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**(2007) 03 AHC CK 0275**  
**In the Allahabad High Court**  
**Case No : Writ Petition No. 703 S/B of 2005**

State of U.P.

APPELLANT

Vs

Rashmi Singh and Another

RESPONDENT

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**Date of Decision :** 13-03-2007

**Acts Referred:**

Constitution of India, 1950 — Article 311(2)  
Uttar Pradesh Civil Services (Executive Branch) Rules, 1982 — Rule 21, 21(2), 22, 23(3)

**Citation :** (2007) 4 ADJ 242 : (2008) 6 AWC 6483

**Hon'ble Judges :** U.K. Dhaon, J;Allah Raham, J

**Bench :** Division Bench

**Advocate :** C.S.C, for the Appellant; G.N. Sachan and Suresh Chandra, for the Respondent

**Final Decision :** Dismissed

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## Judgement

U.K. Dhaon, J.—The State of U. P. has preferred the instant writ petition against the judgment and order dated 20.1.2005 passed by the State Public Services Tribunal, U. P. Lucknow in Claim Petition No. 403 of 2002 by which the State Public Services Tribunal, U. P. Lucknow has allowed the claim petition preferred by the opposite party No. 1 and set-aside the order dated 12.6.1997 by which the services of the opposite party No. 1 on the post of Deputy Collector in U. P. Civil Services (Executive Branch) were terminated.

2. The brief facts of the case are that the opposite party No. 1 was appointed in the cadre of U. P. Civil Services (Executive Branch) on the basis of the examination conducted by the State Public Service Commission, U. P. Allahabad vide appointment order dated 17.10.1987 on probation for a period of two years. She was required to undergo the training in the Administrative Training Institute (A.T.I.) at Nainital where she could not join. By the modified appointment letter dated 7.5.1988 she was placed on two years probation and was posted as Deputy Collector, Moradabad where she joined on 13.5.1988. The State

Government by the order dated 31.1.1991 extended the probation period of the opposite party No. 1 for a further period of one year under the provisions of Rule 21 (2) of the U.P. Civil Service (Executive Branch) Rules, 1982 (hereinafter referred to as Rules). The State Government by the order dated 2.2.1993 directed the opposite party No. 1 to join at Administrative Training Institute, Nainital for the required training which was to commence with effect from 10.5.1993 and in compliance of the said order the opposite party No. 1 joined the training at A.T.I., Nainital. While the opposite party No. 1 was undergoing the training she received a message about the illness of her son and accordingly on her request she was relieved on 7.7.1993 by the Director A.T.I., Nainital and proceeded for Bareilly. The Petitioner, thereafter issued a warning to the opposite party No. 1 through letter dated 27.9.1993 and she was directed to join the next course of training which was to commence from 4.7.1994 through a Radiogram Message dated 18.5.1994 sent to the District Magistrate, Bareilly for service upon the opposite party No. 1. By another order dated 1.7.1994 the name of the opposite party No. 1 was withdrawn from the training on the ground that show cause notice was already issued to the opposite party No. 1 on 25.6.1994. In the said show cause notice dated 25.6.1994 it was stated that why her services may not be terminated on account of non-fulfilment of conditions mentioned in Rules 21 (2) and 22 of the U.P. Civil Service (Executive Branch) Rules, 1982. The opposite party No. 1 on 11.7.1994 submitted reply to the said show cause notice and thereafter on 25.7.1994 submitted additional reply to the said show cause notice dated 25.6.1994. The Petitioner, thereafter on 12.6.1997 passed the dismissal order by which the services of the Petitioner were dismissed. The opposite party No. 1 has alleged that thereafter she made a representation to the State Government regarding the cancellation of the dismissal order. The said representation of the opposite party No. 1 was rejected by the Petitioner by the order dated 24.8.1999. The opposite party No. 1 has further alleged that during the period from November 1999 to December 2001 she made representations to the State Government, which were replied by the Secretary (Appointment) vide letter dated 11.2.2002. Being aggrieved by the action of the Petitioner, the opposite party No. 1 filed a writ petition in this Court which was registered as Writ Petition No. 3735 (SB) of 2002 and the same was dismissed on the ground of alternative remedy available to the opposite party No. 1 before the State Public Services Tribunal, U. P. Lucknow. The opposite party No. 1 thereafter filed a Claim Petition before the State Public Services Tribunal, which was registered as Claim Petition No. 403 of 2002. The said claim petition was contested by the Petitioner and during the pendency of the claim petition the State Government amended the impugned order dated 12.6.1997 and the words "dismissal from service" was substituted by the words "termination of service" by the Order dated 23.7.2003.

3. The State Public Services Tribunal, U. P. Lucknow after considering the material on record and after hearing the learned Counsel for the parties allowed the claim petition of the opposite party No. 1 by the impugned judgment and

order dated 21.1.2005 and set-aside the order dated 12.6.1997 by which the services of the opposite party No. 1 were terminated.

4. Sri Sanjai Bhasin, learned Additional Chief Standing Counsel appearing on behalf of the Petitioner submitted that the order of termination dated 12.6.1997 is just and legal order as the opposite party No. 1 was not a confirmed employee of the State Government. He further submitted that the learned Tribunal has illegally applied the principle of deemed confirmation by implication in the instant case whereas the principle of implication was not applicable in view of the specific provisions contained in Rule 22. He further submitted that the opposite party No. 1 never completed the required training during the probation period and there is no provision under the rules for automatic confirmation. Learned Counsel for the Petitioner has relied upon the provision of Rules 21 and 22 of the U.P. Civil Services (Executive Branch) Rules, 1982. He further submitted that even after the expiry of the extended period of probation, which ended on 30.5.1991 the opposite party No. 1 continued as a probationer in the absence of specific order of confirmation. He further submitted that the learned Tribunal has committed a manifest error of law in holding that the show cause notice is stigmatic. He further submitted that initially an order of dismissal was passed by the State Government but during the pendency of the claim petition the word dismissal from service was substituted by the word termination of service by the Government order dated 23.7.2003.

5. Learned Counsel for the Petitioner has relied upon the decisions in the cases of Samsher Singh Vs. State of Punjab and Another, Shri Kedar Nath Bahl Vs. The State of Punjab and Others, ; State of Maharashtra v. V. R. Saboji and another AIR 1980 SC 42 ; Satya Narayan Athya Vs. High Court of M.P. and another, ; (1997) 10 SCC 682 State of UP and Ors. v. Rajendra Kumar Singh and Anr. G.N. Nayak Vs. Goa University and Others, Pavanendra Narayan Verma Vs. Sanjay Gandhi P.G.I. of Medical Sciences and anr, and Registrar, High Court of Gujarat and Another Vs. C.G. Sharma,

6. On the strength of the aforesaid judgments passed by the Hon"ble Supreme Court, the learned Counsel for the Petitioner submitted that there is no illegality in the impugned termination order and the impugned judgment and order passed by the State Public Services Tribunal, U. P. Lucknow deserves to be set-aside.

7. Sri U.K. Srivastava, learned Counsel for the opposite party No. 1 submitted that the services of the opposite party No. 1 are governed by the U. P. Civil Services (Executive Branch) Rules, 1982 and in pursuance of the modified order of appointment dated 7.5.1988, the probation period of two years expired on 30.5.1990 and the said period of probation was extended vide another order of extension dated 31.1.1991 for a period of one year which also came to an end on 30.5.1991. He further submitted that the opposite party No. 1 stood confirmed on 31.5.1990 itself and even if, the order of extension dated 31.1.1991 extending the initial period of probation of two years by one more year is considered to be legal, the opposite party No. 1 stood confirmed after the expiry

of the extended period of probation on 30.5.1991 and her services could not have been terminated thereafter by an order of termination dated 12.6.1997. He further submitted that the opposite party No. 1 after the expiry of the extended period of probation became confirmed employee by implication of law and thereafter her services could not be terminated by the impugned order of termination dated 12.6.1997 and it was incumbent upon the Petitioner to comply with the provisions of Article 311(2) of the Constitution of India. He further submitted that the Hon''ble Supreme Court while considering the similar rules to Rules 21 and 22 of the U.P. Civil Services (Executive Branch) Rules, 1982 has held that in such cases where there is a restrictive provision in the Services Rules, an employee after the period of probation or extended period of probation shall be deemed to have automatically confirmed by implication of law and in the instant case, no decision was taken by the Petitioner for terminating the services of the opposite party No. 1 during the period of probation or at the end of the period of probation and as such the impugned order was rightly set-aside by the learned Tribunal.

8. Learned Counsel for the opposite party No. 1 submitted that the impugned order of termination dated 12.6.1997 is stigmatic and punitive in nature as in the impugned order specific reasons have been mentioned for holding the opposite party No. 1 to be unauthorisedly absent and for which a show cause notice dated 25.6.1997 was given to her. He has relied upon the decision of the Hon''ble Supreme Court in the case AIR 2000 1706 (SC)

9. Learned Counsel for the opposite party No. 1 has also relied upon the decisions of the Hon''ble Supreme Court in the cases of Om Parkash Maurya Vs. U.P. Cooperative Sugar Factories Federation, Lucknow and Others, ; State of Gujarat Vs. Akhilesh C. Bhargav and Others, M.K. Agarwal v. Gurgaon Gramin Bank and others AIR 1988 SC 286 ; Wasim Beg v. State of U. P. and Ors. (1988) 2 UPLBEC 1117; Karnataka State Road Tpt. Corporation and Another Vs. S. Manjunath, Samsher Singh Vs. State of Punjab and Another,

10. We have considered the submissions made by Sri Sanjai Bhasin, learned Additional Chief Standing Counsel, appearing for the Petitioner and Sri U. K. Srivastava, learned Counsel for the opposite party No. 1 and gone through the record.

11. It is the admitted case of the parties that the opposite party No. 1 was appointed in the cadre of U. P. Civil Services (Executive Branch) on the basis of the competitive examination conducted by the State Public Service Commission, U. P. Allahabad vide appointment order dated 17.10.1987. She was appointed on probation for a period of two years. The said appointment order dated 17.10.1987 was modified by the State Government and by the modified appointment letter dated 7.5.1988 the opposite party No. 1 was placed on two years probation and was posted as Deputy Collector, Moradabad where she submitted her joining on 13.5.1988. The State Government by the order dated 13.1.1991 extended the probation period of the opposite party No. 1 for a further

period of one year under the provisions of Rule 21 (2) of the U.P. Civil Services (Executive Branch) Rules, 1982, which came to an end on 30.5.1991.

12. Rules 21 and 22 of the U.P. Civil Services (Executive Branch) Rules, 1982 are as follows:

21. Probation.--

(1) A person substantively appointed to the service shall be placed on probation for a period of two years.

(2) The appointing authority may, for reasons to be recorded, extend the period of probation in individual cases specifying the date up to which the extension is granted:

Provided that, save in exceptional circumstances, the period of probation shall not be extended beyond one year and in no circumstances beyond two years.

(3) If it appears to the appointing authority at any time during or at the end of the period of probation or extended period of probation that a probationer has not made sufficient use of his opportunities or has otherwise failed to give satisfaction, he may be reverted to his substantive post, if any, and if he does not hold a lien on any post, his services may be dispensed with.

(4) A probationer who is reverted or whose services are dispensed with under Sub-rule (3) shall not be entitled to any compensation.

(5) The appointing authority may allow continuous service, rendered in an officiating or temporary capacity in a post included in the cadre or any other equivalent or higher post, to be taken into account for the purpose of computing the period of probation.

(22) Confirmation. -- A probationer shall be confirmed in his appointment at the end of the period of probation or the extended period of probation if:

(a) he has passed the prescribed departmental examinations ;

(b) he has successfully undergone the prescribed training ;

(c) his work and conduct are reported to be satisfactory ;

(d) his integrity is certified ;

(e) the Governor is satisfied that he is otherwise fit for confirmation.

13. In the case of Om Prakash Maurya v. U. P. Cooperative Sugar Factories Federation, Lucknow and Ors. (supra), the Hon'ble Supreme Court in para 3 has held as under:

The U. P. Co-operative Institutional Service Board constituted by the State of Uttar Pradesh in accordance with Sub-section (2) of Section 122 of the U.P. Co-operative Societies Act, 1965 has framed the U. P. Co-operative Societies

Employees Service Regulations, 1975 which regulate the condition of service of employee of all the co-operative societies placed under the purview of the Institutional Service Board by the Government Notification No. 366-C/XIIC-3-36 dated 4.3.1972. These regulations contain provisions for recruitment, probation, confirmation, seniority and disciplinary control. Regulation 17 provides for probation, it lays down that all persons on appointment against regular vacancies shall be placed on probation for a period of one year. Proviso to the Regulation lays down that the appointing authority may, in individual cases, extend the period of probation in writing for further period not exceeding one year, as it may deem fit. Clause (ii) of the Regulation provides that if, at any time, during or at the end of the period of probation or the extended period of probation, it appears to the appointing authority that the employee placed on probation, has not made sufficient use of the opportunity offered to him, or has otherwise failed to give satisfaction, he may be discharged from service, or reverted to the post held by him substantively if any, immediately before such appointment. Regulation 18 provides for confirmation of an employee on the satisfactory completion of the probationary period. Regulations 17 and 18 read together, provide that appointment against a regular vacancy is to be made on probation for a period of one year, more. The proviso to Regulation 17 restricts the power of the appointing authority in extending period of probation beyond the period of one year. An employee appointed against a regular vacancy cannot be placed on probation for a period more than two years and if during the period of probation the appointing authority is of the opinion that the employee has not made use of opportunity afforded to him he may discharge him from service or revert him to his substantive post but he has no power to extend the period of probation beyond the period of two years. Regulation 18 stipulates confirmation of an employee by an express order on the completion of the probationary period. The regulations do not expressly lay down as to what would be the status of an employee on the expiry of maximum period of probation where no order of confirmation is issued and the employee is allowed to continue in service. Since Regulation 17 does not permit continuation of an employee on probation for a period more than two years the necessary result would follow that after the expiry of two years probationary period, the employee stands confirmed by implication. This is implicit in the scheme of Regulations 17 and 18. In *State of Punjab Vs. Dharam Singh*, a Constitution Bench of this Court held:

Where, as in the present case, the service rules fix a certain period of time beyond which the probationary period cannot be extended, and an employee appointed or promoted to a post on probation is allowed to continue in that post after completion of the maximum period of probation without an express order of confirmation, he cannot be deemed to continue in that post as a probationer by implication. The reason is that such an implication is negated by the service rule forbidding extension of the probationary period beyond the maximum period fixed by it. In such a case, it is permissible to draw the inference that the employee allowed to continue in the post of completion of the maximum period

of probation has been confirmed in the post by implication.

Service Regulations 17 and 18 of the U.P. Co-operative Sugar Factories Federation Rules, 1976 which were considered by the Hon'ble Supreme Court in the case of Om Prakash Maurya v. U. P. Co-operative Sugar Factories Federation, Lucknow and Ors. (supra) are almost similar to Rule 21 and its sub-rule of U. P. Civil Services (Executive Branch) Rules, 1982.

14. The Hon'ble Supreme Court in the case of M. K. Agarwal v. Gurgaon Gramin Bank and Ors. (supra) considered similar rule like Rules 21 and 22 of the U.P. Civil Services (Executive Branch) Rules, 1982 and by placing reliance on Constitution Bench case of the State of Punjab v. Dharam Singh and Om Prakash Maurua v. U. P. Co-operative Sugar Factories Federation, Lucknow and others, (supra) has held as under:

The first point need not detain us. The period of the probation was one year, in the first instance. The employer could extend it only for a further period of six more months. The limitation on the power of the employer to extend the probation beyond 18 months coupled with the further requirement that at the end of it the services of the probationer should either be confirmed or discharged render the inference inescapable that if the probationer was not discharged at or before the expiry of the maximum period of probation, then there would be an implied confirmation as there was no statutory indication as to what should follow in the absence of express confirmation at the end of even the maximum permissible period of probation. In cases where, as here, these conditions coalesce, it has been held, there would be confirmation by implication.

15. The Hon'ble Supreme Court again in the case of Wasim Beg v. State of U. P. and Ors. (supra), has drawn a distinction between the two categories of cases that is a category where there is prohibition upon the power of appointing authority to extend the period of probation beyond a certain period and where there is no such prohibition and it has been held that where there is prohibition, the employee on the expiry of the maximum period of probation, or the extended period of probation, shall be deemed to have been automatically confirmed. Para 15 of the judgment is as under:

Whether an employee at the end of the probationary period automatically gets confirmation in the post or whether an order of confirmation or any specific act on the part of the employer confirming the employee is necessary, will depend upon the provisions in the relevant service Rules relating to probation and confirmation. There are broadly two sets of authorities of this Court dealing with this question. In those cases where Rules provide for a maximum period of probation, beyond which probation cannot be extended, this Court has held that at the end of maximum probationary period there will be a deemed confirmation of the employee unless Rules provide to the contrary. This is line of cases starting with State of Punjab Vs. Dharam Singh, M. K. Agarwal v. Gurgaon Gramin Bank and others JT 1987 (4) SC 511: 1987 Supp SCC 643 ; Om Prakash

Maurya v. U. P. Co-operative Sugar Factories Federation, Lucknow and others 1987 Supp SCC 95 and State of Gujarat Vs. Akhilesh C. Bhargav and Others,

16. The Hon'ble Supreme Court again in the case of Karnataka State Road Transport Corporation and Anr. v. S. Manjunath(supra) in para 10 of the judgment has held as under:

This Court had an occasion to review, analyse critically and clarify the principles on an exhaustive consideration of the entire case-law in two recent decisions in Dayaram Dayal Vs. State of M.P. and another [OVERRULED], and Wasim's case. One line of cases has held that if in the rule or order of appointment, a period of probation is specified and a power to extend probation is also conferred and the officer is allowed to continue beyond the prescribed period of probation, he cannot be deemed to be confirmed and there is no bar on the power of termination of the officer after the expiry of the initial or extended period of probation. This is because at the end of probation he becomes merely qualified or eligible for substantive permanent appointment. The other line of cases are those where even though there is a provision in the rules for initial probation and extension thereof, a maximum period for such extension is also provided beyond which it is not permissible to extend probation. The Constitution Bench, which dealt with the case in State of Punjab v. Dharam Singh(supra) while distinguishing the other line of cases held that the presumption about continuation, beyond the period of probation, as a probationer stood negated by the fixation of a maximum time limit for the extension of probation. Consequently, in such cases the termination after expiry of the maximum period up to which probation could be extended was held to be invalid, inasmuch as the officer concerned must be deemed to have been confirmed.

17. Rule 21 of the U. P. Civil Services (Executive Branch) Rules, 1982 provides for probation, it lays down that a person on appointment to the service in or against a permanent vacancy shall be placed on probation for a period of two years. Rule 21 (2) of Rules, 1982 lays down that the appointing authority may for reasons to be recorded, extend the period of probation in individual cases specifying the date up to which the extension is granted and the proviso to the rule provides that in exceptional circumstances, the period of probation shall not be extended beyond one year and in no circumstance beyond two years.

18. Rule 22 of the Rules, 1982 provides that a probationer shall be confirmed in his appointment at the end of the period of probation or the extended period of probation.

19. Rule 23 (3) provides that if it appears to the appointing authority at any time during or at the end of the period of probation or extended period of probation that the probationer has not made sufficient use of his opportunities or has otherwise failed to give satisfaction, he may be reverted to his substantive post, if any, and if he does not hold a lien on any post, his services may be dispensed with. In the instant case the Petitioner never invoked the provisions of Rule 23

(3) and permitted the opposite party No. 1 to continue in service beyond the extended period of probation. Rules 21 and 22 read together provide that appointment against a permanent vacancy is to be made on a probation of two years, this probationary period in exceptional circumstances can be extended for one year and in no circumstance beyond two years. The proviso to Rule 21 (2) restricts the power of the appointing authority in extending the period of probation beyond the period of two years. Rule 22 stipulates confirmation of a probationer in his appointment at the end of the period of probation or the extended period of probation. The rules do not expressly lay down as to what would be the status of the employee/probationer on the expiry of maximum period of probation where no order of confirmation is issued and the probationer/employee is allowed to continue in service against a permanent vacancy. Since Rule 21 does not permit continuation of any employee on probation for a period more than four years, the necessary result would follow that after the expiry of the extended period of probation the employee stands confirmed by implication.

20. The opposite party No. 1 by the appointment letter dated 7.5.1988 was placed on two years probation and was posted as Deputy Collector, Moradabad where she submitted her joining on 13.5.1988. The State Government by the order dated 13.1.1991 extended the probation period of opposite party No. 1 for a further period of one year under the provision of Rule 21 (2), which came to an end on 30.5.1991 and thereafter the probation period of opposite party No. 1 was not extended by the Petitioner and she was allowed to continue in service.

21. Relying upon various pronouncements of the Hon'ble Supreme Court by the learned Counsel for the Petitioner as well as the learned Counsel for the opposite party No. 1 and considering the relevant Rules applicable in the present case, the opposite party No. 1 after the expiry of the extended period of probation which came to an end on 30.5.1991 became a confirmed employee by implication of law.

22. It is the admitted case of the parties that the State Government by the order dated 2.2.1993 directed the opposite party No. 1 to join at Administrative Training Institute, Nainital for the required training which was to commence with effect from 10.5.1993 and in compliance of the said order the opposite party No. 1 joined the training at A.T.I., Nainital. While the opposite party No. 1 was undergoing training a message was received by her about serious illness of her nine months old son and accordingly on her request she was relieved on 7.7.1993 by the Director, A.T.I., Nainital. After being relieved from the training the opposite party No. 1 joined her duties at District Headquarter, Bareilly, where vide letter dated 27.9.1993 written by the State Government, she was informed to participate in the next professional training course positively and during her posting at Bareilly through a Radiogram Message dated 18.5.1994, the opposite party No. 1 was directed to participate in the next course of training, which was to commence from 4.7.1994 and, by another order dated 1.7.1994 the name of the opposite party No. 1 was withdrawn from the training on the ground that a

show cause notice was already issued to the opposite party No. 1 on 25.6.1994. Once the State Government in its discretion and wisdom took a decision to allow her to participate in the professional training course commencing from 4.7.1994, there was no justification to withdraw her name from the training course and to take a decision to terminate her services. A perusal of the record reveals that the opposite party No. 1 was never unwilling to complete her professional training.

23. In the case of Chandra Prakash Shahi v. State of U. P. and Ors. (supra), it has been held by Hon"ble the Supreme Court that an employee after 10 months of normal period of probation could not be terminated by means of a simpliciter order of termination, more particularly after a preliminary inquiry. In the instant case a show cause notice dated 25.6.1994 was given to the opposite party No. 1 while she was Deputy Collector, Bareilly, directing her to show cause as to why her services may not be terminated, which was duly replied by the opposite party No. 1 on 11.7.1994 and thereafter on 25.7.1994 she submitted additional reply to the said show cause notice. The opposite party No. 1 after the expiry of the extended period of probation which came to an end on 30.5.1991 became a confirmed officer by implication of law and the State Government instead of complying with the provisions of Article 311(2) of the Constitution of India proceeded to pass the impugned order of termination dated 12.6.1997 on the ground of unauthorised absence from duty. The unauthorised absence from duty is a misconduct and therefore the services of the opposite party No. 1 who became a confirmed officer after the expiry of the extended period of probation by implication of law could not be terminated by the order of termination dated 12.6.1997. It was obligatory upon the Petitioner to comply with the provision of Article 311(2) of the Constitution of India. The Tribunal has rightly held that the impugned order of dismissal, which was subsequently converted as termination order during the pendency of the claim petition was a stigmatic order.

24. We are of the view that there is no illegality or infirmity in the impugned judgment and order dated 20.1.2005 passed by the State Public Services Tribunal, U. P. Lucknow. The writ petition is devoid of merits and is accordingly dismissed.

The parties shall bear their own costs.