
(2016) 02 CAL CK 0038
In the Calcutta High Court
Case No : WPST 74 of 2010

Uttam Kumar Majhi

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 23-02-2016

Acts Referred:

Citation : (2016) 02 CAL CK 0038

Hon'ble Judges : Nishita Mhatre and Tapash Mookherjee, JJ.

Bench : Division Bench

Advocate : Zakir Hossain, for the Appellant; Joytosh Majumder, Debjani Roy and Pinaki Dhole, for the Respondent

Final Decision : Dismissed

Judgement

Nishita Mhatre, J.—1. The petitioner was recruited as a Sepoy in the Kolkata Police Force in 1999. He was required to undergo basic training for six months at the Police Training College, Barrackpore. On completion of his basic training, he was posted in the Reserve Force on probation for two years. As he had not completed his probationary period satisfactorily, it was extended for six months from 3rd July, 2003 to 31st December, 2003 and again from 1st January, 2004 to 30th June, 2004. Thereafter his employment was terminated on 13th April, 2005 as it was found that his service was not satisfactory. This termination of service was effected under Regulation 51(3), Chapter XV of the Police Regulations of Calcutta, 1968.

2. The petitioner then approached the West Bengal Administrative Tribunal by filing O.A. No. 1278 of 2006 questioning his termination of service. This application was dismissed by the Tribunal on 18th December, 2009 with a direction to the police authorities to disburse to the petitioner one month's salary in lieu of notice.

3. The main contention of the petitioner is that since he was continued in service after the extended period of probation was completed on 30th June, 2004, he

must be deemed to have been made permanent after 30th June, 2004. Consequently, the termination of his service without following the proper procedure by issuing him a charge-sheet, holding of departmental enquiry, etc. was illegal and in breach of the Police Regulations of Calcutta, claimed the Petitioner.

4. On the other hand, it has been contended on behalf of the State that the provisions of Regulation 51 and 66 of the Police Regulation of Calcutta, if read together, indicate that a probationer has no right to confirmation, and since the petitioner had not completed his probationary period satisfactorily even after extending it on two occasions, it was necessary to terminate his services. It is contended that the order of termination is not stigmatic and therefore, no relief should be granted to the petitioner.

5. It would be useful to set out a couple of the Police Regulations which are relevant for our purpose. Regulations 51 contained in Chapter XV of the Police Regulations reads as follows:

51. Constable, Sepoys and Sowars (Mounted Police):

(1) Constable, Sepoys and Sowars (Mounted Police) shall remain on probation for two years exclusive of the period spent in training as the Police Training College or School, as the case may be.

(2) The Deputy Commissioner, Headquarters, may confirm such probationers on the completion of the period of probation.

(3) The confirming authority may, during the period of probation, for reasons to be recorded in writing, make an order extending the period of probation of any such probationer for a period not exceeding one year or discharging him from service. For further extension, if needed, sanction of Government shall be obtained.

(4) Indian ex-soldiers who enlist as constables, sepoy or sowars on discharge from the Army shall be allowed to have their military service counted towards increment of pay during the period of their probation.

6. Regulation 66 provides:

66. Notwithstanding anything contained in any of the foregoing rules a probationer who has no lien on any permanent post, may, if considered unsuitable, be discharged at any time during the period of his probation on a month's notice or payment of a month's salary in lieu thereof.

7. The contentious issue before us is whether extending the period of probation beyond one year after the initial two years of probation were completed would amount to deemed confirmation.

8. There can be no dispute that under the Police Regulations, a person can be discharged from service on payment of one month's notice or salary in lieu of

notice at any time during the period of probation. No explanation is required to be given to him if such a discharge is made during the period of probation. Under Regulation 51(1), the period of probation is for two years, initially. On completion of this period, the probationer may be confirmed. However, the period of probation can be extended for a period not exceeding one year by the confirming authority for reasons to be recorded in writing. At the end of one year of the extended period of probation the employee may be discharged from service or he may be continued in service as a probationer. However, in such a case the sanction of the Government is required to be obtained. Can it be said that because the petitioner was continuous in service after the extended period of probation of one year, he is deemed to be permanent? In our opinion, the answer is in the negative.

9. Several judgments have been cited at the bar which we will advert to now. In the case of *S. Sukhbans Singh vs. State of Punjab* reported in , AIR 1962 SC 1711 the employee was promoted and was required to work for a specified period of time on probation in the post to which he was promoted. The rules governing the employee in that case provided that on completion of the period of probation prescribed under the rules a member of service was qualified for a substantive permanent appointment. A similar contention was raised before the Supreme Court as is raised here that there is a deemed confirmation. While considering the issue the Constitution Bench of the Supreme Court held thus:

13. This argument assumes that a probationer who continues to be such without being reverted after the expiry of the period of probation has a legal right to be confirmed or to be treated as if he were confirmed. The rule in question says no more than this that at the end of the probationary period the probationer, unless reverted or absorbed in a substantive post will be eligible for being made permanent. In other words it means that he will continue to be a probationer unless he is reverted or absorbed in a permanent post. But the very fact that a person is a probationer implies that he has to prove his worth, his suitability for the higher post in which he is officiating. If his work is not found to be satisfactory he will be liable to be reverted to his original post even without assigning any reason. It would, therefore, not be correct to say that a probationer has any right to the higher post in which he is officiating or a right to be confirmed. A probationer being merely made eligible for being absorbed in a permanent post is in no better position.

10. In the case of *G.S. Ramaswamy vs. Inspector General of Police, Mysore State* reported in , AIR 1966 SC 175, the employees were promoted on ad hoc basis and contended that on completion of their period of probation in the post to which they were promoted, they were entitled to be confirmed. Wanchoo, J., speaking for the Constitution Bench, considered *S. Sukhbans Singh's* case (supra) and held thus:

8. It has further been urged on the basis of R. 486 that as the petitioners had worked for more than two years on probation, they became automatically

confirmed under the said Rule, and reliance is placed on the following sentence in R. 486, namely, "promoted officers will be confirmed at the end of their probationary period if they have given satisfaction." The law on the question has been settled by this Court in Sukhbans Singh v. State of Punjab, , AIR 1962 SC 1711. It has been held in that case that a probationer cannot after the expiry of the probationary period automatically acquire the status of a permanent member of a service, unless of course the rules under which he is appointed expressly provide for such a result. Therefore even though a probationer may have continued to act in the post to which he is appointed on probation for more than the initial period of probation, he cannot become a permanent servant merely because of efflux of time, unless the Rules of service which govern him specifically lay down that the probationer will be automatically confirmed after the initial period of probation is over. It is contended on behalf of the petitioners before us that the part of R. 486 (which we have set out above) expressly provides for automatic confirmation after the period of probation is over. We are of opinion that there is no force in this contention. It is true that the words used in the sentence set out above are not that promoted officers will be eligible or qualified for promotion at the end of their probationary period which are the words to be often found in the Rules in such cases: even so, though this part of R. 486 says that "promoted officers will be confirmed at the end of their probationary period", it is qualified by the words "if they have given satisfaction". Clearly therefore the Rule does not contemplate automatic confirmation after the probationary period of two years, for a promoted officer can only be confirmed under this Rule if he has given satisfaction. This condition of giving satisfaction must be fulfilled before a promoted officer can be confirmed under this rule and this condition obviously means that the authority competent to confirm him must pass an order to the effect that the probationary officer has given satisfaction and is, therefore, confirmed. The petitioners, therefore, cannot claim that they must be treated as confirmed circle inspectors simply because they have worked for more than two years on probation; they can only become confirmed circle inspectors if an order to that effect has been passed even under this rule by the competent authority. The first contention, therefore, that the petitioners before us have an indefeasible right to promotion once their names are put in the eligibility list and that they are entitled to continue as circle inspectors thereafter if they have once been promoted, on temporary or officiating basis, cannot be sustained.

The Court held that in such a case a person who had not completed officiating period satisfactorily could be reverted to his original post.

11. In State of U.P. vs. Akbar Ali Khan reported in , AIR 1966 SC 1842, the issue regarding the deemed confirmation of a probationer came up again before the Constitution Bench. The rule for confirmation provided that at the end of the probationary period, the probationer has to pass an examination after which he could be confirmed in service, depending on his integrity and other factors. The Court after considering the Rules observed thus:

6. The scheme of the rules is clear: confirmation in the post which a probationer is holding does not result merely from the expiry of the period of probation, and so long as the order of confirmation is not made, the holder of the post remains a probationer. It has been held by this Court that when a first appointment or promotion is made on probation for a specified period and the employee is allowed to continue in the post, after the expiry of the said period without any specific order of confirmation he continues as a probationer only and acquires no substantive right to hold the post. If the order of appointment itself states that at the end of the period of probation the appointee will stand confirmed in the absence of any order to the contrary, the appointee will acquire a substantive right to the post even without an order of confirmation. In all other cases, in the absence of such an order or in the absence of such a service rule, an express order of confirmation is necessary to give him such a right. Where after the period of probation an appointee is allowed to continue in the post without an order of confirmation, the only possible view to take is that by implication the period of probation has been extended, and it is not a correct proposition to state that an appointee should be deemed to be confirmed from the mere fact that he is allowed to continue after the end of the period of probation. See *Chief Conservator of Forests, U.P. Nainital v. D.A. Lyall*, C.A. No. 259 of 1963, dated 24-2-1965 (SC); *Sukhbans Singh v. State of Punjab*, , AIR 1962 SC 1711 and *Accountant General, Madhya Pradesh, Gwalior v. Beni Prasad Bhatnagar*, C.A. No. 548 of 1962, dated 23-1-1964 (SC).

12. A discordant note was struck by the Constitution Bench in the case of the *State of Punjab vs. Dharam Singh* reported in , AIR 1968 SC 1210. After considering the Rules, the Supreme Court held that the concept of deemed confirmation is not alien to service jurisprudence. It would be appropriate to set out at this moment the Rule which fell for consideration before the Supreme Court. It reads as follows:

6(1) Members of the Service, officiating or to be promoted against permanent posts, shall be on probation in the first instance for one year.

(2) Officiating service shall be reckoned as period spent on probation, but no member who has officiated in any appointment for one year shall be entitled to be confirmed unless he is appointed against a permanent vacancy.

(3) On the completion of the period of probation the authority competent to make appointment may confirm the member in his appointment or if his work or conduct during the period of probation has been in his opinion unsatisfactory he may dispense with his services or may extend his period of probation by such period as he may deem fit or revert him to his former post if he was promoted from some lower post:

Provided that the total period of probation including extensions, if any, shall not exceed three years.

(4)

13. The Constitution Bench considered its earlier judgments in the case of S. Sukhbans Singh (supra), Akbar Ali Khan (supra), G.S. Ramaswamy (supra). Wanchoo, C.J., analysed the position in law after referring to the aforesaid judgments thus:

3. This Court has consistently 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 the absence of any indication to the contrary in the original order of appointment or promotion or the service rules. In such a case, an express order of confirmation is necessary to give the employee a substantive right to the post, and from the mere fact that he is allowed to continue in the post after the expiry of the specified period of probation it is not Possible to hold that he should be deemed to have been confirmed. This view was taken in Sukhbans Singh v State of Punjab, , 1963-1 SCR 416 at pp. 424-426 : (AIR 1962 SC 1711 at pp. 1714-1715), G.S. Ramaswamy v. Inspector-General of Police, Mysore State, Bangalore, , (1964) 6 SCR 279 at pp. 288-289 : (AIR 1966 SC 175 at pp. 179-180), Accountant-General, Madhya Pradesh, Gwalior v. Beni Prasad Bhatnagar, Civil Appeal No. 548 of 1962, D/- 23-1-1964 (SC), D.A. Lyall v Chief Conservator of Forests, U.P., Civil Appeal No. 259 of 1963, D/-24-2-1965 (SC) and State of U.P. v Akbar Ali, , (1966) 3 SCR 821 at pp. 825-826 : (AIR 1966 SC 1842 at p. 1845). The reason for this conclusion is that where on the completion of the specified period of probation the employee is allowed to continue in the post without an order of confirmation, the only possible view to take in the absence of anything to the contrary in the original order of appointment or promotion or the service rules, is that the initial period of probation has been extended by necessary implication. In all these cases, the conditions of service of the employee permitted extension of the probationary period for an indefinite time and there was no service rule forbidding its extension beyond a certain maximum period.

4.

5. In the present case, Rule 6(3) forbids extension of the period of probation beyond three years. 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 on completion of the maximum period of probation has been confirmed in the post by implication.

14. In Kedar Nath Bahl vs. The State of Punjab and Ors reported in , 1974 (3)

SCC 21 a Bench of three learned Judges of the Supreme Court reiterated the view in *S. Sukhbans Singh* (supra) and the other judgments. However, *Dharam Singh*'s case (supra) was not cited before the Court.

15. In *Jai Kishan vs. Commissioner of Police and Another* reported in , 1995 Supp (3) SCC 364 a Bench of two learned Judges of the Supreme Court, on distinguishing the facts in *Dharam Singh* (supra) and the case before them, held that although a probationer was allowed to continue in service beyond maximum period of probation, he could not be deemed to be confirmed in service. This view was reiterated in *State of U.P. and Ors vs. Rajendra Kumar Singh and Anr* reported in 1997 (10) SCC 682.

16. In *High Court of M.P. and Ors vs. Satya Narayan Jhavar* reported in , (2001) 7 SCC 161 the Bench of three learned Judges of the Supreme Court reconciled the three disparate lines of decisions of the Supreme Court on the question of deemed confirmation. The Court recognised that one line of decisions dealt with situations where the service rules or the letter of appointment conferred upon the authority the power to extend the period of probation, if the initial period was not satisfactorily completed, without prescribing any maximum period of probation. In such cases, if the officer or employee was continued beyond the prescribed or extended period of probation, he could not be deemed to be confirmed. This line of cases included *S. Sukhbans Singh* (supra), *Akbar Ali Khan* (supra), *G.S. Ramaswamy* (supra), *Kedar Nath Bahl* (supra) and *Tarsem Lal Verma vs. Union of India* reported in 1997 (9) SCC 243.

17. The Court then considered the second stream of cases where the rules provided for the initial period of probation and the extension thereof with a maximum period for such extension being stipulated. In such cases, the employee concerned is deemed to have been confirmed upon the expiry of maximum period of probation in case the order of termination had not been passed prior to the expiry of the period. This line of judgments included *Dharam Singh* (supra), *Wasim Beg vs. State of U.P.* reported in , (1998) 3 SCC 321, *Om Prakash Maurya vs. U.P. Co-operative Sugar Factories Federation* reported in , 1986 Supp SCC 95, *M.K. Agarwal vs. Gurgaon Gramin Bank* reported in , 1987 Supp SCC 643, *State of Gujarat vs. Akhilesh C. Bhargav* reported in , (1987) 4 SCC 482.

18. The third array of cases which the Supreme Court then considered is where though the rules prescribed the maximum period of probation a specific act on the part of the employer of issuing a confirmation letter is envisaged or the passing of a test by the employee for the purposes of confirmation is stipulated under the rules. The Court observed that in such cases even if the maximum period of probation had expired and an order of confirmation had not been passed or the employee had not passed the requisite test, he could not be deemed to have been confirmed merely because the period had expired. The Court observed that in such cases the order of confirmation is a positive act to be undertaken by the employer in accordance with the rules governing the

employee with respect to confirmation and probation. The Court then observed that although the maximum period of probation may be provided, the probationer must be fit for confirmation. The Court noted that in the case of *Samsher Singh vs. State of Punjab* and *Anr* reported in , (1974) 2 SCC 831 the Bench of seven learned Judges of the Supreme Court had approved the decision of the Constitution Bench in *Dharam Singh's* case (supra). However, that judgment was distinguished in *Samser Singh's* case (supra). In the case of *Satya Narayan Jhavar* (supra), the Supreme Court took a conspectus of its earlier judgments dealing with the vexed issue of deemed confirmation and has ultimately concluded thus:

37. Ordinarily a deemed confirmation of a probationer arises when the letter of appointment so stipulates or the Rules governing service condition so indicate. In the absence of such term in the letter of appointment or in the relevant Rules, it can be inferred on the basis of the relevant Rules by implication, as was the case in *Dharam Singh* (supra). But it cannot be said that merely because a maximum period of probation has been provided in Service Rules, continuance of the probationer thereafter would ipso facto must be held to be a deemed confirmation which would certainly run contrary to Seven Judge Bench Judgment of this Court in the case of *Samsher Singh* (supra) and Constitution Bench decisions in the cases of *Sukhbans Singh* (supra), *G.S. Ramaswamy* (supra) and *Akbar Ali Khan* (supra).

19. Thus, the view is that although the maximum period of probation may be specified either in the appointment order or the relevant rules or can be inferred by implication, it could not be said that a probationer would ipso facto be deemed to be confirmed as that would run contrary to the judgment in *S. Sukhbans Singh's* case (supra).

20. The State has relied on the judgments of the two Division Benches of this Court in the case WPST 173 of 2006 and WPST 91 of 2006 where the same provisions, i.e., Regulation 51(3) read with Regulation 66 of Chapter XV of the Police Regulations of Calcutta, 1968 were in question. It has been held in both these judgments that there was no automatic confirmation merely because the maximum period of probation had been completed unless there was a specific order of confirmation. It was held that such a specific order of confirmation should be passed only after taking into account the service record of the probationer. The mere fact that the probationer had been permitted to continue in service beyond the maximum statutory period could not lead to the conclusion that he was deemed to be made permanent in the post.

21. Therefore, there can be no doubt today that under Regulation 51(3) read with Regulation 66 the concept of deemed confirmation in service is not applicable. There has to be a positive act on the part of the police authority to confirm the Constable/Sepoy in service if it is found that the employee had improved his conduct and work during the extended period of probation.

22. In the present case, it is apparent from the affidavit-in-opposition that despite opportunities being granted to the petitioner to improve his service record, he did not care to do so. He was on extraordinary leave for 445 days from 18th November, 2001 when he was initially on probation and this conduct continued till his services were terminated on 13th April, 2005.

23. Therefore, in our opinion, the petitioner is not entitled to any relief. He cannot claim to have been confirmed in service by a deeming fiction. Therefore, the termination of his services while on probation cannot be considered to be illegal, requiring interference of this Court. The Tribunal, in our opinion, has not erred in dismissing the Original Application. The petition is dismissed.

24. Urgent certified photocopies of this judgment, if applied for, be given to the learned Advocates for the parties upon compliance of all formalities.