

State of Punjab

Vs

Baldev Singh Khosla

Civil Appeal No. 7793 of 1996

(K. Ramaswamy, G.B. Pattanaik JJ)

19.04.1996

JUDGMENT

1. Leave granted.

2. This appeal by special leave arises from the order of the High Court of Punjab and Haryana made on September 14, 1994 in CWP No. 11874. The respondent was promoted as an Assistant Registrar of the Co-operative Societies by proceedings dated March 21, 1990. Rule 10 of the Punjab State Co-operative Service (Class II) Rules, 1958 enjoins that the promotee or direct recruit would be put on probation for a period of two years provided that the Government may allow service rendered on a post on an identical cadre or in the higher post in another department to count for probation in the said service. Rule 10 reads as under:

"10. Probation. All members of the service shall on appointment remain on probation in the first instance for a period of two years, provided that Govt. may allow service rendered on a post on an identical cadre or in the higher post in another department to count for probation in the post in the service.

2. Provided further that in the case of members promoted from the State Service Class III continue officiating of four months or over shall be reckoned as a period of probation.

3. If the work or conduct of any candidate or member during the period of training of probation in the opinion of Government not satisfactory they may dispense with his service, if he has been recruited by direct appointment or may revert him to his former post if he has been recruited by promotion or by transfer. On the conclusion of the period of probation of any members of the service, government, may, if vacancy exists, confirm him in his appointment; if his work or conduct has, in its opinion been satisfactory may extend his period of probation by such period as it may think fit and thereafter pass such orders as it could have passed on the expiry of the first period of probation, provided that the total period of probation, including extension, shall not exceed three years in any case".

3. Though respondent had completed his probation on November 25, 1992, however, his probation was extended, in the meanwhile from time to time. On September 15, 1993, a show cause notice was issued to him as to why he should not be reverted to the substantive cadre. On consideration of

the reply to show cause notice order came to be passed on February 11, 1994 reverting him to the substantive post from which he was promoted. Consequently, he filed writ petition. The High Court has allowed the writ petition holding that since he was not reverted before expiry of 3 years, he must be deemed to have been confirmed and that, therefore, the reversion order was held bad in law. The High Court did not express any opinion on the adverse remarks commented upon the performance of the respondent. Thus, this appeal by special leave.

4. Learned counsel for the respondent contends that since the rule provides an outer limit of three years, if the respondent had not been reverted within that period, he must be deemed to have been confirmed and the High Court, therefore, was right in concluding that the respondent is a confirmed probationer. We do not find force in the contention. Sub-rule (3) of Rule 10 clearly envisages that on conclusion of the period of probation of any member of the service the Government may, if vacancy exists, confirm him in his appointment; if his work or conduct has, in its opinion, not been satisfactory, it may extend his period of probation by such period as it may think fit and thereafter pass such orders as could have been passed on the expiry of his period of probation. It would thus be seen that the outer limit of three years provided under the rule is an enabling provision to allow the probationer to continue in service without being reverted or discharged from service for failure to satisfactorily complete the period of probation, but that would not mean that the probationer, on expiry of three years' period, must be deemed to have been confirmed. The rule itself envisages a positive order of confirmation. So long as the order of confirmation is not made, even after expiry of probation, the probationer may continue and remain in service, but by allowing him to remain in service it cannot be concluded that he must be deemed to have been confirmed.

5. The rule also envisages that during the period of probation, the appointing authority is required to the performance of the work done by the probationer to the satisfaction of the appointing authority. It is seen that for the year 1991 and 1992 there were adverse remarks made upon the performance of the respondent. Obvious for that reason, his confirmation was not made. On the other hand, the period of probation was further extended as admitted by the respondent. Under these circumstances, he cannot be deemed to have been confirmed. However, since the authorities had extended the period of probation and given him chance to improve his performance during the year 1993-94, that period was not taken into consideration before reverting the respondent from service. The appointing authority is therefore directed to consider whether he is fit to be confirmed on the basis of his performance for the subsequent period and in case it considers that he may be confirmed, it would be open to them to pass appropriate orders. In case, even after consideration of the performance for the year 1993-94, his record is not found satisfactory, appropriate orders may be passed and communicated to the respondents.

6. The appeal is accordingly disposed of. No costs. Order accordingly.