

Pratap Singh

Vs

Union Territory Of Chandigarh

Civil Appeal No. 924 of 1978

(Syed M. Fazal Ali, P.S. Kailasam, A.P. Sen JJ)

03.09.1979

JUDGMENT

FAZAL ALI, J. -

1. This appeal by special leave is directed against the judgment of the Punjab and Haryana High court dismissing the Writ petition filed by the appellant against the order of this termination passed by the Senior Superintendent of Police. The appellant was appointed on July 2, 1973 as a temporary Assistant Sub-Inspector of Police. On September 26, 1977, his services were terminated by the Senior Superintendent of Police. Against this order, the appellant moved the High Court of Punjab and Haryana but his petition was rejected. Thereafter, he came to this Court and after obtaining special leave from this Court, the appeal has been placed before us for hearing.

2. The short point taken by the appellant in this appeal is that under Rule 12.8(1) of Punjab Police Rules, the petitioner must be considered to be on probation for a period of three years and as the appellant has crossed his period of three years, he must be deemed to have been confirmed and, therefore, his services could not be terminated. In support of this submission, reliance is placed by the appellant on a Division Bench judgment of this Court in case of Superintendent of Police, Ludhiana v. Dwarka Das ((1979) 3 SCC 789 : AIR 1979 SC 336) where Shinghal, J., speaking for the Court observed as follows : (SCC p. 791, para 5)

So if Rules 12.2(3) and 12.21 are read together, it will appear that the maximum period of probation in the case of a police officer of the rank of constable is three years, for the Superintendent of Police concerned has the power to discharge him within that period. It follows that the power of discharge cannot be exercised under Rule 12.21 after the expiry of the period of three years.

3. It is true that the observations made by this Court support the contention of the appellant to an extent. But in our opinion, the Division Bench decision was not correctly decided as it has not considered the five Bench decision of this Court in case of State of Punjab v. Dharam Singh ((1968) 3 SCR 1, 4, 5 : AIR 1968 SC 1210 : 34 FJR 408) were after considering the number of cases, the Court observed thus : (SCR pp. 4, 5)

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 ... 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.

4. In the instant case, the appellant was appointed purely on a temporary basis and not on probation and, therefore, Rule 12.8 which deals with officials who are appointed on probation does not apply to this case at all. It is well settled that a person is appointed on probation only if he is appointed against a substantive vacancy. In the instant case, it is not disputed that the appellant was appointed only against a temporary vacancy. Assuming, however, that Rule 12.8 of the Punjab Police rules applies to the appellant's case and he is governed by Rule 12.8 even after the probation of three years is over, the police officer shall not be deemed to be confirmed unless there is any rule which provides that in absence of an order of confirmation at the end of the probation, the employee must be presumed to be confirmed. There is no such provision in the present rules. In these circumstances, therefore, as held by this Court in the case of Dharam Singh ((1968) 3 SCR 1, 4, 5 : AIR 1968 SC 1210 : 34 FJR 408, it must be held that if no express order of confirmation was passed after the appellant completed three years, it must be presumed that his probation was extended.

5. In this view of the matter, as the appellant was a temporary hand, the services could be terminated at any time. It appears that the attention of this Court in Dwarka Das case ((1979) 3 SCC 789 : AIR 1979 SC 336) was not drawn to the case of State of Punjab v. Dharam Singh ((1968) 3 SCR 1, 4, 5 : AIR 1968 SC 1210 : 34 FJR 408) which has been decided by a larger Bench and therefore, the later decision rendered by this Court in Dwarka Das ((1979) 3 SCC 789 : AIR 1979 SC 336) is directly opposed to the view taken by the larger Bench and must, therefore, be overruled. For these reasons, therefore, we are unable to find any legal error in the order passed by the Senior Superintendent of Police in terminating the services of the appellant.

6. The appeal is accordingly dismissed.

7. A request has been made by the appellant that he may be allowed to retain the government quarter which has been allotted to him for some time so as to enable him to find alternative accommodation. Mr. Marwah, Counsel for the State, has no objection if a reasonable time is given to the appellant for this purpose. We, therefore, give three months' time to the appellant to vacate the government quarter allotted to him on his furnishing an undertaking to the Senior Superintendent of Police.

</html