State of Punjab

Vs

Dharam Singh

Civil Appeal No. 787 of 1966

(CJI K. N. Wanchoo, R. S. Bachawat, J. M. Shelat, G. K. Mitter, C. A. Vaidialingam JJ)

02.02.1968

JUDGMENT

BACHAWAT, J.

These two connected appeals raise a common question of construction of r. 6 of the Punjab Educational Service (Provincialised Cadre) Class III Rules, 1961. Before October 1, 1957, Dharam Singh and Dev Raj, the respondents to these appeals, were junior teachers in District Board schools. The District Board schools were provincialised, and the services of the respondents were taken over by the Punjab State with effect from October 1, 1957 in pursuance of a scheme of provincialisation of Local Bodies schools in the State. On February 13, 1961, the Governor of Punjab in exercise of the powers conferred by the proviso to Art. 309 of the Constitution framed the Punjab Educational Service (Provincialised Cadre) Class III Rules, 1961 regulating the conditions of service of the teaching staff taken over by the State Government from the local authorities. Rule 1 provides that the rules will be deemed to have come into force with effect from October 1, 1957. Rule 3 created the Punjab Educational (Provincialised Cadre) Class III Service consisting of the posts shown in Appendix A. It is common case that the posts held by the respondents are included in Appendix A and carry time scales of pay. Rule 6 is in these terms :

> "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.
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> (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.
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> (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) Service spent on deputation to a corresponding or higher post may be allowed to count towards the period of probation, if there is a permanent vacancy against which such member can be confirmed."

The respondents were officiating in permanent posts and under r. 6(3) they continued to hold those posts on probation in the first instance for one year. The maximum period of probation fixed by the rules was three years which expired on October 1, 1960. The respondents continued to hold their posts after October 1, 1960, but formal orders confirming them in their posts were not passed. Under r. 7, the Director of Public Instruction, Punjab was the appointing authority. By two separate orders passed on February 10, 1963 and April 4, 1963, the Director terminated their services. The order in each case stated that the services of the respondent concerned "are hereby terminated in accordance with the terms of his employment. The order shall take effect after one month from the date it is served on him." Rule 12 provides that in matters relating to discipline, punishment and appeals, members of the service shall be governed by the Punjab Civil Services (Punishment and Appeal) Rules, 1952. The orders dated February 10 and April 4, 1963 were passed without holding any departmental enquiry and without giving the respondents any opportunity of making representations against the action taken against them. The respondents filed separate writ petitions in the Punjab High Court challenging the aforesaid orders on the ground that they had acquired substantive rights to their posts, and that the orders amounted to removal from service, and were passed in violation of Art. 311 of the Constitution. The appellants pleaded that the respondents were temporary employees, that their services were terminated in accordance with the terms of their employment, and that the impugned orders did not amount to amount to removal from service and were not in violation of Art. 311. Learned single Judges of the High Court rejected the respondents' contentions and dismissed the writ petitions. The respondents filed separate Letters Patent appeals against these judgments. The appellate Court allowed the appeals and set aside the impugned orders. The appellate Court held that the respondents were not temporary employees, that they held the posts on probation, that on the expiry of three years' period of probation they must be deemed to have been confirmed in their posts, that the impugned orders having deprived them of their right to those posts amounted to removal from service by way of punishment and were passed in violation of Art. 311 and the Punjab Civil Services (Punishment and Appeal) Rules, 1952. It is against these appellate orders that the present appeals have been filed after obtaining special leave.

The High Court found that the respondents were officiating in permanent posts against permanent vacancies as contemplated by r. 6(1), and that on the coming into force of the rules, they must be deemed to have held their posts under r. 6(1) on probation in the first instance for one year from October 1, 1957. The correctness of these findings is not disputed by the appellants. The High Court also held that in the circumstances of these cases, on the completion of three years' period of probation on October 1, 1960, the respondents must be deemed to have been confirmed in their appellants. The appellants attack this finding. They submit that in the absence of formal orders of confirmation the respondents must be deemed to have continued in their posts as probationers. In the alternative, they submit that on completion of three years' period of probation, the respondents must be deemed to have been discharged from service and re-employed as temporary employees. We are unable to accept these contentions.

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. The State of Punjab [[1963] (1) S.C.R. 416, 424-426], G. S. Ramaswamy v. The Inspector-

General of Police, Mysore State, Bangalore [[1964] 6 S.C.R. 278, 288-289], The Accountant General, Madhya Pradesh, Gwalior v. Beni Prasad Bhatnagar [C.A. No. 548 of 1962 decided on January 23, 1964.], D. A. Lyall v. The Chief Conservator of Forests, U.P. and others [C.A. No. 259 of 1963 decided on February 24, 1965.] and State of U.P. v. Akbar Ali [[1966] 3 S.C.R. 821, 825-826.]. 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.

The same view was taken in Narain Singh Ahluwalia v. State of Punjab and another [C.A. No. 492 of 1963 decided on January 29, 1964.]. It was suggested before us that the service rules in that case provided for a maximum period of probation of two years beyond which the probationary period could not be extended. The judgment in that case does not refer to such a rule, nor does it appear from the judgment that before the appellant was reverted to his substantive post, the maximum period of probation in the post to which he had been promoted had expired. A reference to the paper book in that case shows that in November, 1957 the appellant was promoted as a superintendent and on June 26, 1959 before the expiry of the maximum period of probation he was reverted to his substantive post. He thus continued to hold the post of superintendent as a probationer when the order of reversion was passed.

In the present case, r. 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 negatived 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.

The employees referred to in r. 6(1) held their posts in the first instance on probation for one year commencing from October 1, 1957. On completion of the one year period of probation of the employee, four courses of action were open to the appointing authority under r. 6(3). The authority could either (a) extend the period of probation provided the total period of probation including extensions would not exceed three years, or (b) revert the employee to his former post if he was promoted from some lower post, or (c) dispense with his services if his work or conduct during the period of probation was unsatisfactory, or (d) confirm in his appointment. It could pass one of these orders in respect of the respondents on completion of their one year period of probation. But the authority allowed them to continue in their posts thereafter without passing any order in writing under r. 6(3). In the absence of any formal order, the question is whether by necessary implication from the proved facts of these cases, the authority should be presumed to have passed some order under r. 6(3) in respect of the respondents, and if so, what order should be presumed to have been passed.

The respondents were not promoted from lower posts and there was no question of their reversion to such posts at any time under r. 6(3).

The initial period of probation of the respondents ended on October 1, 1958. By allowing the respondents to continue in their posts thereafter without any express order of confirmation, the competent authority must be taken to have extended the period of probation up to October 1, 1960 by implication. But under the proviso to r. 6(3), the probationary period could not extend beyond October 1, 1960. In view of the proviso to r. 6(3), it is not possible to presume that the competent authority extended the probationary period after October 1, 1960, or that thereafter the respondents continued to hold their posts as probationers.

Immediately upon completion of the extended period of probation on October 1, 1960, the appointing authority could dispense with the services of the respondents if their work or conduct during the period of probation was in the opinion of the authority unsatisfactory. Instead of dispensing with their services on completion of the extended period of probation, the authority continued them in their posts until sometime in 1963, and allowed them to draw annual increments of salary including the increment which fell due on October 1, 1962. The rules did not require them to pass any test or to fulfil any other condition before confirmation. There was no compelling reason for dispensing with their services and re-employing them as temporary employees on October 1, 1960, and the High Court rightly refused to draw the inference that they were so discharged from service and reemployed. In these circumstances, the High Court rightly held that the respondents must be deemed to have been confirmed in their posts. Though the appointing authority did not pass formal orders of confirmation in writing, it should be presumed to have passed orders of confirmation by so allowing them to continue in their posts after October 1, 1960. After such confirmation, the authority had no power to dispense with their services under r. 6(3) on the ground that their work or conduct during the period of probation was unsatisfactory. It follows that on the dates of the impugned orders, the respondents had the right to hold their posts. The impugned orders deprived them of this right and amounted to removal from service by way of punishment. The removal from service could not be made without following the procedure laid down in the Punjab Civil Services (Punishment and Appeal) Rules, 1952 and without conforming to the constitutional requirements of Art. 311 of the Constitution. As the procedure laid down in the Punjab Civil Services (Punishment and Appeal) Rules, 1952 was not followed and as the constitutional protection of Art. 311 was violated, the impugned orders were rightly set aside by the High Court.

In the result, the appeals are dismissed with costs. There will be one hearing fee.

Appeals dismissed.##

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