

(2012) 08 AP CK 0055

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 1409 of 2011

The Hyderabad Public School Society and 2 Others

APPELLANT

Vs

M. David Sam Roy

RESPONDENT

Date of Decision : 08-08-2012

Acts Referred:

Citation : (2012) 6 ALT 638

Hon'ble Judges : K.G. Shankar, J;G. Rohini, J

Bench : Division Bench

Advocate : J. Sudheer, for the Appellant; Rajendaran, for the Respondent

Final Decision : Dismissed

Judgement

G. Rohini, J.—By order dated 28.9.2011 the learned Single Judge while allowing W.P. No. 20141 of 2008 set aside the impugned order of termination of the services of the writ petitioner. Aggrieved by the same, the Hyderabad Public School Society and two others, who are the respondents in the writ petition, filed this appeal. For the sake of convenience, the parties shall hereinafter be referred to as they were arrayed in the writ petition.

2. In pursuance of a notification issued by the Hyderabad Public School Society inviting applications for filling up the vacancies in various posts, including the post of Vice-Principal - Administration for Hyderabad Public School, Begumpet, the writ petitioner (the respondent herein) had applied and he was selected and appointed by proceedings dated 17.06.2005. As per the appointment order, the petitioner shall be on probation for a period of two years in a continuous period of three years. Subsequently, the post held by the writ petitioner was re-designated as Registrar by proceedings dated 3.9.2007. However, by proceedings dated 6.5.2008, the writ petitioner was informed that as per the resolution of the Board of Governors the period of probation of the writ petitioner is extended for one more year from the date he completed two years probation. Aggrieved by the same, the writ petitioner had earlier filed W.P. No. 11194 of 2008. By order

dated 30.07.2008 this Court allowed the said writ petition and set aside the order dated 6.5.2008 holding that the Principal who is the appointing authority alone is competent and that though the Board of Governors happens to be the superior authority, it could not have extended the probation of the petitioner bypassing the appointing authority.

3. The respondents neither challenged the said order in W.P. No. 11194 of 2008 nor a fresh order of extension was passed by the appointing authority, but by proceedings dated 12.09.2008 the services of the writ petitioner were terminated with immediate effect on payment of three months pay in lieu of notice period. Aggrieved by the same, the writ petitioner filed W.P. No. 20141 of 2008 contending inter alia that his services cannot be terminated except through disciplinary proceedings since he has become a confirmed employee on expiry of three years from the date of joining the duty.

4. Disputing the petitioner's claim of deemed confirmation in the service, it was contended on behalf of the respondents that the impugned action of termination was in accordance with law.

5. In the light of the pleadings of the parties as well as the other material available on record, the learned Single Judge opined that even the respondents had understood that the writ petitioner ceased to be a probationer. Accordingly, it was concluded that the impugned order of termination by paying three months salary in lieu of notice was contrary to the Rules framed by the respondents and the law laid down by the Supreme Court. Thus the impugned order of termination was set aside and the writ petition was allowed by order dated 28.9.2008 which is under challenge before us.

6. Sri J. Sudheer, the learned counsel appearing for the appellants vehemently contended that in the absence of an express order declaring that the writ petitioner had successfully completed the period of probation, he cannot be treated as a "confirmed employee". Thus, according to the learned counsel, the writ petitioner by the date of the impugned order of termination was continuing only as a probationer and therefore the termination of his services with immediate effect was in accordance with law.

7. On the other hand, the learned counsel for the respondent/writ petitioner submitted that on expiry of the prescribed period of probation and in the absence of any order by the competent authority extending the probation, the writ petitioner should be deemed to have successfully completed the probation and therefore the order under appeal warrants no interference.

8. As per Rule 9 (a) of the Hyderabad Public Schools Employees Service Rules, 2002, every person appointed by direct recruitment shall be on probation for a total period of two years on duty within a continuous period of three years. In the appointment order of the writ petitioner dated 17.06.2005, the same thing has been reiterated with regard to the period of probation.

9. The prescribed period of two years probation of the writ petitioner was completed by 20.06.2007 and even the continuous period of three years expired on 20.06.2008. Admittedly no order was passed by the respondents declaring the probation of the writ petitioner nor any order was passed extending the period of probation. Having allowed the petitioner to continue in the post held by him on completion of the maximum period of probation, the impugned order of termination came to be passed on 12.09.2008.

10. In view of the time limit for completion of probation prescribed under Rule 9 (a) of the Service Rules and that the appointing authority did not choose to extend the probation or to terminate the probation within that time, the learned Single Judge held that the writ petitioner should be deemed to have successfully completed the probation on expiry of the maximum period prescribed in Rule 9 (a).

11. However it is sought to be contended by the learned counsel for the appellants that unless and until an order is passed under Rule 10 of the Service Rules declaring him as confirmed member of the service, the writ petitioner cannot be deemed to have been confirmed in the service.

12. In exercise of the powers conferred by the Hyderabad Public Schools Society, the Board of Governors made Disciplinary and Appeal Rules of Hyderabad Public Schools, 2002. Rules 6 to 12 of the said Rules provide for the procedure to be followed for imposing the minor/major penalties specified in Rule 6. One of the major penalties provided is "removal from service" and before passing such an order holding an enquiry as provided under Rule 8 is mandatory.

13. We have already noticed that as per Rule 9 (a) of the Hyderabad Public Schools Employees Service Rules, 2002, (for short Service Rules) every person appointed by direct recruitment shall from the date on which he commences the duty, be on probation for a total period of two years on duty within a continuous period of three years. As per Rule 9 (c) during the period of probation the service of any employee may be terminated without assigning any reason after giving one month's notice in writing or one month's salary in lieu of such notice. Rule 10 which provides for confirmation, upon which the learned counsel for the appellants has placed reliance, reads as under:

10. Confirmation:- All the probationers whose probationary period has been declared as satisfactory are confirmed members of the service.

14. Having regard to the provisions of the Rules governing the services of the writ petitioner, the crucial question that requires consideration is whether the probation of the writ petitioner can be deemed to have been declared or he is continuing on probation by the date of the impugned order of termination dated 12.9.2008.

15. Though it is open for the appointing authority, during the period of probation stipulated under Rule 9 (2), to terminate the services of any employee without

assigning any reason after giving one month's notice as provided under Rule 9 (c) or to extend the period of probation, admittedly the respondents did not choose to do so. Nevertheless, according to the learned counsel for the appellants, the petitioner continues to be a probationer. It is contended by the learned counsel that on a combined reading of Rules 9 & 10, unless and until a specific order is made declaring the probation, the employee would continue to be a probationer even after the expiry of the period of probation prescribed in Rule 9 (a).

16. The legal position with regard to declaration of probation is well-settled. After referring to the decision of the Constitution Bench of the Supreme Court in *STATE OF PUNJAB AIR 1974 SC 2193 VS. DHARAM SINGH AIR 1968 SC 1210* as well as the later decisions in *Om Parkash Maurya Vs. U.P. Cooperative Sugar Factories Federation, Lucknow and Others*, *Federation of All India Customs and Central Excise Stenographers (Recognised) and others Vs. Union of India and others*, and *REGISTRAR, HIGH COURT OF GUJARAT vs. C.G. SHARMA*, the learned Single Judge has summed up the legal position as under:

(a) Where the Rule is silent as to the maximum period, within which the probation of an employee must be completed, he would continue to be a probationer, till the probation is declared by the appointing authority, through a specific order.

(b) Where however, the Rule, apart from stipulating the period of probation, prescribes the time limit for completion thereof, it would be competent for the appointing authority to extend the probation, upto the maximum period or to terminate the probation within that time; and if no such steps are taken, the employee shall be deemed to have successfully completed the probation and would become a confirmed member of service; on expiry of the maximum period.

(c) Even where the maximum period is stipulated by the Rules for completion of probation, the confirmation can be only through a specific order, if the Rule so warrants and the employee would continue to be a probationer after expiry of the maximum period also, unless such a specific order is passed.

17. Reiterating the principles of law laid down in the above noticed decisions, it was held in *Khazia Mohammed Muzammil Vs. The State of Karnataka and Another*,

19. Having discussed in some 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 have been taken by the Court. Firstly, there can be "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 the 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.

18. Coming to the case on hand, Rule 9 of the Service Rules which provides for the probation is silent as to whether the period of probation can be extended beyond two years. As already noticed above, the petitioner joined the service on 20.06.2005 and the probation period of two years on duty came to an end on 20.06.2007 and even the continuous period of three years expired on 20.06.2008. Though a decision was taken by the Board of Governors on 26.5.2007 to extend the period of probation for one more year the same was set aside by this Court in W.P. No. 11194 of 2008. Thereafter, there is no further order extending the period of probation and the petitioner is allowed to continue in the post even after completion of the maximum period of probation.

19. Since Rule 9 (a) stipulated a specific period of probation which the petitioner has successfully completed and during the said period the respondents failed to either extend the period of probation or to terminate the services as provided in Rule 9(c); as rightly held by the learned single Judge, an inference has to be drawn that the petitioner has been confirmed in the post by implication.

20. We are unable to accept the further contention advanced on behalf of the appellants that in the light of Rule 10 of the Service Rules unless and until an order is passed declaring the petitioner's probationary period is satisfactory, he cannot be treated as a confirmed employee.

21. As we could see Rule 10 merely defines who is a confirmed member of service and it appears to us that the declaration of probationary period as satisfactory as provided in Rule 10 includes both the cases where there is an express order declaring that the probationary period of an employee has been satisfactorily completed and also the cases where the probationary period of an employee is deemed to have been declared by virtue of completion of the period of probation stipulated in Rule 9 (a).

22. It may also be added that as per Rule 9 (c) which provides for termination of the services of an employee during the period of probation without assigning any reasons, the employee is entitled to only one month's notice in writing or one month's salary in lieu of such notice. However under the impugned order dated

12.09.2008 the petitioner's services were terminated on payment of three months' pay in lieu of notice period. Such three months notice in writing or three months salary is required under Rule 14 only for the purpose of termination of services of an employee after confirmation.

23. Viewed from any angle, the learned Single Judge is justified in concluding that the petitioner is a confirmed employee by virtue of deeming confirmation. Consequently, the termination simplicitor is impermissible under law. For the aforesaid reasons, we do not find any justifiable reason to interfere with the order under Appeal. Accordingly, the Writ Appeal is dismissed. No costs.