

(1996) 02 AHC CK 0087

In the Allahabad High Court

Case No : Civil Miscellaneous W. P. No 513 of 1986

Surendra Singh Goal

APPELLANT

Vs

Managing Director, U.P. Co-operative Sugar Factories
Federation Ltd. and Another

RESPONDENT

Date of Decision : 23-02-1996

Acts Referred:

Uttar Pradesh Co-operative Societies Employees Service Regulations, 1975 — Rule 17, 18

Citation : (1996) 02 AHC CK 0087

Hon'ble Judges : B.M.Lal, J and R.K.Mahajan, J

Final Decision : Dismissed

Judgement

R. K. Mahajan, J.—By this petition, the petitioner seeks a writ in the nature of certiorari quashing the order dated 27121985 terminating the petitioner's services.

2. The petitioner was appointed as a Chief Chemist on a clear vacancy on 1071984 and he joined at Kisan Sahkari Chini Mills Ltd., Gadarpur, district Nainital on 2671984. Later on he was transferred to Kisan Sahkari Chini Mills Ltd., Tilhar, district Shahjahanpur. The petitioner joined there on 2791984. He was placed on probation for a period of one year as per condition No. 4 of the letter. He alleges that despite the satisfactory performance, he was terminated from service by the impugned order.

3. The learned counsel for the petitioner submitted that after the expiry of the period of probation of one year as per terms of the agreement and also under the Cooperative Societies Service Rules and Regulations (U. P. Primary Agricultural Cooperative Credit Societies Centralised Service Regulations, 1978), he is confirmed employee. He describes the impugned order as illegal as no notice was given.

4. On behalf of the respondents, it is submitted that the petitioner did not improve his performance despite the warning whereupon a decision was taken to

terminate the services of the petitioner in view of the considered opinion and report of the advisor Sugar Technology dated 2012/1985 wherein he reported that the services of the petitioner were resulting in colossal loss to the mills and the petitioner was simply failing to discharge his duties. As mentioned, various letters were sent to the petitioner to improve his performance.

5. We have heard the learned counsel for the parties. Sri H. S. Nigam, learned counsel for the petitioner has argued that the petitioner's services be deemed to have been confirmed after the expiry of the probation period of one year. He further submits that regarding the utilisation of plant, comparative statement of his working for the Sessions 1883/84 and 1984/85 has been given in the chart annexured as Annexure 2 to the writ petition. On the other hand, learned counsel appearing for the respondents submitted that there is no automatic confirmation after one year and since the mills suffered heavy loss, the services of the petitioner have been rightly terminated.

6. In support of his contention, learned counsel for the petitioner has relied on Rule 17 of the U. P. Cooperative Societies Employees Service Regulations, 1975 (hereinafter referred to as the Rules). The said Rule 17 is quoted below with advantage :

"17. Probation. (i) All persons on appointment against* regular vacancies shall be placed on probation for a period of one year :

Provided that the appointing authority may, in individual cases, extend the period of probation in writing by such further period not exceeding one year, as it may deem fit.

(ii) If it appears at any time before or at the end of the period of probation or extended period of probation that a person has not availed the opportunity offered to him for picking up the work or has otherwise failed to give satisfaction he may, if directly recruited, be removed from the service or if promoted by selection, be reverted to the post from which he was promoted.

(iii) A person removed from service during or at the end of the period of probation or extended period of probation under clause (ii) shall not be given any compensation unless he is, under mandatory provisions of any law applicable to his case, entitled for the same."

Rule 18 of the aforesaid Rules relates to confirmation which is also quoted with the advantage :

"18. Confirmation.(I) Confirmation of an employee shall, on the satisfactory conclusion of the probationary period, be made by the appointing authority if the post is regular one in terms of the preceding regulation....."

7. The learned counsel for the petitioner has also relied on *Om Prakash Maurya v. U. P. Cooperative Sugar Factories Federation*, *Luc know*, AIR 1986 SC 1844. The ratio of this ruling is not applicable in the present case. It was a case of reversion

from higher post to reverted post by promotion and it was not a case of probation or on trial.

8. The next ruling, which is relied on by the learned counsel for the petitioner, is the case of *Jai Kishan v. Commissioner of Police*, 1995 Supp (3) SCC 364. In fact, the ratio of this ruling is available. It lays down as under:

"Service Law Probation Termination Rules laying down the maximum period of probation and also providing for confirmation on successful completion of probation period In such circumstances a probationer failing to improve his performance, although allowed to continue in service beyond the maximum statutory period of probation, held, could not be deemed to have been confirmed Hence, termination of his service even at that stage, held valid Confirmation Central Services (Temporary Service) Rules, 1966, Rule 5(e), *State of Punjab v. Dharam Singh*, AIR 1968 SC 1210 ; 1968 SLR 247 distinguished."

9. In the ruling quoted above, it is not mentioned that the maximum period of probation is one year and there would not be further extension.

Rather, in the rule (supra), it is provided that there can be extension of probation. Even in the rule, it is not provided that the employer can extend the period of probation and there is no bar to do so. Successful completion of probation is a condition precedent for confirmation. The petitioner would have been confirmed if the stage of Rule 18 would have been arrived. It is not fulfilled in the present case.

10. Another case relied on is *Dhanjibhai Ramjibhai v. State of Gujarat* reported in (1985) 2 SCC 5. The rules provide termination simpliciter of his service due to unsuitability. Termination not being stigmatory, opportunity of hearing need not be given to the probationer.

11. The idea of the probation is to put a person on trial so that he can come to the standard of the employer. If he is found unsuitable, the employer can dispense with his service. Under such circumstances, we are of the view that it is difficult to accept the submissions of the learned counsel for the petitioner and the services of the petitioner have been rightly terminated.

12. In the result, the writ petition fails and is dismissed.