relieved from his post as he was found unsuitable for the same. It is aggrieved by the said order of discharge, that the petitioner is before this court.

The learned Senior Counsel K. Subbarao, appearing for the learned Counsel for

the petitioner, would contend that the petitioner had put in more than six years of service. Though he was on probation for a period of two years, which is the period prescribed under the Karnataka Civil Services (Probation) Rules, 1977 (hereinafter referred to as the "Probation Rules" for brevity), it was neither extended nor was it declared as having been successfully completed. In any event, during his entire stint, the petitioner had discharged his duties to the best of his ability and to his knowledge, all along, his work and performance were appreciated by his superiors. 2. It is pointed out that alongwith the petitioner, 56 persons were appointed as Civil Judges during the year 1998, four of whom had been discharged during the year 2003. The High Court, which monitors and supervises the work of Judicial Officers, having discharged the Judicial Officers appointed along with the petitioner, whose work was not satisfactory, the fact that the petitioner continued in service even after discharge of those officers, would be an indication that the petitioners performance was not found wanting in any respect. But after expiry of more than six years, the petitioner being taken unawares by the order of discharge is therefore wholly inexplicable and is patently illegal. The only clue, which in itself is again not sufficient to warrant the discharge of the petitioner, is a communication from the Registrar General of the High Court communicating certain remarks in his Confidential Records for the period 1.1.2002 to 5.8.2002, as per letter dated 29.3.2004. The remarks were communicated to the petitioner after a lapse of more than eighteen months and was just prior to discharging him from service. The only remark that has been made against the petitioner was that there was scope for improvement. This, by itself, could not be considered as an adverse remark and it was wholly advisable and therefore it is contended that there is no explanation at all for the petitioner's discharge from service as having been found unsuitable, in the absence of any material to indicate that his services were, at all points of time, well appreciated and it is on record that it was more than satisfactory. One other incident which the petitioner is able to recall had occurred during his tenure at Malavalli in the year 2001. It is stated that a new building had been constructed for the court during March 2001. This was away from the town. There were no facilities like Canteen, Toilets and drinking water. There was demand by everyone, including the court staff that a Canteen and other facilities be provided. There was however, no separate building for a Canteen. This was brought to the attention of the District Judge. The District Judge, who was on a visit to the court building, orally directed the petitioner to take steps to provide a Canteen. The petitioner accordingly had invited tenders and awarded the contract of running a Canteen to one Venkatesh on payment of a licence fee of Rs. 200/- per month to the Government for a period of eleven months. An agreement was executed and as there was no permanent structure, the contractor himself had put up a temporary structure measuring 10" * 10, by arising two walls near the compound wall and providing a roof with zinc sheets. This agreement with the Canteen Contractor was with a clause that he would immediately vacate the premises if there was any objection for whatsoever reason from any source. It transpires that after the Canteen had functioned for

about eight months, there were anonymous letters addressed to the High Court by certain individuals making allegations against the petitioner. This had prompted the District Judge to inspect the premises, including the Canteen, in respect of which, pointed inquiries were made though the petitioner was not questioned and it is learnt by the petitioner that a report had been submitted to the High Court and thereafter the petitioner was telephonically informed to shut down the Canteen, which was immediately implemented and the proprietor vacated the premises. Thereafter, the petitioner had received a communication from the High Court informing him that he was permitted to provide facilities for running a Canteen on a temporary basis. Accordingly, the petitioner had invited for fresh tenders and a contract was awarded to yet another. This appears to have infuriated the earlier contractor, who is said to have made anonymous complaints to the higher authorities. This had prompted yet another inquiry by the Registrar (Vigilance) of the High Court. Though the petitioner was not questioned at all, he was summarily transferred to Mundargi. There he received the order of discharge. It is therefore the petitioner's belief that acting on the allegations made against him, there has been an inquiry conducted behind his back and findings have been arrived at, which is the foundation for the petitioner's discharge from service. It is therefore contended that the law is well settled that if the findings on allegations arrived at behind the back of a person, such as the petitioner and if that formed the foundation for an order of discharge simpliciter, it can only be construed as an order of termination by way of punishment.

3. It is next contended that in terms of the Karnataka Civil Services (Probation) Rules, 1977 (hereinafter referred to as "the Probation Rules" for brevity), the period of probation prescribed is two years and the period commenced, insofar as the petitioner is concerned, with effect from 27.6.1999 and came to a close on 25.7.2001. The respondents could have extended the period of probation in terms of Rule-4 for reasons to be recorded in writing by the Governor for such period not exceeding half of the prescribed period of probation. If within the prescribed or extended period, the probationer has to appear for examination or a test required to be passed during the period of probation, and if the result is not known before the expiry of such period, then the period of probation shall be deemed to have been extended until the publication of the results of such examination or test. The petitioner, on the other hand, was exempted from appearing for the Kannada Language examination, which is the only examination prescribed and since under Rule 5, it was required that a declaration of satisfactory completion of probation was to be made at the end of the prescribed period or the extended period and as there was no extension, nor was any order passed at the end of the probationary period and the petitioner having continued in service after the prescribed period and having served as a Judicial Officer for a period of five years, there is deemed satisfactory completion of probation, in which event, it is contended that it was not open for the petitioner to have been terminated from service without valid reasons and therefore, the order of

discharge, which is punitive in nature, is wholly illegal and arbitrary.

4. The learned Government Pleader, on the other hand, has filed Statement of Objections to assert that the discharge of the petitioner is a discharge simpliciter on the face of it and does not cast any stigma on the petitioner. As no punishment was imposed, the question of any regular inquiry under the provisions of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 (hereinafter referred to as the CCA Rules" for brevity) was unnecessary.

In this regard, reliance is placed on a judgment of the apex Court in H.G. Sangati vs. Registrar General, High Court of Karnataka, AIR 2001 SC 1148, and the following Passage from the said judgment is extracted hereunder:

It is well settled by a series of decisions of this Hon"ble Court including the Constitution Bench decision in Parshotam Lal Dhingra Vs. Union of India (UOI), and Seven Judge Bench decision in Samsher Singh Vs. State of Punjab and Another, that services of an appointee to a permanent post or probation can be terminated or dispensed with during or at the end of a period of probation because the appointee to a permanent post or probation can be terminated or dispensed with during or at the end of the period of probation because the appointee does not acquire any right to hold or continue to hold such a post during the period of probation. In Samsher Singh case, it was observed that the period of probation is intended to assess the work of the probationer whether it is satisfactory and whether the appointee is suitable for the post, the competent authority may come to the conclusion that the probationer is unsuitable for the job and hence must be discharged on account of inadequacy for the job or for any temperamental or other similar grounds not involving moral turpitude. No punishment is involved in such a situation. Recently, in Dipti Prakash Banerjee Vs. Satyendra Nath Bose National Center for Basic Services AIR 1999 SCW 605, AIR 1990 SC 983 having reviewed the entire available case law on the issue, this court has held that termination of a probationer's services, if held that termination of a probationer's services, if motivated by certain allegations tantamounting of misconduct but not forming foundation of a simple order of termination cannot be termed punitive and hence, would be valid. In Satya Narayan Athya Vs. High Court of M.P. and another, the petitioner appointed on probation as a Civil Judge and not confirmed, was discharged from service in view of the non-satisfactory nature of his service. This court held that the High Court was justified in discharging the Petitioner from service during the period of probation and it was not necessary that there should have been a charge and an inquiry on his conduct since the petitioner was only on probation and it was opened to the High Court to consider whether he was suitable for confirmation or should be discharged from service.

5. It is also contended that the petitioner was discharged from service under clause (b) of Sub-rule (1) of Rule 5 of the Probation Rules, 1977 and hence, the order of discharge of the petitioner is in accordance with the Rules.

6. By way of reply, the learned Senior Advocate requested that the record be called for and after having perused the same, closely, he would submit that the petitioner's suspicions are confirmed in that, it is the incident pertaining to the establishment of the Canteen and closure thereafter and the further circumstances were the subject matter of a detailed inquiry conducted by the Registrar - Vigilance as well as the District Judge, which has been placed before the Administrative Committee of the High Court and on its recommendations, the Full Court has accepted the findings, but however has innocuously recommended the petitioner's discharge from service as being found unsuitable for the post. This would tantamount to an order of termination by way of punishment and therefore would seek the intervention of this court.

7. In the above background, the points that arise for consideration would be as follows:

(a) In view of the record disclosing that there were serious allegations against the petitioner which had been investigated through the Registrar (Vigilance), whether it could be said that the same has formed the foundation for the petitioner's discharge from service and therefore, was in the nature of an order of termination by way of punishment ?

(b) Whether the petitioner having completed two years of the probationary period and in the absence of extension of the period of probation, whether it could be said that there was deemed confirmation of service?

8. In answering the above issues, it is unnecessary to examine every single decision that has been cited at the Bar as each case would depend on its facts and circumstances. The apex Court in the case of *Rajesh Kohli Vs. High Court of J. and K. and Another*, has held that 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 could 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. If examined in this vein, the record would indicate that there were serious allegations against the petitioner, on a preliminary investigation conducted through the Registrar (Vigilance) of the High Court. What has emerged, however, is that the petitioner's performance and conduct were not up to the mark. In respect of the allegations, no detailed inquiry has been conducted. It is perfunctory prima facie findings that are furnished. Even without which, the Full Court, which is assisted by the Administrative Committee, would have no clue as to the ground realities. It is depending on that minimum material to be gathered to form a prima facie opinion on the basis of complaints and

allegation that such "discreet inquiries" are made and it is that which has been the motive for the order of discharge being issued. It can neither be said that it is based on findings arrived at an inquiry or inquiries conducted behind the back of the petitioner nor can it be said that the same is stigmatic in nature. As held by the apex Court in *Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others*, whether an order of termination of a probationer can be said to be punitive or not, depends on whether the allegations which are the cause of the termination are the motive or foundation and if findings were arrived at in an inquiry as to misconduct behind the back of an officer or without a regular departmental inquiry, a simple order of termination is to be treated as founded on the allegations and would be bad. But if the inquiry was not held and no findings were arrived at and the employer was not inclined to conduct an inquiry but at the same time he did not want to continue the employee's services, it would only be a case of motive and the order of termination of the employee would not be bad.

9. Applying this test in the present case on hand, the material on record would indicate that there are observations based on material gathered not only with regard to the petitioner's performance, but also as regards his conduct which did not require any detailed findings in deciding whether the petitioners performance was satisfactory and hence, it cannot be said that the order of discharge is punitive in nature or that it is stigmatic.

10. Insofar as the challenge to the Rules and the claim that there is a deemed confirmation and hence the discharge of the petitioner was not permissible, is also not tenable in the light of the judgment in *Khazia Mohammed Muzammil Vs. The State of Karnataka and Another*, wherein the apex Court has examined and reviewed the entire case-law while addressing the very Rules which are involved in the present case on hand and which was also questioned in the very same manner as the petitioner seeks to do. The Supreme Court has held as follows: 19. Having discussed in same elaboration the conduct of the appellant as well as his antecedents, now we proceed to examine the merits of the legal controversy raised in the present case on behalf of the appellant in relation to "deemed confirmation". The "deemed confirmation" is an aspect which is known to the service jurisprudence now for a considerable time. Both the views has been taken by the Court. Firstly, there can be ""deemed confirmation" after an employee has completed the maximum period of probation there can he "deemed confirmation" after an employee has completed the maximum probation period provided under the rules whereafter, his entitlement and conditions of service are placed at parity with a confirmed employee. Secondly, that there would be no "deemed confirmation" and at best after completion of maximum probation period provided under the rules governing the employee, the employee becomes eligible for being confirmed in his post. His period of probation remains in force till a written document of successful completion of probation is issued by the competent authority.

20. Having examined the various judgments cited at the Bar, including that of all larger Benches, it is not possible for this Bench to state which of the views is the correct enunciation of law or otherwise. We are of the considered opinion, as to what view has to be taken, would depend upon the facts of a given case and the relevant rules in force, it will be cumulative effect of these two basics that would determine the application of the principle of law to the facts of that case. Thus, it will be necessary for us to refer to this legal contention in some elucidation.

21. According to the appellant the language of Rule 3 of the 1977 Rules provides that the probation period cannot be extended beyond 3 years and upon expiry of such period the appellant would be deemed to have been confirmed. To substantiate this contention, the appellant relied upon Rules 3 and 4 of the 1977 Rules and Entry 2 of the Schedule under Rule 2 of the 1983 Rules which provide that there shall be two-year probation during which period, the officer was to undergo such training, as may be specified by the High Court of Karnataka. Therefore, the submission is that once the maximum period of probation under these Rules has expired the officer will stand automatically confirmed and thus is incapable of being discharged under Rule 5(1)(b) of the 1977 Rules.

22. We shall now proceed to discuss the judgments which have been relied upon by the appellant in support of his contentions. On merits these judgments are hardly applicable to the facts of the present case. While examining the cited judgments this Court has to keep in mind the specific rules relating to alleged automatic confirmation of the appellant and the fact that the appellant failed to satisfactorily complete the period of probation or extended period of probation in terms of Rule 5(1)(b) of 1977 Rules. The 1983 Rules ought to be read in conjunction with the 1977 Rules as they have duly been adopted by the High Court. The 1977 Rules are specific rules on the subject in question while the 1983 Rules are general rules and in any case there is no conflict between the two as they seek to achieve the same object in relation to probation and effects thereof in relation to different matters.

23. Not only the rules but even the principles of service jurisprudence fully recognise the status of an employee as a probationer and a confirmed employee. "Probationer" in terms of Rule 2(2) of the 1977 Rules means a government servant on probation. Rule 3 to 6 are the relevant rules which specifically deal with the period of probation, extension respondent or reduction of period of probation, satisfactory completion of the probation period and discharge of a probationer during the period of probation. The relevant rules read as under:

3. Period of probation:- The period of probation shall be as may be provided for in the rules of recruitment specially made for any service or post, which shall not be less than two years, excluding the period if any, during which the probationer was on extraordinary leave.

4. Extension or reduction of period of probation:

(1) The period of probation may, for reasons to be recorded, in writing, be

extended-

(i) by the Governor or the Government by such period as he or it deems fit;

(ii) by any other appointing authority by such, period not exceeding half the prescribed period of probation;

provided that if within the prescribed or extended period of probation, a probationer has appeared for any examinations or tests required to be passed during the period of probation and the results thereof are not known before the expiry of such period, then the period of probation shall be deemed to have been extended until the publication of the results of such examinations or tests or of the first of them in which he fails to pass.

2. The Government may, by order, reduce the period of probation of a probationer by such period not exceeding the period during which he discharged the duties of the post to which he was appointed or of a post he duties of which are, in the opinion of the Government, similar and equivalent to those of such post.

5. Declaration of satisfactory completion of probation, etc., - (1) At the end of the prescribed or, the case may be, the reduced or extended period of probation, the appointing authority shall consider the suitability of the probationer to hold the post to which he was appointed, and

(a) if it decides that the probationer is suitable to hold the post to which he was appointed and has passed the special examinations or tests, if any. required to be passed during the period of probation it shall, as soon as possible, issue an order declaring the probationer to have effect from the date of the expiry of the prescribed, reduced or extended period of probation;

(b) if the appointing authority decides that the probationer is not suitable to hold the post to which he was appointed or has not passed the special examinations or special tests, if any required to be passed during the period of probation, it shall, unless the period of probation is extended under Rule 4, by order, discharge him from service.

(2) A probationer shall not be considered to have satisfactorily completed the probation unless a specific order to that effect is passed. Any delay in the issue of an order under sub-Rule (1) shall not entitle the probationer to be deemed to have satisfactorily completed his probation.

Note:- in this Rule and rule 6 "discharge" in the case of a probationer appointed from another service or post, means reversion to that service or post.

6. Discharge of probationer during the period of probation:

(1) Notwithstanding anything in Rule 5, the appointing authority may. at any time during the period of probation, discharge from service a probationer on grounds arising out of the conditions, if any imposed by the Rules or in the order

of appointment, or on account of his un-suitability for the service or post; but the order of discharge except when passed by the Government shall not be given effect to, till it has been submitted to and confirmed by the next higher authority.

(2) An order discharging a probationer under this Rule shall indicate the grounds for the discharge but no formal proceedings under the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957, shall be necessary.

24. Now, let us analyse these Rules. No doubt Rule 3 states that the period of probation shall be, as may be, provided for in the rules of recruitment specially made for any service or post, which shall not be less than two years, (emphasis supplied) Out of which period extraordinary leave will have to be excluded. Thus the Rules contemplate that every service provides rules relating to probation. But the probation period should not be less than two years. The emphasis of the Rules is that minimum period of probation has to be two years. The period of probation can be extended for reason to be recorded by the competent authority by such period not exceeding half of the prescribed period of probation. Interestingly, to this Rule the framers of the Rules have introduced a proviso, which gives discretion to the authorities and, in fact, introduced deemed extension in the event the probationer has appeared for any exam or result thereof has not been declared within the period of probation and extended period. The Rule, therefore, contemplates deemed extension of probation period where the authorities have not passed any order for extending or declining to extend the period of probation provided the circumstances stated therein are satisfied.

25. The purpose of any probation is to ensure that before the employee attains the status of confirmed regular employee, he should satisfactorily perform his duties and functions to enable the authorities to pass appropriate orders. In other words, the scheme of probation is to judge the ability, suitability and performance of an officer under probation. Once these ingredients are satisfied the competent authority may confirm the employee under Rule 5 of the 1977 Rules.

26. Rule 5(2) places an obligation upon the authority that at the end of the prescribed period of probation, the authority shall consider the suitability of the probationer to the post to which it is appointed and take a conscious decision whether he is suitable to hold the post and issue an order declaring that the probationer has satisfactorily completed his probation period or pass an order extending the period of probation etc.. Rule 5(1)(b) empowers the authority that in the event it is of the view that the period of probation has not been satisfactorily completed or the probationer has not passed the special examinations, it may discharge him service unless the period of probation is extended.

27. Rule 5(2) has been couched with negative language. It specifically prescribes that a probationer shall not be considered to have satisfactorily completed the

probation unless a specific order to that effect is passed. The Rule further clarifies that if there is a delay in issuance of an order under the rule (1). it shall not entitle the probationer to be deemed to have satisfactorily completed his probation. In other words, the framers of the Rules have introduced a double restriction to the concept of automatic confirmation or deemed satisfactory completion of the probation period. Firstly, the specific order is required to be issued in that regard and secondly, delay in issuance of such orders does not tilt the balance in favour of the employee.

28. Rule 6(1) states that the competent authority may, at any time, during the period of probation, discharge from service, a probationer on grounds arising out of the conditions, if any, imposed by the Rules in the order of appointment, order account of his un-suitability for the service of post. However, the said order of discharge would take effect only after it is confirmed by the next higher authority. Rule 6(2) specifically excludes the application or holding of formal proceedings under the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957. It says that such course will not be necessary.

29. In the light of this statutory provision, let us also examine the probation period referred to under Item 2 of Rule 2 of the 1983 Rules. The Rule states that probation period will be of 2 years and further mandates during that period of probation, the officer must undergo a training, as may be specified by the High court. This itself has been indicated under the head ""minimum qualifications". It, therefore, clearly shows that it is not the. provision dealing with the probation period, extension and discharge of a qualifications, which are to be essentially satisfied by the officer concerned before he takes over his appointment as a regular judge.

30. The reference to the. probation period has to be examined and interpreted with reference to and in conjunction with the 1977 Rules which are the primary rules dealing with probation. These Rules have admittedly been adopted by the High Court. Under the 1983 Rules, the emphasis is on performance and training during the period of probation. In other words, the primary purpose of these Rules is only to ensure that the officer concerned undergoes training during the period of probation. While the significance under the 1983 Rules is on training, under the 1977 Rules, all matters relating to probation are specifically dealt with. It would not be permissible to read the relevant part of the 1983 Rules to say that it mandates that probation period shall be only for two years and not more. If that was to be accepted, all provisions under Rules 3 to 6 of the 1977 Rules will become redundant and ineffective. In fact, it would frustrate the very purpose of framing the 1977 Rules."

31. What will be the period of probation, the circumstances under which it can be extended or reduced and discharge the probationer officer in the event of unsuitability, etc., are only dealt with under the 1977 Rules. The 1983 Rules would have to be read harmoniously with the 1977 Rules to achieve the. real purpose and timely training of Judicial Officers on the one hand and appropriate control

over the matters relating to probation of the officer on the other. That, in fact, is the precise reason as to why the 1983 Rules do not deal specifically with any of the aspects of probation. In view of this discussion the contention of the appellants has to be rejected.

32. Having referred to the specific rules on the subject and the entire scheme under the relevant provisions relating to different aspects of probation, let us examine the law and the pronouncements of this court in some detail.

33. We have already noticed that two views are prevalent. Primarily, the court has taken the diametrical opposite view. One which accepts the application of the deemed confirmation after the expiry of the prescribed period of probation, while the other taking the view that it will not be appropriate to apply the concept of deemed confirmation to the officers on probation as that is not the intent of law. In our opinion the rules and regulations governing a particular service are bound to have greater impact on determining such question and that is the precise reason that we have discussed Rules 3 to 6 of the 1977 Rules in the earlier part of the judgment.

Thereafter, the apex Court after discussing the reasoning in each of the several judgments rendered by the apex Court with reference to other Rules, which were the subject matter of those decisions, has held as follows:

46. On a clear analysis of the above enunciated law. particularly, the seven-Judge bench judgment of this court in Samsher Singh and the three-Judge Bench judgments, which are certainly the larger Benches and are binding on us, the courts have taken the view with reference to the facts and relevant rules involved in those cases that the principle of "automatic" and "deemed confirmation" would not be attracted. The put and substance of the stated principle of law is that it will be the facts and the rules, which will have to be examined by the courts as a condition precedent to the application of the dictum stated in any of the line of cases afore noticed.

47. There can be cases where the rules require a definite act on the part of the employer before an officer on probation can be confirmed. In other words, there may a rule or regulation requiring the competent authority to examine the suitability of the probationer and then upon recording its satisfaction issue an order of confirmation. Where the rules are of this nature the question of automatic confirmation would not even arise. of course, every authority is expected to act properly and expeditiously. It cannot and out not to keep issuance of such order in abeyance without any reasons or justification. While there could be some other cases where the rules do not contemplate issuance of such a specific order in writing but merely require that there will not be any automatic confirmation or some acts, other than issuance of specific orders, are required, to be performed by the parties, even in those cases it is difficult to attract the application of this doctrine.

48. However, there will be cases where not only such specific rules, as noticed

above, are absent but the rules specifically prohibit extension of the period or probation or even specifically provide that upon expiry of that period he shall attain the status of a temporary or a confirmed employee. In such cases, again, two situations would rise; one. that he would attain the status of an employee being eligible for confirmation and second, that actually he will attain the status of a confirmed employee. The courts have repeatedly held that it may not be possible to prescribe a straitjacket formula of universal implementation for all cases invoking such questions. It will always depend upon the facts of a case and the relevant rules applicable to that service.

49. Reverting back to the Rules of the present case it is clear that Rule 3, unlike other rules which have been referred in different cases, contains negative command that the period of probation shall not be less than two years. This period could be extended by the competent authority for half of the period of probation by a specific order. But on satisfactory completion of the probation period, the authorities shall have to consider the suitability of the probationer to hold the post to which he was appointed. If he is found to be suitable then as soon as possible order is to be issued in terms of Rule 5(1)(a). On the other hand, if he is found to be unsuitable or has not passed the requisite examination and unless an order of extension of probation period is passed by the competent authority in exercise of its power under Rule 4, then it shall discharge the probationer from service in terms of Rule 5(1)(b).

50. At this juncture Entry 2 of the Schedule under Rule 2 of the 1983 Rules would come into play as it is a mandatory requirement that the probationer should complete his judicial training. Unless such training was completed no certificate of satisfactory completion of probation periods could be issued. Obviously, power is vested with the appropriate authority to extend the probation period and in the alternative to discharge him from service. The option is to be exercised by the authorities but emphasis has been applied by the framers on the expression "as soon as possible" they should pass the order and not keep the matters in abeyance for indefinite period or for years together.

51. The language of Rule 5(2) is a clear indication of the intent of the framers that the concept of deeming confirmation could not be attracted in the present case. This Rule is preceded by the powers vested with the authorities under Rules 4 and 5(1) respectively. This Rule mandates that a probationer shall not be deemed to have satisfactorily completed the probation unless a specific order to that effect is passed. The Rule does not stop at that but furthermore specifically states that any delay in issuance of order shall not entitle the probationer to be deemed to have satisfactorily completed his probation. Thus, use of unambiguous language clearly demonstrates that the fiction of deeming confirmation, if permitted to operate, it would entirely frustrate the very purpose of these Rules. On the ground of un-suitability, despite what is contained in Rule 5, the competent authority is empowered to discharge the probationer at any time on account of his un-suitability for the service or post. That discharge has to

be simplicities without causing a stigma upon the probationer concerned. In our view, it is difficult for the court to bring the present case within the class of cases, where, "deemed confirmation", or principle of "automatic confirmation" can be judiciously applied.

52. The 1977 Rules are quite different from the rules in some of the other mentioned cases. The 1977 Rules do not contain any provision which places a ceiling to the maximum period of probation, for example, the probation period shall not be extended beyond a period of two years. On the contrary, a clear distinction is visible in these Rules as it is stated that probation period shall not be less than two years and can be extended by the authority by such period not exceeding half the period. The negative expression is for half the period and not the maximum period totally to be put together by adding to the initial period of probation and to extended period. Even if, for the sake of argument, we assume that this period is of three years, then in view of the language of Rules 5(1) and 5(2) there cannot be automatic confirmation, a definite act on the part of the authority is contemplated. The act is not a mere formality but a mandatory requirement which has to be completed by due application of mind. The suitability or un-suitability, as the case may be, has to be recorded by the authority after due application of mind and once it comes to such a decision the other requirements is that a specific order in that behalf has to be issued and unless such an order is issued it will be presumed that there shall not be satisfactory completion of probation period. The Rules, being specific and admitting no ambiguity, must be construed on their plain language to mean that the concept of "deemed confirmation" or "automatic confirmation" cannot be applied in the present case.

53. Another aspect, which would further substantiate the view that we have expressed, is that the proviso to Rule 4 shows that where during the period of probation the results of an examination have not been declared which the probationer was required to take, in that event the period of probation shall be deemed to have extended till completion of the act i.e., declaration of result. Applying this analogy to the provisions of Rule 5 unless certificate is issued by the competent authority the probation period would be expected to have been extended as it is a statutory condition precedent to successful completion of the period of probation and confirmation of the probationer in term of this Rule.

Hence, the question stands answered against the petitioner. The petitioner having completed the prescribed period of probation, it is not in dispute that there was no letter of extension of the probation or any order stating that the petitioner had completed the period of probation successfully in terms of Rule 5(3) and hence Rule 5(2) would come into play and till the issuance of such an order and certificate of satisfactory completion of probation the petitioner could not claim to be a confirmed employee on the principle of ""automatic" or "deemed"" confirmation. The order of termination was a discharge from service simplicities, without casting any stigma on the appellant. In that view of the

matter, there is no merit in this petition and the same stands dismissed.