

K. A. Barot

Vs

State of Gujarat

Civil Appeal No. 778 of 1975

11.04.1990

ORDER

1. The appellant in this appeal by special leave was appointed as a Civil Judge of the Junior Division in the Gujarat Judicial Service on March 7, 1969 on probation for a period of two years. His probation was thrice extended - on October 1, 1971 for six months; again for six months on April 1, 1972 and for the third time for six months on October 1, 1972 on April 13, 1973 there was an order terminating his services with effect from April 30, 1973. He challenged the order of termination by filing a writ petition before the High Court and when the High Court dismissed the same, the appeal has been filed by special leave.

2. It is the settled view of this Court, in the absence of a rule to the contrary, that probation does not transform itself into confirmation unless there is a specific order. It is not the case of the appellant that he was confirmed by any order of the authority. The only contention which is canvassed in support of the appeal before us is the term of the order of appointment which stipulated.

"you will be on probation for a period of two years from the date on which you take charge of your appointment and during this period your appointment is liable to be terminated without notice. After the period of probation your services are liable to be terminated on one month's notice as long as your appointment is temporary.

It should be clearly understood that your appointment at present is purely temporary."

3. Appellant's learned counsel contends that the appellant was entitled to a month's notice after termination as after March 31, 1973 when the final extension of probation expired to a month's notice as stipulated; in its absence the termination was bad in law. He further indicated that the appellant was prepared to go back as a probationer. We have examined all aspects of the matter and particularly the fact that he has been out of employment from May 1, 1973 until now a period of about 17 years.

4. It must be accepted in the facts of this case that though in the absence of a clear order of confirmation, a probationer does not get the confirmed status, it is open to the appointing authority to confer a status other than that of confirmed status on the termination of probation. In the instant case, the appellant's status was temporary as indicated in the order of appointment. The order of appointment stipulated termination with a month's notice. In the event of notice falling short of a month as stipulated, at the most the appellant would have become entitled to a month's salary in lieu of notice. The principle in Section 25-F of the Industrial Disputes Act or under Section 5 of the Civil Services (Temporary Service) Rules, 1965 when this Court has taken the view that unless the statutory dues accompanied the notice of termination the same would be bad cannot be invoked in

the facts of the present case. Therefore the appellant is not entitled to succeed in his contention raised in the appeal.

5. We have, however, taken a broad view of the matter and looked into the different aspects appearing on the record. On an earlier occasion when the matter was heard by a different bench, a suggestion had been made to the State of Gujarat to compensate the appellant by payment of fixed sum. No final decision could be taken then. On looking into the record, we are of the view that the appellant should be compensated by payment of a sum of Rs. 50,000 net and this amount should be paid within two months hence. If it is so paid, it shall not carry interest and in the event of failure to pay or necessity to execute for its recovery, interest of 12 per cent shall be payable on the amount from today till payment.

6. This amount represents compensation to the appellant and, therefore, must be deemed to be spread over a period intervening between the date of termination and the date of this judgment for purpose of tax. The appeal is disposed of accordingly. No costs.

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