
(1982) 08 GUJ CK 0002
In the Gujarat High Court

Sunilkumar S.P. Sinha

APPELLANT

Vs

Indian Oil Corporation Ltd. and Another

RESPONDENT

Date of Decision : 06-08-1982

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F, 25F

Citation : (1983) 1 GLR 573

Hon'ble Judges : G.T. Nanavati, J

Bench : Single Bench

Judgement

G.T. Nanavati, J.—The petitioners in both these petitions were employed by the Indian Oil Corporation Limited (hereafter referred to as "the Corporation") as Senior Clerks with effect from 7-10-1978. They were appointed on probation for a period of six months from the date they took charge. It is their case that during the said period of six months, they had rendered satisfactory service; and, therefore, on the expiry of that period, they had become confirmed employees of the Corporation as no order extending the period of their probation was passed by it. The petitioners were also treated by the Corporation as permanent employees and on that basis they were given Indane Gas connections at their residence and were also advanced loans for the purpose of purchasing motor vehicles. Sharanand Jha, petitioner in Special Civil Application No. 1889 of 1980 was also promoted for some time as an Office Assistant (Stores) on 7-5-1979. Both the petitioners were called for an interview held for the purpose of promotion to the higher post of Office Assistants in September, 1979. The petitioners then came to know that they were likely to be removed from service; and, therefore, they filed civil suits in the Court of the Civil Judge (Senior Division), Jamnagar for a declaration that it was open to the respondent Corporation and its officers to terminate their services without following due procedure of law. Ultimately, in those proceedings, a statement was made on behalf of the Corporation that they would not be removed from service except in accordance with law and without following due procedure and complying with the terms of the contract of employment. Both the petitioners were thereafter served

with show cause notices dated 5-10-1979 alleging that the certificates regarding experience submitted by them were false and that they had actually not worked in the establishments which had issued those certificates for the requisite period. Both, the petitioners were called upon to submit their explanations in writing in that behalf. Both of them replied to the said show cause notices; but the second respondent by his order dated 13-6-1980 terminated their services. Those orders of termination are challenged by the petitioners in these petitions.

2. As the facts in both the petitions are similar and the contentions raised are the same, they are disposed of together by this common judgment.

3. First contention raised on behalf of the petitioners was that the probation period of the petitioners having expired on 6-4-1979 the petitioners must be deemed to have been confirmed in the posts which they held with effect from 6-10-1978. In the alternative, it was contended that even if the petitioners can be said to have continued in the employment thereafter on probation as no specific order of confirmation was passed, even in that case, they should be treated as having been confirmed on expiry of the period of 12 months as that is the maximum period for which an employee of the Corporation can be employed on probation. On this basis, it was further urged that the respondents had no power to terminate their services under clause 9 of the offer of appointment. It was also urged that the petitioners having become confirmed employees, their services could not have been terminated in that manner and without holding a regular formal inquiry. First part of the submission cannot be accepted as the law on this point is now well settled. As pointed out by the Supreme Court in *State of Maharashtra v. V.R. Saboji* : (1979) IILLJ393SC , there is no automatic confirmation on the expiry of the probationary period. On the expiry of the said period and on fulfilment of the requirements of the relevant rules, a Government Servant becomes eligible for being confirmed. The ordinary and normal rule is that without an express order of confirmation, the Government servant will not be then to have been confirmed in the post to which he was appointed temporarily and/or on probation. An officer cannot be deemed to have been confirmed in service merely because, after completion of probationary period, he was appointed in "officiating capacity". In this case, it is not in dispute that no orders confirming the petitioners were passed by the Corporation after expiry of the initial probationary period. It is also not disputed that the Rules do not provide for such automatic confirmation. The petitioners were regarded as probationers till their services came to be terminated.

4. In support of their alternative contention, reliance was placed upon the following two decisions of the Supreme Court viz. *State of Punjab Vs. Dharam Singh*, and *Paramjit Singh v. Ram Rakha* 1979 (3) Supreme Court Cases, 478. In *Dharm Singh's* case the Supreme Court held that where the service rules fix a certain period of time beyond which the probationary period cannot be extended, and an employee appointed or promoted to a post on probation is allowed to continue in that post after completion of the maximum period of probation

without an express order of confirmation, he cannot be deemed to continue in that post as a probationer by implication. The reason is that such an implication is negated by the service rule forbidding extension of the probationary period beyond the maximum period fixed by it. In such a case, it is permissible to draw the inference that the employee allowed to continue in the post on completion of the maximum period of probation has been confirmed in the post by implication. In that case the Supreme Court was concerned with Rule 6 of the Punjab Educational Service (Provincialised Cadre) Class III Rules (1961). That Rule provided for appointments to that service on probation in the first instance for one year. It further provided for confirmation of the member in his post on completion of the period of probation, unless his work or conduct during the period of probation was in the opinion of the competent authority unsatisfactory in which case he could dispense with his services or extend his period of probation by such period as deemed fit. Proviso to Sub-rule (3) of the said Rule laid down that the total period of probation including extensions, if any, was not to exceed three years. In view of the fact that the rules provided for a maximum period of probation and also required the competent authority to take action within the period of probation, it was held that if no such action was taken within that period, an inference could be drawn that the concerned member of the service continued thereafter as a confirmed employee.

5. In *Pamajit Singh's case* (supra) the Supreme Court was required to construe Rule 8 of the Punjab Police Service Rules, 1959. That rule provided that both promotees and direct recruits were to be appointed on probation for two years. The proviso to that rule conferred power on the Government to extend the period of probation by not more than one year. In that case the Supreme Court held that when a first appointment or promotion is made on probation for a specific period and the employee is allowed to continue in the post after the expiry of the period without any specific order of confirmation he should be deemed to continue in his post as a probationer only, in absence of any communication to the contrary in the original order of appointment or promotion or the Service Rules. However, where the rules provide for a fixed period of probation with a power in the Government to extend it upto a specified period and not any unlimited period, either by express provision or by necessary implication, at the end of such specified period beyond which the Government had no power to extend the probation, the probationer if he continues beyond that period, should be deemed to have been confirmed in the post.

6. It was urged that the Rules contained in the Personnel Manual, Vol. I apply to the petitioners. They specifically provide for probation for a maximum period of twelve months, including extensions. Therefore, according to the ratio of the decision of the Supreme Court in *Dharam Singh's case* (supra) and *Paramjit Singh's case* (supra), the petitioners when they were continued in their posts should be deemed to have been confirmed in those posts. It was further urged that on expiry of the probationary period of six months, no order extending the said period was passed. Therefore, it has to be presumed that their work was

found satisfactory. They were also treated as confirmed employees. In support, they have relied upon the letters written by them to the District Manager, Indian Oil Corporation Limited, Marketing Division, Rajkot for allotment of Indane Gas connections to them without charging deposits for gas cylinder and pressure regulator. It is their case that only permanent employees of the Corporation are allowed such a facility. While they had applied for a gas connection, they had also obtained a certificate from the Personnel and Administrative Officer that they were permanent employees of the Corporation. Such a certificate was given below the application for allotment of Indane Gas installation made by each of the petitioners. The petitioners have also pointed out that after the expiry of the probationary period of six months, they had applied for advances for purchasing motor vehicles. The Corporation had sanctioned advances. One of the terms and conditions for sanction of such advances was that the loan was to be repaid in 60 instalments. It is their case that such long term loans and/or advances are not sanctioned by the Corporation to the probationers. The petitioners have also pointed out that on 14-9-1979 they were called for interview as they had applied for the posts of Office Assistants. It is their case that the post of Office Assistant is a higher post and if the petitioners were really treated as on probation, then, according to Rule 10-2-4 they could not have been called for that interview. On the other hand, in the reply filed by B.K. Mittal, Deputy Manager (Personnel and Administration), it is pointed out that such facilities are given by the Corporation to all its employees - whether permanent or temporary. In case of temporary employees before any disbursement is made, a surety is insisted upon. Though advances were sanctioned in case of the petitioners, no disbursement was actually made.

7. The respondents have thus denied that the petitioners were treated as confirmed employees. There is nothing on record to show that such facilities are not extended to the probationers by the Corporation. Therefore, merely because such facilities were extended to the petitioners, it cannot be said that they were treated by the Corporation as confirmed or permanent employees. Even if it is assumed that the petitioners were so treated by the local officers of the Corporation, that by itself cannot confer a status of a confirmed employee on them. Neither the Corporation nor any of its competent officers had directly or indirectly recognised them as confirmed employees. Even if it is assumed that after expiry of six months probationary period their work was found satisfactory, the petitioners did not thereby get any right to be confirmed immediately.

8. We will now consider the effect of the Rules. Chapter X of the said Manual contains Rules regarding probation and confirmation. Relevant Rules are:

10.1. Every new entrant, as also every promotee, against a post other than a purely temporary one, shall be on a probation for a specified period which may be extended or reduced.

10.2.1. Ordinarily, the period of probation would be six months. Each extension of the probationary period, where considered desirable, shall generally be for

three months. No more than two extensions should normally be allowed whereafter the question of the continued appointment of the individual against the post in question should be reconsidered. Unless there are sound reasons to believe that the employee's endeavours, if any, for self-improvement to fit into the post have a reasonable chance of success, no further extension should be allowed and he should be separated/reverted forth with.

10.2.3. In no case of a workman will probation period be longer than 12 months.

10.3. Successful completion of probation shall not be construed as "confirmation".

In respect of the latter, a separate letter shall be issued to the individual concerned by the Corporation on the fulfilment of certain conditions detailed in Rules 10.4 and 10.5.

10.4.1. Confirmation of an employee can be made only against a (particular) permanent post sanctioned by the Board of Directors and where no other employee of the Corporation holds lien on that post.

10.5.2. Where the post is sanctioned by the Board of Directors on permanent basis and no other employee holds lien on that post, the probationer may straightway be issued a letter of confirmation after satisfactory completion of probation. In such cases, it will be necessary to issue a letter informing the employee of both successful completion of probation and confirmation.

10.5. 3. Against permanent posts on which some other employees are holding lien, only an intimation of successful completion of probation will be issued and not a letter of confirmation.

10.5.4. Before an employee is confirmed it is necessary to verify the followings:

(a) That no other employee has a superior claim to that post by virtue of his seniority.

(b) No person who was previously appointed against the post is kept out of consideration simply because he is officiating in a higher post or has been transferred to some other post, unless he is confirmed in the higher post or in the other post to which he has been transferred.

(c) The employee has been found to be medically fit for continued employment.

(d) His character and antecedents have been verified.

(e) The performance of the employee has been found to be satisfactory as reflected in the Annual Confidential Reports.

(f) That no departmental enquiry or even a confidential enquiry with regard to the employee's conduct is going on. (The confirmation of such an officer should be withheld until the enquiry against him is completed. If he is exonerated, he should be confirmed and given his due place in the seniority list. Confirmation should only be denied if something specific has been proved against an officer's

integrity and not on mere suspicion which may sometimes till remain after the enquiries have been completed.)

What is the correct position under the Rules will depend upon how the Rules are interpreted and construed. Rules 10.1 and 10.2.1 together provide that a new entrant has to be appointed on probation, that ordinarily the period of probation would be six months, that no more than two extensions, each consisting of three months, should normally be allowed and that no further extension should be given and he should be separated forthwith unless there are sound reasons to believe that employee's endeavours for self-improvement have a reasonable chance of success. Rule 10.2.3 then provides that in no case the probation period will be longer than 12 months. Can it, therefore, be said that as this rule provides a maximum period of probation the employee continued in service thereafter must be regarded as a confirmed employee?

9. As pointed out by the Supreme Court in Dharam Singh's case (supra), where 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 an inference that the employee allowed to continue in the post on completion of the maximum period of probation has been confirmed, in the post by implication. In Paramjit Singh's case (supra) also, Supreme Court has observed that where the rules provide for a fixed period of probation with a power in the Government to extend it upto a specified period and not any unlimited period, either by express provision or by necessary implication at the end of such specified period beyond which the Government had no power to extend the probation, the probationer if he continues beyond that period, should be deemed to have been confirmed in the post. Thus, the Supreme Court, in view of the provision in the rules forbidding extension of the probationary period beyond the maximum period fixed by those rules, and in absence of any other indication employed to the contrary, read into them, by necessary implication, that the employee would then be deemed to have been confirmed on the expiry of the maximum period of probation.

10. As pointed out above, the Rules relating to probation and confirmation are contained in Chapter X of the Personnel Manual. I am told by the learned advocates that they are administrative instructions only. Rule 10.2.3 which provides that in no case of a workman will probation period be longer than 12 months, does not stand apart from other rules. Rule 10.3 which follows after Rule 10.2.3, provided that successful completion of probation shall not be construed as "confirmation". In light of the ratio of the two decisions of the Supreme Court in the cases of Dharam Singh (supra) and Paramjit Singh (supra)

it will have to be considered what inference can be drawn by way of necessary implication. Rule 10.3 further provides that in case of confirmation a separate letter shall be issued to the individual concerned by the Corporation on fulfilment of the conditions detailed in Rules 10.4 and 10.5. A perusal of those rules reveals that confirmation of an employee can be made only against a permanent post sanctioned by the Board of Directors and where no other employee holds a lien on that post. Even that can be done only if certain conditions are satisfied viz., (i) that no other employee has a superior claim to that post by virtue of his seniority, (ii) the employee is found medically fit for continued employment, (iii) his character and antecedents have been verified and (iv) that no departmental inquiry or even a confidential enquiry with regard to the employee's conduct is going on. Confirmation of an employee against whom such an inquiry is pending is to be withheld until the enquiry is completed. If something specific is proved against the employee's integrity, confirmation has to be denied, Letter of confirmation has to be issued by the competent Personnel Department in the prescribed form. The Rules thus contemplate fulfilment of certain conditions precedent and a positive action on the part of the competent officers of the Corporation before its employee can be confirmed. It clearly appears that for that reason, it is also provided by the Rules that successful completion of probation shall not be regarded as confirmation. In my opinion, the inference which can be drawn on a combined reading of the Rules is that even after expiry of the maximum period of probation, an employee of the Corporation continues to serve as a probationer only till a clear permanent post is available and the conditions contained in Rules 10.4 and 10.5 are satisfied.

11. The petitioners have not claimed that all those conditions have been satisfied in their cases. On the contrary, the material on record shows that an inquiry regarding their conduct was pending when the maximum period of probation expired. On 5-10-79 i.e. before the expiry of period of one year, the petitioners were served with show cause notices. The authorities had found that the certificates regarding experience produced by the petitioners were false and actually the petitioners had not worked for a period of three years as required by the rules of recruitment and thus they did not possess requisite qualifications for being appointed on the said posts. A confidential enquiry was already initiated against the petitioners and it was pending on 6-10-79 when the period of one year expired. In the show cause notices it was made clear by the competent authority that the petitioners would be continuing on probation during the period of enquiry. Thus, before the expiry of the period of probation, an enquiry was initiated against the petitioners and they were specifically informed that till that enquiry was over, they were to remain on probation. It cannot, therefore, be said by way of an inference by necessary implication that the petitioners stood confirmed on the expiry of the maximum probationary period of 12 months. First contention raised on behalf of the petitioners thus deserves to be rejected.

12. It was next urged that even if the petitioners are to be regarded as having been continued as probationers, their services could not have been terminated as

eight clerks recruited subsequent to the petitioners have been retained in service. It was further urged that even though it was permissible to the respondents under clause 9 of the letter of appointment to terminate their services after giving one month's notice, they could not have done so in a discriminatory manner in view of the protection available to them under Articles 14 and 16 of the Constitution. There is no substance in this contention also. The petitioners had got their names registered with the Employment Exchange Office at Rajkot in 1978. On the basis of that registration, their names were forwarded to the Corporation when it notified to the Employment Exchange Office that certain posts of Senior Clerks were required to be filled in. According to the recruitment rules, the candidates, apart from other qualifications, were required to have experience for a period of three years in general administration/ establishment/ purchase department. The petitioners along with other candidates were called for test and interview and they came to be selected on the basis of their performance and the certificates regarding experience produced by them. The petitioners were then offered employment. Thereafter attention of the authorities was drawn to the fact that Sunilkumar, petitioner in Special Civil Application No. 1888 of 1980 is the brother of Satishkumar who was at the relevant time, working as Personnel and Administrative Officer at Rajkot. It was also pointed out that Sharanand Jha, petitioner in Special Civil Application No. 1889 of 1980 is the brother of Mahanand Jha who was then working as a Pipeline Engineer of the Corporation. It was also brought to their notice that the certificates regarding experience produced by the petitioners were false and that the petitioners did not possess three years' experience. Having received such complaints, the respondents decided to get the facts verified. Accordingly, Senior Vigilance Officer of the Corporation was asked to verify those allegations who after conducting a confidential enquiry, submitted a report on 11-6-79. The report revealed that the certificates regarding experience and release submitted by the petitioners were not correct and that the petitioners had not worked for the requisite period in the establishments shown in the said certificates. The petitioners were, therefore, called upon to put forward their say by the show cause notices dated 5-10-79. All this happened during the period of probation; and, therefore, the enquiry was held for the purpose of finding out suitability of the petitioners for continuing in the employment of the Corporation. After considering all the relevant aspects, it was decided by the respondents that the probation period of the petitioners should not be extended and their services should be terminated. Thus, the petitioners were found unsuitable for being retained in the employment of the Corporation and it was for that reason that their services came to be terminated. Therefore, it cannot be said that their services have been arbitrarily terminated, and that by retaining their juniors in service, the respondents have discriminated. For the same reasons, the decision of the Supreme Court in *The Manager, Government Branch Press and Another Vs. D.B. Belliappa*, relied upon by the petitioners cannot be of any avail to them. On the contrary, the ratio laid down in that decision goes against them. It is pointed out in that decision that if the services of a temporary Government servant is

terminated in accordance with the conditions of his service on the ground of unsatisfactory conduct or his unsuitability for the job and/or for his work being unsatisfactory or for a like reason which marks him off a class apart from other temporary servants who have been retained in service, there is no question of the applicability of Article 16. Therefore, the second contention raised on behalf of the petitioners is also rejected.

13. The third contention raised on behalf of the petitioners was that though the impugned orders of termination prima facie appear to be orders of termination simpliciter, they are really penal orders. According to the petitioners, the acts which were complained of amount to a misconduct involving moral turpitude and actually a preliminary enquiry was held in that behalf against them. Having held such an enquiry, the respondent sought to have held a full-fledged enquiry in accordance with the principles of natural justice and should have passed an order of punishment only thereafter. It was urged that as the impugned orders of termination were passed without holding a full-fledged enquiry and without complying with the principles of natural justice, they must be regarded as void ab initio. There is no substance in this contention also. As pointed out above, the petitioners by producing false certificates regarding experience had represented to the Corporation that they possessed three years experience. It was reported to the Corporation that those certificates were bogus and, therefore, the Corporation was required to verify the said fact. For that reason, it got a confidential enquiry made and when it was found that there was some substance in the complaint received by it, it called upon the petitioners to put forward their versions about the allegation that they did not possess requisite experience. The show cause notices clearly indicated that they were not given for the purpose of taking any penal action against the petitioners, but were given only with a view to find out the correct facts. The respondents wanted to find out whether the petitioners in fact possessed the requisite experience or not. That was very much necessary for the purpose of finding out the suitability of the petitioners for the purpose of continuing them in service. If for such a purpose a confidential enquiry is made and thereafter the services of a probationer are terminated, it cannot be said that the order of his termination is made by way of punishment. In fact, it is desirable that before taking any action against a probationer on the basis of a complaint received against him, a summary for a confidential enquiry is held. Holding of such an enquiry would really be in the interest of the employee. It really provides an opportunity to the employee to clear any doubt against him. Therefore, in these cases, it cannot be said that the acts of termination of services of the petitioners were by way of punishment.

14. It was then urged that the petitioners can be said to be "workmen" as defined by the Industrial Disputes Act, 1947, termination of their services amounted to retrenchment and as no retrenchment compensation was paid to them while passing the orders of retrenchment, the orders of termination of their services are void as being not in accordance with Section 25F of the said Act. Nowhere in petition, the petitioners have stated that they were workmen as

defined in the Industrial Disputes Act. The petitioners were appointed as Senior Clerks. Nowhere in the petition they have pointed out what was the nature of the duties which they were required to perform. All these facts have been assumed by the petitioners in their favour and they have come out only with a submission that termination of their services amounts to retrenchment and as no retrenchment compensation was paid to them, the orders of termination of their services are null and void. The petitioners have not even pointed out that all other conditions of Section 25F of the Industrial Disputes Act were fulfilled in their case. Thus, the petitioners want this Court to decide this question without placing sufficient and complete material before it. At one stage I pointed out to the learned advocates that if they insisted for a decision on this question in absence of sufficient material, the decision may harm the interests of the petitioners and it would be proper if the said question is kept open and is allowed to be decided by the appropriate forum after leading evidence. Both the learned advocates, however, insisted that this Court should decide this question on the basis of the material which is already on the record of the case. As pointed out above, no material has been placed before me to show that the petitioners were workmen within the meaning of that term as defined in the Industrial Disputes Act. Since it is not established that they were workmen, Section 25F of the Industrial Disputes Act would not apply; and, therefore, there was no necessity of payment of retrenchment compensation to the petitioners at the time of terminating their services. Thus, there is no substance in this contention also.

15. It was lastly urged by Mr. Takwani, the learned advocate for the petitioner in Special Civil Application No. 1889 of 1980, that the order of termination in his case was passed by the Deputy General Manager who had no authority to pass such an order. In their reply, the respondents have pointed out that the order in fact was passed by the General Manager and it was merely communicated to the petitioner by the Deputy General Manager. Thus there is no substance in this contention also.

For all these reasons, both these petitions fail and they are dismissed. Rule in each of them is discharged with no order as to costs.