

Municipal Corporation, Raipur

Vs

Ashok Kumar Misra

Civil Appeal No. 722 of 1978

(N. M. Kasliwal, K. Ramaswamy JJ)

16.04.1991

JUDGEMENT

K. RAMASWAMY, J.:-

1. The facts in this appeal would lie in a short compass. The appellant appointed the respondent as Lower Division Clerk on September 22, 1966 and put him on probation for a period of two years which expired on September 21, 1968. On December, 9, 1968, the appellant served him with one month's notice terminating the services with effect from Jan., 9, 1969. Calling in question the order of termination, the respondent laid the suit for declaration that the termination without enquiry and an opportunity of being heard was violative of Rule 9A of the Madhya Pradesh Civil Service Classification, Control and Appeal (Rules), 1966 with consequential declaration that he became a permanent employee of the Corporation with continuity of the service and arrears of salary. The trial Court dismissed the suit and on appeal it was confirmed. The High Court in Second Appeal No. 315/70 by judgment and decree dated April 11, 1977 allowed the appeal and decreed the suit as prayed for. On leave under Art. 136 the appellant filed this appeal.

2. Shri S. K. Gambhir, learned counsel for the appellant contended that the respondent being a probationer acquires permanent status only on confirmation. Before confirmation the appellant had exercised its power, in terms of the rules, and terminated the respondent's service. The High Court committed manifest error of law in its finding that on expiry of two years period of probation the respondent must be deemed to have been confirmed under Rule 14 of the Municipal Officers and Servants Recruitment Rules which no longer were in force. He further contended that R. 8 of Madhya Pradesh Government Servants' General Conditions of Service Rules, 1961 for short 'the Rules' expressly provides confirmation of probation as a condition precedent. Notice was issued terminating the service before confirmation and so it is valid in law. Shri S. S. Khanduja, learned counsel for the respondent contended that by operation of the resolution passed by the Municipal Corporation under S. 25 of the Central Provinces and Berar Municipality Act, 1922, the Municipal Officers and Servants are governed by recruitment rules thereunder. Rule 14 thereof, relied on by the High Court expressly provided to put an employee on probation for a period of two years subject to being confirmed. At the end of the probationary period, if the probationer was found unfit, the Municipal Committee shall, if he was a direct recruit, dispense with his service and if he has been recruited by transfer, to revert to his original post. On expiry of the period of two years, no action was taken by the Municipal Corporation. Therefore, the respondent must be deemed to have been confirmed. Thereafter, the only power which the Corporation had was to terminate the service of the respondent in accordance with Classification, Control and Appeal Rules after conducting an enquiry and giving him reasonable opportunity that too for misconduct. No such procedure was adopted. Therefore, the impugned notice was illegal and the High Court was justified in granting the

decree.

3. The first question is, which are the relevant rules that would be applicable to the respondent? Admittedly, the Municipal Council became a Municipal Corporation on or after August 26, 1967. A resolution was passed making a draft bye-law by a Municipal Council on November 11, 1960, exercising the power under S. 178(3) of the Madhya Pradesh Municipal Act, 1922 and confirmed the same under S. 25(1) of the said Act, adopting Government Rules to regulate the conditions of service of officers and servants of the Municipal Committee which provides thus :

"The fundamental rules and the civil service regulations as amended from time to time in their applications to M.P., the M.P. Government Servants' Conduct Rules, 1959, as amended from time to time and the General Book Circulars of the Govt. of M.P. as in force for the time being shall apply to the officers and servants of the M. C. in the same way as they apply to Govt. Servants."

Thus, it is clear that the Fundamental Rules, Civil Service Regulations, Govt. Servants Conduct Rules and the General Book Circulars of the Government of Madhya Pradesh as amended from time to time, etc. shall apply to the officers and servants of the Municipal Committee. The previous rules were thus superseded and were no longer in force. Reliance on R. 14 referred to above made by the High Court is, therefore, wrong. Rule 8 of the Rules reads thus:

"Probation- (1) A person appointed to a service or post by direct recruitment shall ordinarily be placed on probation for such period as may be prescribed.

(2) The appointing authority may, for sufficient reasons, extend the period of probation by a further period not exceeding one year.

Note- A probationer whose period of probation is not extended under this sub-rule but who has neither been confirmed nor discharged from service at the end of the period of probation shall be deemed to have been continued in service, subject to the condition of his service being terminable on the expiry of a notice of one calendar month given in writing by either side.

(3) A probationer shall undergo such training and pass such departmental examinations during the period of his probation as may be prescribed.

(4) and (5) are not relevant, hence omitted.

(6) on the successful completion of probation and the passing of the prescribed departmental examinations, the probationer shall be confirmed in the services or post to which he has been appointed."

4. Thus, it is clear from R. 8 of the Rules that the procedure to place a direct recruit on probation for a prescribed period was provided. The appointing authority would be entitled to place a direct recruit on probation for a specified period and for sufficient reasons may extend the period of probation to a further period not exceeding one year. Under the note to sub-rule (2) if the probationer is neither confirmed nor discharged from service at the end of the period of probation, he shall be deemed to have been continued in service as probationer subject to the condition of his service being terminated on the expiry of a notice of one calendar month given in writing by either side. As per sub-rule (6) on passing the prescribed departmental examination and on successful

completion of the period of probation, the probationer shall be confirmed in the service or post to which he has been appointed. Then he becomes an approved probationer. Therefore, after the expiry of the period of probation and before its confirmation, he would be deemed to have been continued in service as probationer. Confirmation of probation would be subject to satisfactory completion of the probation and to pass in the prescribed examinations. Expiry of the period of probation, therefore, does not entitle him with a right to a deemed confirmation. The rule contemplates to pass an express order of confirmation in that regard. By issue of notice of one calendar month in writing by either side, the tenure could be put to an end, which was done in this case. In *State of Punjab v. Dharam Singh* (1968) 3 SCR 1,; (AIR 1968S C 12 1 0) considering the effect of continuing a probationer in service after the period of probation was completed, the Constitution Bench held that there was no rule for the extension of probation after October 1, 1960 and it was not possible to presume the competent authority extended it beyond October 1, 1960. Thus in the above case there was no power to extend the probation in the rules beyond the specified period. It was held that

"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 Rule 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."

Accordingly it was held that the respondent therein was deemed to have been confirmed.

5. In *Om Prakash Maurya v. U. P. Coop. Sugar Factories Federation, Lucknow* (1986) Supp SCC 95 : (AIR 1986 SC 1844), this Court held that U.P Co-op. Sugar Factories Federation Service Rules, 1976 made under the U.P. Co-op. Societies Act were in force. Regulation 17 of 1975 Regulations does not permit continuance of an employee for a period of more than two years. One year normally was the period of probation and further being extended to a period of one more year. R. 5 of 1976 Rules does not prescribe any limit on the extension of the probationary period. In the light of the operation of those rules when the probationary period was prescribed on promotion to the post of Commercial Officer with a condition that his probationary period may be extended and he could be reverted to the post of Office Superintendent without any notice, this Court held that the stipulation for extension of probationary period in the appointment order must be considered in accordance with the proviso to Regn. 17(1) which means that the probationary period could be extended for a period of one year more and the probationary period was further extended to one year during which period the service of the appellant was neither terminated nor was he reverted to his substantive post, instead he was allowed to continue. On those facts this Court held that "since under those regulations, appellant's probationary period could not be extended beyond the maximum period of two years, he stood confirmed on the expiry of the maximum probationary period and thereafter he could not be reverted to lower post treating him on probation". In *M. A. Agarwal v. Gurgaon Bank* (1987) Supp SCC 643: (AIR 1988 SC 286) and in *State of Gujarat v. Akhilesh C. Bhargav* (1 987) 3 SCR 1091 this Court reiterated the same view.

6. Exercise of the power to extend the probation is hedged with the existence of the rule in that regard followed by positive act of either confirmation of the probation or discharge from service or reversion to the substantive post within a reasonable time after the expiry of the period of probation. If the rules do not empower the appointing authority to extend the probation beyond the prescribed

period, or where the rules are absent about confirmation or passing of the prescribed test for confirmation of probation and inaction for a very long time may lead to an indication of the satisfactory completion of probation. But in this case R. 8 expressly postulates otherwise. The period of probation is subject to extension by order in writing for another period of one year. Passing the prescribed examinations and successful completion of probation and to make an order of confirmation are condition precedent. Mere expiry of the initial period of probation does not automatically have the effect of deemed confirmation and the status of a deemed confirmation of the probation. An express order in that regard only confers the status of an approved probationer. We are of the view that note to sub-rule (2) read with sub-rule (6) of Rule 8 manifests the legislative intent that confirmation of the probation of the respondent would be made only on successful completion of the probation and the passing of the prescribed examinations. It is not the respondent's case that he passed all the examinations. He shall be deemed to be, continued on probation. Before confirmation the appointing authority is empowered to terminate the service of the probationer by issuing one calendar month's notice in writing and on expiry thereof the service stands terminated without any further notice. Within three months from the date of expiry of original two years period of probation and within one year's period, the order of termination was made. In this view the question of conducting an inquiry under the Classification, Control and Appeal (Rules) after giving an opportunity and that too for specific charges does not arise. The High Court, therefore, committed manifest error of law in decreeing the suit. By an interim order passed by this Court, the respondent received a sum of Rs. 5,000/- from the appellant. The appellant shall not recover the same from him. The appeal is accordingly allowed. The judgment and decree of the High Court is set aside and that of the trial Court and the I st Appellate Court are confirmed. But in the circumstances parties are directed to bear their own costs.

Appeal allowed.

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