

(2011) 11 MAD CK 0102

In the Madras High Court

Case No : Writ Petition No. 13116 of 2011 and M.P. No's. 1 and 2 of 2011

V. Santhi Siri

APPELLANT

Vs

The Pondicherry University

RESPONDENT

Date of Decision : 16-11-2011

Acts Referred:

Pondicherry Universities Act, 1985 — Section 27(1)

Citation : (2011) 11 MAD CK 0102

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : A.R.L. Sundaresan, for Ms. A.L. Ganthimathi, for the Appellant; R. Viduthalai, for Ms. A.V. Bharathi, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice D. Hariparanthaman

1. The issue that arises for consideration in this writ petition is as to whether the petitioner is a Probationer or not when the impugned orders questioned in this writ petition were passed by the respondent University. The question of deemed confirmation in service jurisprudence has often arisen for consideration. The case on hand is one among those cases.

2. The facts leading to the filing of the writ petition are as follows:

(a) The petitioner obtained Master Degree in Fine Arts from the University of Hyderabad in the year 1999 and a Decree of Master of Philosophy in Fine Arts from the University of Madras in the year 2001. She also obtained a Master's Degree in Communication and Journalism from Madurai Kamaraj University in the year 2007. She submitted her Ph.D., thesis titled "Women as Cultural Icons in Contemporary Fine Arts of Andhra Pradesh" on 15.12.2008 to the Mother Teresa Women's University, Kodaikanal. She also passed in the National Eligibility Test for Lectureship in Visual Arts conducted by the University Grants Commission in December 1998 and December 1999. She secured Diploma in Web Designing in

Manipal Institute of Computer Education and also has obtained Certificate of Training from the Government of India, Ministry of Small Scale Industries, Small Industries Development Organisation. She served as a Casual Compere on assignment basis with Yuvavani of Prasar Bharathi, All India Radio, Hyderabad, between August 1997 and August 2000. She worked as a Lecturer in Visual Communication in the Department of Visual Communication, Mother Teresa University, Kodaikanal from May 2004 till she was appointed in the respondent University as Lecturer.

(b) The respondent University called for applications for appointment to the post of Lecturer in the Centre for Electronic Media, School of Physical, Medical and Applied Sciences of the University. The petitioner applied for the said post. She participated in the selection process and became successful. The respondent University issued an order dated 11.06.2009 appointing the petitioner as Lecturer in the aforesaid Centre. Accordingly, she joined duty on 25.06.2009. As per the appointment order, her services would be governed by the Act, Statutes and the Ordinances of the University. It is further stated therein that she would be on probation for a period of one year and the one year probation period ended on 24.06.2010. The probationary period was not extended before the expiry of the probation.

(c) While so, after the expiry of one year of probation, the respondent passed the impugned order dated 24.08.2010, based on the Resolution dated 07.08.2010 of the Executive Council, extending the probation of the petitioner for a further period of one year, with effect from 25.06.2010. By the said order, the petitioner was informed that her probation was extended, based on the assessment of her performance during the initial period of one year probation. It was further informed that if her performance during the extended period of probation is found not satisfactory, her services might be terminated.

(d) In these circumstances, a show cause notice dated 27.05.2011 was issued by the respondent University calling upon the petitioner to show cause as to why her services should not be terminated with immediate effect, as she secured only 2.35 score out of 5 in the students assessment report, which is below the acceptable level of 2.5 fixed by the Executive Council. She was directed to submit her reply on or before 08.06.2011. The impugned show cause notice was issued based on the resolution dated 27.05.2011 of the Executive Council.

(e) According to the petitioner, both the impugned orders are passed based on the assessment by the students and the same was not done in a transparent manner, as she was not put on notice of the details of such assessment. Furthermore, the assessment on the performance of a Teacher could not be solely based on the alleged students' assessment and therefore, the impugned orders are bad.

(f) The petitioner has filed the present writ petition seeking to quash the aforesaid order dated 24.08.2010 extending the period of probation for one more

year with effect from 25.06.2010 and the show cause notice dated 27.05.2011 asking her to show cause as to why her services could not be terminated with immediate effect, as she secured only 2.35 scores in the students assessment report, which is below the acceptable level of 2.5 fixed by the Executive Council.

3. According to the petitioner, the respondent University should decide the issue as to extend or not to extend the probation, by assessing her performance, at least 40 days before the expiry of one year probation period and the decision if any taken to extend the probation, shall be informed, at least 30 days prior to the one year period of probation, as per Clause 7 of Chapter XX of the Ordinances of the University. Since the one year period of probation came to end on 24.06.2010, the impugned order dated 24.08.2010 extending the period of probation is without jurisdiction and is in violation of the aforesaid Ordinances. Likewise, if the extension of probation is bad, she could not be termed as probationer and she should be deemed to be a confirmed employee. In this regard, reliance is also placed on Clause 11 of the UGC Regulations 2010. Since the petitioner could not be termed as a probationer as the one year probation period was not validly extended as per Clause 7 of Chapter XX of the Ordinances of the University, the impugned show cause notice seeking to terminate the petitioner from service treating her as probationer, is bad and illegal.

4. The respondent University filed a counter affidavit refuting the allegations made by the petitioner. It is stated in the counter affidavit that the University gives utmost importance to the feedback received from the students on the performance of the Teachers, as quite a large amount of money is being spent on the students by the University, in providing education. Based on NAAC/UGC guidelines, a format was devised by the University with the approval of the Academic Council for receiving students inputs on Teachers on as many as 20 parameters. Those 20 parameters, based on which inputs were received, are stated in the counter affidavit. If a Teacher has secured less than 2.5 out of the total score of 5, in the assessment by students, the Executive Council would extend the probation by one year and if the Teacher does not improve his/her performance during the extended period, she/he will be liable to be terminated in accordance with the provisions of the Ordinances. It is stated that the petitioner's case regarding declaration of probation along with 36 others, was placed in the 104th Executive Council meeting held on 27.05.2010 and the Executive Council passed a resolution resolving that the students feedback should be brought before the Council for approving the declaration of probation.

5. In these circumstances, the Executive Council, in its meeting held on 07.08.2010 considered the cases of 60 Faculty Members including the petitioner based on the students feed back report and the Council resolved to extend the probation of those who secured less than 2.5 out of the total score of 5. The petitioner secured only 1.95 score. Based on such resolution of the Executive Council, the probation of the petitioner was extended for a further period of one year by an order dated 24.08.2010. The petitioner secured 2.35 out of the total

score of 5 in the assessment by students on Teachers during the extended period of probation and therefore, the Executive Council, in its meeting held on 27.05.2011, resolved to issue show cause notice to the petitioner asking her explanation as to why she should not be terminated from service for her poor performance even during the extended period of probation.

6. Accordingly, a memo dated 27.05.2011 was issued to the petitioner asking her to give her explanation before 08.06.2011. It is stated that the UGC Regulations 2010, dated 30.06.2010 was notified only on 18.09.2010 and that therefore, the same could not be invoked by the petitioner for deemed confirmation as on 24.06.2010. It is further averred that the UGC Regulations 2010 was approved by the Academic Council and the Executive Council of the respondent University only on 12.01.2011 and 24.03.2011 respectively and therefore, Clause 11 of UGC Regulations 2010 could not be relied on by the petitioner for automatic confirmation.

7. Automatic confirmation is not in practice in the University. The respondent University has confirmed no employee without an order of confirmation. It is reiterated that the concept of giving grades and scores by students to the Teachers was evolved as per the guidelines of the UGC and NAAC. It is further stated that NAAC provides the guidelines for creation of Internal Quality Assurance Cell (IQAC) and that various aspects of institutional functioning are assessed by the IQAC and one of the aspects is the assessment by students. Thus, the respondent sought for dismissal of the writ petition.

8. Heard both sides.

9. The learned senior counsel for the petitioner submitted that since no decision was taken 40 days prior to the expiry of one year period of

probation and the petitioner was not informed 30 days prior to the expiry of one year period of probation about the extension of probation for a further period of one year, as per Clause 7 of Chapter XX of the Ordinances, the petitioner could not be termed as a probationer, on expiry of one year period of probation and she should be deemed to be a confirmed employee. In support of his contention, the learned senior counsel relied on the following judgments of the Honourable Apex Court:

- (a) State of Punjab Vs. Dharam Singh,
- (b) Dayaram Dayal Vs. State of M.P. and another [OVERRULED],
- (c) Babu Verghese and Others Vs. Bar Council of Kerala and Others,
- (d) Karnataka State Road Tpt. Corporation and Another Vs. S. Manjunath,
- (e) Punjab National Bank by Chairman and Another Vs. Astamija Dash,

10. The learned senior counsel for the petitioner placed heavy reliance on the judgment of the Honourable Apex Court in Babu Verghese and Others Vs. Bar

Council of Kerala and Others, for the proposition that when the statute contemplates a thing to be done in a particular manner, it has to be done in that manner alone. Since the respondent University failed to act as per Clause 7 of Chapter XX of the Ordinances, the petitioner has to be treated as confirmed employee for all purposes.

11. On merits, the learned senior counsel for the petitioner assailed that the alleged assessment by the students on teachers was not transparent. In any event, the score of 2 to 3 out of 5 is rated as average and therefore, the respondent University was not correct in extending the period of probation as the petitioner scored 2.45 and further seeking to terminate her from service.

12. The learned senior counsel for the petitioner seriously disputed the fact that the petitioner secured 1.95 out of the total score of 5 during the first year of probation. According to him, the petitioner secured 2.49 score as communicated by the respondent University themselves. He has also produced the original order of the respondent University, wherein it has been mentioned as 2.49. According to the learned senior counsel, 2.49 could be rounded as 2.5 and therefore, even according to the yardstick of the respondent University, there was no need for extension of probation.

13. Apart from assailing the assessment by students on teachers as not transparent, the learned senior counsel for the petitioner argued that the issue as to extension of probation of a teacher, could not be decided solely based on the assessment of students. Since the action of the respondent University in extending the period of probation and seeking termination of the service of the petitioner was solely based on the assessment of students, according to the learned senior counsel, such action is bad, illegal and arbitrary.

14. On the other hand, the learned senior counsel for the respondent University submitted that unless the University issued an order of confirmation, the petitioner should be continued as probationer. According to the learned senior counsel, there is no automatic confirmation. The learned senior counsel interpreted Clause 7(c) of Chapter - XX of the Ordinances to mean that there is no automatic confirmation. The learned senior counsel further submitted that the proviso to Clause 7(a) of Chapter - XX of the Ordinances could be applied only at the end of 24 months and not at the end of the expiry of one year period of probation.

15. The learned senior counsel for the respondent University also submitted that the new UGC Regulations 2010 came into operation only on 8.09.2010 and it did not come into operation on 30.06.2010. Hence, the same could not confer the benefit of confirmation to the petitioner. The learned senior counsel reiterated that unless there was an order of confirmation, the petitioner could continue as probationer and she could not be deemed as a confirmed teacher. The learned senior counsel relied on the following judgments in support of her submissions:

(a) Samsher Singh Vs. State of Punjab and Another,

- (b) Satya Narayan Athya Vs. High Court of M.P. and another,
- (c) High Court of Madhya Pradesh thru. Registrar and Others Vs. Satya Narayan Jhavar,
- (d) Rajinder Singh Chauhan and Others Vs. State of Haryana and Others,
- (e) Chaitanya Prakash and Another Vs. H. Omkarappa,
- (f) Khazia Mohammed Muzammil Vs. The State of Karnataka and Another,
- (g) Rajesh Kohli Vs. High Court of J. and K. and Another,
- (h) Division Bench Judgment of the Delhi High Court in Commissioner, NVS Vs. Rinku Sharma in W.P.(C). No. 8231 of 2009 (decided on 16.09.2010)

16. I have considered the submissions made on either side and perused the materials available on record.

17. The issue that arises for consideration is as to whether the petitioner continues as a probationer after expiry of one year period of probation or she could not be termed as a probationer, after the expiry of one year period and she is deemed to be a confirmed employee.

18. The learned senior counsel on either side relied on Clause 7 of Chapter-XX of the Ordinances of the University in support of their submissions. Clause 7 of Chapter-XX of the Ordinances is extracted hereunder:

7. Probation and Confirmation

(a) Every teacher shall be appointed on probation for a period of 12 months which may be extended by the Executive Council by a further period of upto 12 months provided that the total period of probation shall in no case exceed twenty four months.

Provided that the case of each teacher shall be placed before the Executive Council at least 40 days prior to the date on which his probation period would end and the teacher shall be informed of the decision of the EC not later than 30 days prior to the expiration of the period of probation.

(b) A teacher appointed by invitation under Statute 20(1) shall be deemed to have been confirmed with effect from the date (s)he joins duty.

(c) Where a teacher appointed on probation is found, during the period of probation, not suitable for holding that post or has not completed the period of probation whether extended or not, satisfactorily, the EC may (i) if the appointment is by promotion, revert the incumbent to the previous post held by him; and (ii) if the appointment is by direct recruitment, terminate the teacher's services under the University without notice.

19. In the judgments cited by the learned senior counsel on either side, the Honourable Apex Court held that the issue as to the deemed confirmation

depends solely on the relevant statutory rule that governs the conditions of service and each case has to be decided based on the facts of the case. Therefore, the interpretation of the aforesaid Clause - 7 of Chapter - XX of the Ordinances assumes much importance.

20. Clause 7(a) of Chapter - XX of the Ordinances contemplates appointment of a teacher on probation initially for a period of twelve months. The said Clause provides for extension of probation also. The word "may be" is used for extension by the Executive Council for a further period upto 12 months. Thus, a maximum period of 24 months is provided in the Ordinances for probation. The said Clause uses the word "may" in respect of extension by Executive Council. While Clause 7(a) uses the word "may be" for extension for a further period of 12 months, the proviso to Clause 7(a) uses the word "shall". The proviso to Clause 7(a) mandates that the case of each teacher "shall be" placed before the Executive Council to decide as to whether extension for a further period of 12 months be granted or not before 40 days to date on which the probation period would end, and the decision of the Executive Council "shall" be informed not later than 30 days prior to the expiration of the period of probation.

21. In this case, the petitioner was initially appointed on one year probation period, by order dated 11.06.2009. Clause-1 of the appointment order also states that the services of the petitioner will be governed by the Act, Statutes and the Ordinances of the University. Pursuant to the order dated 11.06.2009 appointing the petitioner as Lecturer in the Centre for Electronic Media of the University, the petitioner joined the service on 25.06.2009. The one year period of probation came to end on 24.06.2010. As per the proviso to Clause 7(a) of Chapter-XX of the Ordinances, the University ought to have placed the case of the petitioner before the Executive Council at least 40 days prior to 24.06.2010 for consideration as to whether the probation period was to be extended or not. Such a decision ought to have been informed at least 30 days prior to 24.06.2010. Admittedly, the University failed to act in accordance with the Ordinances. It is not in dispute that the Ordinances are statutory in its character and the same are framed u/s 27(1)(n) of the Pondicherry University Act, 1985. Therefore, when the statute contemplates the respondent to act in a particular manner, the respondent should act in such a manner and if the respondent failed to do so, they alone have to be blamed for the same.

22. As rightly contended by the learned senior counsel for the petitioner, the judgment of the Honourable Apex Court in Babu Verghese and Others Vs. Bar Council of Kerala and Others, squarely applies to the facts of the case. The Bar Council Election for the State of Kerala, which was conducted contrary to the Rule, was set aside by the Honourable Apex Court and the Apex Court has declared that if the manner of being a particular act is prescribed under any statute, the act must be done in that manner alone. In this regard, paras 31 and 32 of the said judgment are extracted hereunder:

31. It is the basic principle of law long settled that if the manner of doing a

particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in *Taylor v. Taylor* which was followed by Lord Roche in *Nazir Ahmad v. King Emperor* who stated as under:

[W]here a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all.

32. This rule has since been approved by this Court in *Rao Shiv Bahadur Singh v. State of V.P.* and again in *Deep Chand v. State of Rajasthan*. These cases were considered by a three-Judge Bench of this Court in *State of U.P. v. Singhara Singh* and the rule laid down in *Nazir Ahmad* case was again upheld. This rule has since been applied to the exercise of jurisdiction by courts and has also been recognised as a salutary principle of administrative law

23. I am not in agreement with the submissions of the learned senior counsel for the respondent University that proviso to Clause 7(a) of Chapter - XX of the Ordinances could be attracted only at the end of two years and not at the end of one year probation period. Likewise, I am also not in agreement with the submissions of the learned senior counsel that there is an implied extension of probation period after the expiry of one year probation period. Clause 7(a) of Chapter-XX of the Ordinances and more particularly, the proviso to Clause 7(a) makes it clear that the respondent University shall decide at least 40 days prior to the expiry of one year period of probation as to whether probation has to be extended or not and the decision shall be informed to the concerned employee 30 days prior to the completion of one year period of probation. I am unable to read Clause 7 as providing implied extension of probation.

24. In these circumstances, I am of the view that after the expiry of one year probation period, the petitioner shall be deemed to be a confirmed teacher. Clause 7 of Chapter - XX of the Ordinances does not contemplate the issuance of any order of confirmation on the expiry of one year period of probation. Furthermore, Clause 7 does not contemplate writing of any examination or facing an interview etc., at the end of probation period. Clause 7 also does not make any condition to become a confirmed employee. If the respondent University failed to decide the matter as per the proviso to Clause 7(a), then the employee should be deemed to be a confirmed employee and the employee/teacher could no more be a probationer. If the teacher is no more a probationer, the question of extension would not arise, after one year period of probation. The extension of probation for non satisfactory performance has to be decided at the end of one year of probation. Even during the one year period of probation, the respondent University could terminate the services, as per Clause 7(c) of Chapter - XX of the Ordinances on the ground of "unsatisfactory service". But the same did not take place and on the expiry of one year period of probation, the petitioner was not terminated. Hence, as per proviso to Clause 7(a) of Chapter XX of the Ordinances, the petitioner is deemed to be a confirmed employee. Therefore, the decision taken by the Executive Council after the expiry of one year period of

probation namely, 24.06.2010 is of no consequence.

25. In this case, decision was taken by the Executive Council in its meeting held on 07.08.2010 to extend the period of probation, for which, the respondent University has no power under the proviso to Clause 7(a) of Chapter - XX of the Ordinances. Hence, the very decision of the Executive Council to extend the period of probation retrospectively, is bad and illegal and therefore, the communication of the same in the proceedings dated 24.08.2010 is liable to be quashed. Since the very extension for a further period of 24 months, as communicated in the proceedings dated 24.08.2010, is liable to be quashed, the other impugned proceedings dated 25.07.2011 seeking to terminate the service of the petitioner on the ground that her service during the extended period of probation was not satisfactory, is also liable to be quashed.

26. Furthermore, as rightly contended by the learned Senior Counsel for the petitioner, extension or otherwise of probation of a teacher could not solely be based on the assessment of students. In fact on 27.05.2010, the Executive Council resolved to take into account the following records for declaration of probation of the newly appointed faculty members:

(i) Feedback of students

(ii) Peer evaluation report

(iii) Self appraisal report

But the decision taken by the Executive Council in its meeting held on 07.08.2010 to extend the probation of the petitioner for a further period of 12 months was solely based on the feedback of students and the Peer Evaluation report and the Self Appraisal report were not taken note of. In the counter affidavit filed before this Court also, the respondent sought to justify their action based on the feedback of the students alone. The other order dated 27.05.2011 seeking to terminate the service of the petitioner is also solely based on the feedback of the students and the other reports were not taken note of. Though the peer evaluation report and the self appraisal reports are available, the same were not considered by the Executive Council for the purpose of assessment of performance of the petitioner as per Clause 7 of Chapter-XX of the Ordinances. Hence, on merits also, I am of the considered view that the respondent was not correct in coming to the conclusion to extend the probation of the petitioner and later to dispense with the service.

27. At this juncture, it is relevant to note that had the respondent taken note of the peer evaluation and the self appraisal scores of the petitioner, the petitioner should have been confirmed in service. In the case of one Mr. A. Muthamil in the same Department, her self appraisal score is 19.5 during the first year of probation i.e. 2009-2010, while the score of the petitioner on her self appraisal is 126. Under 40 heads, self appraisal was evaluated. While Mr. A. Muthamil scored 7.5 under the head "Details of participation in Seminars / Symposium /

Conference in India and scored 10 under the head "Organization of Programmes at National / International Levels (National / International Seminars / Workshops etc.)" and scored 2 under the head "Chairmanship / Membership in University / Academic Bodies P.G. Level, i.e. 19.5 in total, the petitioner scored 40 under the head "Participation in Refresher Courses / Orientation Programme / Other Trainings" and scored 36 under the head "Number of publications authored" and scored 30 under the head "Participation in Seminars / Symposium / Conference in India" and scored 6 under the head "Chairmanship / Membership in University/ Academic Bodies P.G. Level" and scored 4 under the head "Administrative experience" and scored 2 under the head "Membership in Board of Appointments" and scored 5 under the head "Participation in Extension Activities" and scored 3 under the head "Membership in Academic Societies". While Mr. A. Muthamil was confirmed in service on completion of one year period of probation, the petitioner's period of probation was extended. Thus, in my view, the submissions of the learned senior counsel for the petitioner are well founded.

28. The learned senior counsel for the responder University is not able to show that the petitioner was informed that she scored 1.95 during the first year period of probation in the assessment of students. On the other hand, the original order dated 19.07.2010 with the graph enclosed was produced by the learned senior counsel for the respondent University, wherein it is recorded that the score of the petitioner is 2.49. Had the score of the petitioner is 2.49 during the first year, it could be read as 2.5 and there is no reason to deny her confirmation and to extend the period of probation, particularly when Mr. A. Muthamil was confirmed on completion of one year period of probation, when her self appraisal score is very low compared to the petitioner herein.

29. Reliance placed on by the learned senior counsel for the respondent University on the 7 Judges Bench judgment of the Honourable Apex Court in Samsher Singh Vs. State of Punjab and Another, has no application to the facts of this case. In the said case, the Apex Court considered the statutory rule, namely, Punjab Civil Services (Punishment and Appeal) Rules, 1952 and held that Rule 7(3) provides that express order of confirmation is necessary. It is also noted that the proviso to Rule 7(3) provides that the completion of maximum period of three years probation would not confer the right of confirmation till there is a permanent vacancy in the cadre. It is also held that the period of probation is extended by implication. In this regard, para 72 of the said judgment is extracted hereunder:

72. In this context reference may be made to the proviso to Rule 7(3). The proviso to the rule states that the completion of the maximum period of three years" probation would not confer on him the right to be confirmed till there is a permanent vacancy in the cadre. Rule 7(3) states that an express order of confirmation is necessary. The proviso to Rule 7(3) is in the negative form that the completion of the maximum period of three years would not confer a right of confirmation till there is a permanent vacancy in the cadre. The period of

probation is therefore extended by implication until the proceedings commenced against a probationer like the appellant are concluded to enable the Government to decide whether a probationer should be confirmed or his services should be terminated. No confirmation by implication can arise in the present case in the facts and circumstances as also by the meaning and operation of Rules 7(1) and 7(3) as aforesaid

But in the present case, Clause 7 of Chapter -XX of the Ordinances does not contain any such provision. Therefore, the aforesaid judgment could not be applied.

30. The judgment of the Honourable Apex Court in Satya Narayan Athya Vs. High Court of M.P. and another, relied on by the learned senior counsel for respondent University has also no application to the facts of this case. That case arose out of M.P. Judicial Service (Classification, Recruitment and Condition of Services) Rules, 1955. The said rule provides for passing of departmental examination at the end of probation. The Full Court of the Madhya Pradesh High Court decided not to confirm the petitioner therein in service due to his unsatisfactory service during the period of probation and the petitioner therein was terminated from service. Honourable Apex Court confirmed the judgment of the High Court confirming the order terminating service. However, in the case on hand, Clause-7 of Chapter-XX of the Ordinances does not contemplate writing of any test or departmental examinations for declaration of probation.

31. The judgment of the Honourable Apex Court in High Court of Madhya Pradesh thru. Registrar and Others Vs. Satya Narayan Jhavar, relied on by the learned senior counsel for respondent University has also no application to the facts of this case. That case also arose out of M.P. Judicial Service (Classification, Recruitment and Condition of Services) Rules, 1955. The three Judges bench of the Honourable Apex Court examined the question of confirmation of a probationer and held that it depends upon his fitness for confirmation and his passing of the departmental examination. But in this case, as stated above, Clause-7, Chapter -XX of the Ordinances does not contain any such condition for declaration of probation.

32. I am unable to understand as to how the Judgment of the Honourable Apex Court in Rajinder Singh Chauhan and Others Vs. State of Haryana and Others, as relied on by the learned senior counsel for the respondent University would help the case of the respondent. In that case, the deemed confirmation was applied based on the fact that the appellant therein completed the maximum period of probation.

33. Honourable Apex Court judgment in Chaitanya Prakash and Another Vs. H. Omkarappa, relied on by the learned senior counsel for the respondent University could not be applied to the facts of this case. In para 13 of the said judgment, it is stated that there is no dispute with regard to the fact that the respondent therein continued to be on probation. Furthermore, in the said case, it is found

that the respondent therein used an intemperate language against his superior. In this context, it is stated in para 16 as follows:

16. Our attention was also drawn to a letter written by the respondent to Appellant 1, who was the Managing Director of the Company. If a subordinate officer like the respondent is in the habit of using an intemperate language against his superior like Appellant 1, the decision taken by the appellant Company cannot be said to be in any manner vitiated. Letter dated 13-11-1999 written by the respondent to Appellant 1 would support the said position and would speak volumes about his behaviour and conduct.

Thus, the said judgment could not be applied to the case on hand.

34. Honourable Apex Court judgment in Khazia Mohammed Muzammil Vs. The State of Karnataka and Another, relied on by the learned senior counsel for the respondent University also could not be applied to the facts of this case. That case arose out of Karnataka Judicial Services (Recruitment) Rules, 1983. The appellant therein was directly recruited as a District Judge. The Full Court of the Karnataka High Court terminated him from service on not being satisfied with his service, while he was on probation. The Apex Court confirmed the order of the High Court terminating the services of the appellant therein, on the ground that the Rule contemplates passing of departmental examination and also that the Rule contains negative command that the period of probation shall not be less than two years. Furthermore, it is found that the appellant therein was in the Rowdy List maintained by the Police. Without verification of the police report, the appellant therein was appointed. In fact, in paras 33 and 46 of the said judgment, it has been held that the issue has to be decided based on the rule position. In this regard, paras 33 and 46 of the said judgment extracted hereunder:

33. We have already noticed that two views are prevalent. Primarily, the Court has taken the diametrical opposite view. One which accepts the application of the deemed confirmation after the expiry of the prescribed period of probation, while the other taking the view that it will not be appropriate to apply the concept of deemed confirmation to the officers on probation as that is not the intent of law. In our opinion, the rules and regulations governing a particular service are bound to have greater impact on determining such question and that is the precise reason that we have discussed Rules 3 to 6 of the 1977 Rules in the earlier part of the judgment.

46. On a clear analysis of the above enunciated law, particularly, the seven-Judge Bench judgment of this Court in Samsher Singh and the three-Judge Bench judgments, which are certainly the larger Benches and are binding on us, the courts have taken the view with reference to the facts and relevant rules involved in those cases that the principle of "automatic" or "deemed confirmation" would not be attracted. The pith and substance of the stated principles of law is that it will be the facts and the rules, which will have to be

examined by the courts as a condition precedent to the application of the dictum stated in any of the line of cases aforenoticed.

In the present case on hand, Clause-7, Chapter-XX of the Ordinances do not contain any condition, such as writing of examination or facing of interview or any other condition for confirmation and on the other hand, the condition was placed on the respondent to assess the performance of a teacher before 40 days of the expiry of the period of one year probation and to intimate the same before 30 days of the expiry of the one year period of probation. Thus, the said judgment could not be applied to the facts of this case.

35. The judgment of the Honourable Apex Court in Rajesh Kohli Vs. High Court of J. and K. and Another, relied on by the learned senior counsel for the respondent University also could not be applied to the facts of this case. That case arose out of Jammu and Kashmir Higher Judicial Service Rules. The appellant therein was a probationary Judicial Officer, who was sought to be terminated by the High Court of Jammu and Kashmir. The appellant therein was involved in a financial irregularity amounting to Rs. 2.6 Lakhs and the Chief Justice of the Jammu and Kashmir High Court directed the Registrar to file a criminal complaint against the appellant therein. The Apex Court held that the district judiciary is the bedrock of our judicial system and is positioned at the primary level of entry to the doors of justice. The appellant therein was terminated during the period of probation.

36. The Division Bench judgment of the Delhi High Court in Commissioner, NVS Vs. Rinku Sharma in W.P.(C) No. 8231 of 2009 (decided on 16.09.2010) relied on by the learned senior counsel for the respondent University also could not be applied to the facts of this case. The respondent therein was a Teacher in Kendriya Vidyalaya School. While she was on probation and she went on long leave and remained absent. In that context, the termination of her service during the probationary period was upheld by the Delhi High Court. Thus, all the judgments relied on by the learned senior counsel for the respondent has no application to the facts of this case.

37. The judgments relied on by the learned senior counsel for the petitioner have held the "deemed confirmation" in favour of the employees in those judgments, based on the relevant rules. Likewise, based on the relevant clause herein, namely Clause 7 of Chapter - XX of the Ordinances of the respondent University, the petitioner herein is deemed to be a confirmed employee on completion of one year period of probationary service.

38. In these circumstances, the impugned orders are quashed and the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.