

**(2004) 07 KAR CK 0043**  
**In the Karnataka High Court**  
**Case No : W.A. No. 3013 of 2001**

The State of Karnataka and Another

APPELLANT

Vs

Ramesh

RESPONDENT

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**Date of Decision :** 22-07-2004

**Acts Referred:**

Karnataka Civil Services (Probation) Rules, 1977 — Rule 4, 4 (1)

**Citation :** (2004) ILR (Kar) 4459 : (2004) 7 KarLJ 356 : (2004) 4 KCCR 428 SN

**Hon'ble Judges :** P. Vishwanatha Shetty, J;K. Bhakthavatsala, J

**Bench :** Division Bench

**Advocate :** Shobha Patil, Addl. Government Advocate, for the Appellant;  
Subhash B. Adi, for the Respondent

**Final Decision :** Dismissed

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## Judgement

P. Vishwanatha Shetty, J.—This appeal is directed against the order dated 28th March 2001 made in Writ Petition No. 13072 of 1998 by the learned Single Judge of this Court allowing the Writ Petition filed by the respondent challenging the validity of notification dated 13th March 1998, a copy of which has been produced as Annexure-E to this appeal passed by the 1st appellant-State discharging him from service during the period of his probation and quashing the said notification.

2. The facts in brief are as follows:

The respondent was appointed by the 1st appellant-State Government (hereinafter referred to as the State) as a Civil Judge (Junior Division) by means of notification dated 25th June 1991 issued by the State. Immediately after his appointment, he had reported to duty on 15th July 1991. He also underwent training for two months organised by the 2nd appellant-High Court. The appointing authority of the respondent is the State Government. The period of probation prescribed to a Civil Judge (Junior Division) is two years under the Karnataka Judicial Services (Recruitment) Rules, 1983 (hereinafter referred to a

"the Recruitment Rules"). As per the terms and conditions of his recruitment, the respondent was required to pass the Kannada Language Examination conducted by the Karnataka Public Service Commission in accordance with the Karnataka Civil Services (Service and Kannada Language Examinations) Rules, 1974. The Administrative Committee No.III of the High Court while considering the question as to whether the respondent should be declared as having satisfactorily completed the period of probation resolved to recommend to the Full Court of the High Court that he may be discharged from service on the ground that he had not passed the Kannada Language examination by means of its resolution dated 20th August 1997. It is useful to extract the said resolution which reads as hereunder:

"Considered the question of declaring satisfactory completion of the period of probation of Sri R.S. Doddamani, I Addl. Munsiff, Buntwal, and in view of the fact that he has not passed the Kannada Language Examination as required under Rule 5 of the Karnataka Civil Services (Kannada Language Examination) Rules, 1974, though sufficient opportunity and time was given, resolved to recommend to the Full Court that he be discharged from service."

The resolution passed by the Administrative Committee No. III was approved by the Full Court of the High Court in its meeting held on 12th February 1998. The relevant portion of the resolution of the Full Court reads as hereunder:

"Considered the resolution of Administrative Committee No. 3 dated 20-8-1997 and resolved to accept the recommendation of the Committee that Sri R.S. Doddamani, I Addl. Civil Judge (Jr.Dn.) and JMFC, Afzalpur, be discharged from service for not having passed the Kannada Language Examination as required under Rule 5 of the Karnataka Civil Services (Kannada Language Examination) Rules, 1974."

The resolution of the Full Court was forwarded to the State Government who is the appointing authority to discharge the respondent from service. As noticed by us earlier, the State Government by means of its notification Annexure-E dated 13th March 1998, discharged the respondent from service.

3. Aggrieved by the order of discharge-Annexure-E, the respondent filed the Writ Petition challenging the validity of the said Notification. The appellants having been served with the notice of the Writ Petition filed their statement of objections. The substantial contention raised in the statement of objections is that since the performance of the respondent in the discharge of his duties was poor, his service came to be discharged. At paragraph 6 of the statement of objections it was further contended that merely because the respondent had passed the Kannada Language examination and had completed the training he was not entitled for a declaration that his performance was satisfactory so as to enable him to hold the post in a substantive capacity. It is useful to refer to the relevant portion of the statement made in paragraph 6 of the statement of objections which reads as hereunder:

"6. Merely because the petitioner has passed the Kannada Language Examination and has completed the training and the period of probation he is not entitled for him to be declared that his performance is satisfactory so as to enable him to hold the post in a substantive capacity. Since the discharge of the petitioner was not by way of punishment and the said is discharged simpliciter the question of holding any enquiry prior to the order of discharge does not arise."

Again at paragraph 9 of the statement of objections, it was also stated on behalf of the appellants that the respondent did not pass the Kannada Language Examination even after the lapse of seven years from the date of entry into service though sufficient opportunity was afforded to him to pass the examination. The learned Single Judge on consideration of the rival contentions advanced before him and also on examination of the confidential records of the respondent by means of his order dated 28th March 2001 found that there was absolutely no justification to discharge the respondent from service. As noticed by us earlier, aggrieved by the said order, this appeal is filed.

4. Smt. Shobha Patil, learned Additional Government Advocate challenging the correctness of the impugned order and supporting the order of discharge of the respondent from service strongly contended that the entire approach made by the learned Single Judge to the matters in controversy is erroneous in law in as much as the learned Single Judge has failed to consider that the services of the respondent came to be discharged only on the short ground that he did not pass the Kannada Language examination; and therefore has seriously erred in law in proceeding to examine the question as to whether the performance of the respondent in discharge of his services was satisfactory as they were not the ground on which his services came to be discharged. It is also her submission that since the respondent has admittedly not passed the Kannada Language examination on the date of the meeting of the Administrative Committee No.III; the date of the decision taken by the Full Court of the High Court and also as on the date of the order of discharge-Annexure-E passed by the State Government, the learned Judge ought to have held that on admitted facts, the respondent was not entitled for any relief at the hands of this Court. Therefore, she submits that since this question has not been considered by the learned Judge, the order impugned is liable to be set aside on that short ground alone and the notification-Annexure-E passed discharging the respondent from service is required to be upheld.

5. However, Sri Subhash Adi, learned Counsel appearing for the respondent while contending that notification-Annexure-E passed by the State is totally unsustainable in law, pointed out that since by the time the order-Annexure-E came to be passed, the respondent had appeared and passed the written examination, in view of the proviso given to Rule 4 of the Karnataka Civil Services Probation Rules, 1977 (hereinafter referred to as "the Probation Rules") he could not have been discharged from service as according to him, the period of probation was deemed to have been extended till the announcement of the

results of the examination to which the respondent had appeared. It is his further submission that though there is no specific order passed by the appellants extending the period of probation of the respondent, since the respondent continued to be in service till the date of issue of notification-Annexure-E, it must be deemed that the respondent was in extended period of probation and as such he was entitled for the benefit of proviso given to Rule 4 of the Probation Rules. However, in reply to this submission of Sri Adi, Smt. Shobha Patil would contend that the proviso given to Rule 4 of the Probation Rules would be applicable only in cases where period of probation is extended by specific orders issued on that behalf. In this connection, she drew our attention to Clause (1) of Rule 4, wherein it is provided that reasons are required to be given for extending the period of probation.

6. In the light of the rival contentions advanced by the learned Counsel appearing for the parties, the only question that would arise for consideration in this appeal is as to whether the order of discharge-Annexure-E passed by the State Government is sustainable in law?]

7. From the facts set out above, it is clear that the services of the respondent came to be discharged by the State on the basis of the recommendation made by the High Court that the respondent had not passed the Kannada Language examination. This is clear from the resolution of the Administrative Committee No.III which was accepted by the Full Court of the High Court in its meeting held on 12th February 1998. The undisputed facts also disclose that the respondent had appeared for the Kannada Language examination on 19th December 1997 and results of the written examination were announced on 27th February 1998 declaring that he had passed the written examination. Pursuant to the passing of the written examination, he had appeared for the viva voce on 18th March 1998. The results of the examination comprising both written and viva voce was announced on 24th April 1998 declaring that the respondent had passed the examination. Further, the averments made in paragraph 9. of the Writ Petition also shows that after entering the service though the respondent had appeared for the examination prior to the year 1996, he was unsuccessful; and during the year 1996 when he had made an application for attending the examination, the said application came to be rejected by the Karnataka Public Service Commission on the ground that the same was not endorsed by the District Judge, Mangalore and on account of that the respondent had lost the chance of appearing for the examination during the year 1996. The averment indicates that there being no default on his part he was deprived of an opportunity to appear for the examination during the year 1996 and for the reasons beyond his control the application forwarded by him came to be rejected. Sri Adi points out that on account of typing error, it was mentioned in the Writ Petition that the respondent had failed twice earlier, but, as a matter of fact he had failed only once. Whatever that be, the real question that would arise for consideration is that when the respondent had admittedly appeared for the examination, before his services came to be discharged, whether his services as a probationer deemed to

have been extended till the results were announced as contended by the learned Counsel appearing for the respondent? To examine this question, it will be useful to refer to sub-rule (1) of Rule 4 of the Probation Rules which reads as follows:

"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."

Rule 5 of the Rules provides for declaration of satisfactory completion of probation. It is useful to extract the said Rule which reads as hereunder:

"5. Declaration of satisfactory completion of probation etc."

(1) At the end of the prescribed period or, as 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 satisfactorily completed his probation and such an order shall 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."

Clause (b) of Rule (1) of Rule 5 of the Rules referred to above provides that the appointing authority is entitled to discharge the probationer from service when it decides that the probationer was not suitable to hold the post to which he was appointed or has not passed the special examination or special tests, if any

required to be passed during the period of probation unless the period of probation is extended under Rule 4 by order. As noticed by us earlier, the services of the respondent came to be discharged only on the ground he has not passed the Kannada Language examination. No doubt, in the instant case, there is no order made under sub-rule(I) of Rule 4 by the Governor extending the period of probation of the respondent. Under these circumstances, the question is whether the respondent who had admittedly appeared for the examination and also had passed the written examination before the order of discharge came to be passed, is not entitled for the benefit of protection from discharge from service merely on the ground there was no order made extending the period of probation as contended by Smt. Patil. Having given our anxious consideration to the interpretation to be placed on the proviso given to sub-rule (1) of Rule 4, we are of the view that it is not possible to take such a view. As noticed by us earlier, the respondent was allowed to continue in service. He continued in service either as a probationer or having satisfactorily completed his service to a substantive post. It is well settled that in the absence of any order made declaring that the probationer has successfully completed his probationary period, the respondent cannot claim to have completed his probationary period satisfactorily. Therefore, even if there is no specific order made extending the period of probation of the respondent, he is deemed to have continued in service as a probationer and his probationary period was impliedly extended. In this case, it should be held that it was impliedly extended because, though the period of probation under the Rules was two years, the respondent was allowed to continue in service till the date of discharge of his service. That is for a period of about seven years. In this connection, it is useful to refer to the observation made by the Supreme Court in the case of Karnataka State Road Transport Corporation and Anr. v. S. Manjunath<sup>1</sup> wherein the Supreme Court has taken the view that even where the Rules prescribe the maximum period of probation; if there is a further provision in the Rules for continuation of such probation beyond the maximum period under these circumstances it cannot be held that there would be a deemed confirmation in such a case and it has to say that only probation period is deemed to be extended. It is useful to refer to paragraphs 16 and 17 of the judgment wherein it is stated as follows:

"16. However, even when the rules prescribe a maximum period of probation, if there is a further provision in the rules for continuation of such probation beyond the maximum period, the Courts have made an exception and said that there will be no deemed confirmation in such cases and the probation period will be deemed to be extended. In this category of cases we can place Samsher Singh Vs. State of Punjab and Another, which was the decision of a Bench of seven Judges where the principle of probation not going beyond the maximum period fixed was reiterated but on the basis of the 1. 2000 (3) CCR 1953 Rules which were before the Court, this Court said that the probation was deemed to have been extended. A similar view was taken in the case of Municipal Corporation, Raipur Vs. Ashok Kumar Misra, although the Rules prescribed that the

probationary period should not exceed two years, and an order of confirmation was also necessary, the termination order was issued within the extended period of probation. Hence the termination was upheld.

17. The other line of cases deals with rules where there is no maximum period prescribed for probation and either there is a rule providing for extension of probation or there is a rule which requires a specific act on the part of the employer (either by issuing an order of confirmation or any similar act) which would result in confirmation of the employee. In these cases unless there is such an order of confirmation, the period of probation would continue and there would be no deemed confirmation at the end of the prescribed probationary period."

9. Therefore, we are of the considered view that in the facts and circumstances of the case, it must be held that the probation period of the respondent was deemed to have been extended. Once it is held that the probation period of the respondent is deemed to have been extended, in terms of the proviso given to Rule 4 of the Probation Rules, the period from the date of appearance of the respondent for examination until the publication of the results of such examination or the test, his probationary period is also deemed to have been extended, curtailing the power of the Appointing Authority to discharge the services of the probationer solely on the ground that he had not passed the Kannada Language examination. It is necessary to point out that the object of the proviso given to sub-rule (1) of Rule 4 of the Rule is to prevent the discharge of service of such of those government servants who are on probation and who have appeared for the Kannada Language examination till the results announced and to continue them in service. The object of the proviso has to be understood as imposing a restriction on the power of the appointing authority to discharge the services of a probationer from service during the time-lag between the examination and the announcement of the results. May be in the instant case, when the Full Court of the High Court took a decision to discharge the respondent from service and also when the state government issued the notification-Annexure-E discharging him from service, the State and the Full Court of the High Court were not aware that the respondent had appeared for the examination. But that cannot be a ground to deny the benefit of the proviso given to sub-rule (1) of Rule 4 of the Probation Rules to the respondent. It is necessary to point out that the respondent takes the examination with the permission of the head of the institution i.e., the jurisdictional District Judge. Therefore, the lapse if any, on the part of the respondent in not bringing to the notice of the High Court that he had appeared for the examination, as noticed by us earlier cannot be held against him to deny the relief to which he is entitled in law.

10. No doubt, it is true that the learned Single Judge has not examined this question as pointed out by the learned Additional Government Advocate. It is because this question was not urged as contended by Sri Adi before him and the stand of the appellants in the Writ Petition was that the performance of the

respondent was poor. As noticed by us earlier, the respondent was not discharged from service on the ground that his performance was poor or he was otherwise unsuitable to continue in service. His service came to be discharged as noticed by us earlier only on the short ground that he did not pass the Kannada Language examination.

11. Therefore in the light of our conclusion that the service of the respondent could not have been discharged on the ground that he had not passed the Kannada Language examination, the notification-Annexure-E is liable to be quashed on that ground. Under these circumstances, we find it unnecessary to examine the conclusion reached by the learned Judge that the services of the respondent could not have been discharged on the basis of his performance. Therefore, in the light of the discussion made above, the Writ Appeal is liable to be dismissed. Accordingly, it is dismissed. However, no order is made as to costs.