

Daya Ram Dayal

Vs

State of M.P. & Anr.

(Sujata V. Manohar, M. Jagannadha Rao JJ)

28.08.1997

JUDGMENT

M. JAGANNADHA RAO, J.

1. The appellant, after going through the process of selection by the Public Service Commission, was appointed as Civil Judge, Class 2 in the Madhya Pradesh Subordinate Judicial Service by an order dated 22.10.1985. The order stated that he would have to undergo training for six months and be on probation for 2 years. The appellant completed training on 29.5.1986 and was put on probation for 2 years. He completed probation by 22.5.1988. On 2.3.1990, he was placed, under suspension pending some charges. The charges were served on 3.3.1990, an inquiry report was given by the District Judge on 12.4.1991 and the High Court, in its Full Court Meeting dt. 27/28.4.1991 resolved to impose a punishment of stoppage of two annual increments with cumulative effect. On 7.8.1991, the suspension was revoked and he resumed duties as Civil Judge Class II w.e.f. 7.8.1991. There were certain adverse remarks in the ACRs during 1987-88, 88-89, 89-90, 91-92 and 92-93. The inspection Judge of the High Court who inspected appellant's court on 26.2.92 also referred to certain irregularities. In the Full Court Meeting dated 3.5.92, the appellant was not found fit for confirmation and his case for promotion as Civil Judge, Class I was postponed. In a subsequent Full Court Meeting dt. 30.4.93, 1st, 2nd May, 1993, it was decided that appellant was not fit for confirmation and looking at his overall performance, his services should be terminated after giving him one month's salary in lieu of notice. The resolution was forwarded to the Madhya Pradesh State Government on 19.7.1993. The State Government by orders dated 8.11.1993, terminated the appellant's services by paying one month's salary in lieu of notice. The order was served on 17.12.1993. The writ petition filed by the appellant being MP 627/94 was dismissed by the learned Single Judge on 25.4.1994.

2. The learned Single Judge held that during the period of probation, the appellant was found guilty and punished by orders dated 23.8.1991 by stoppage of 2 increments with cumulative effect; that the appellant's court was inspected by the inspection Judge and the appellant's work was not found satisfactory and adverse remarks were made and duly communicated to the appellant; that the overall performance was considered by the Full Court Meeting and it was decided to "discharge" him from service by giving him one month's salary in lieu of notice and that this was not illegal. In LPA 27/94, the Division Bench in its judgment dated 7.7.1994 dismissed the appeal. It was contended in the appeal that the appellant was appointed in 1985 prescribing a period of 2 years probation, that according to the M.P. Judicial Services (Classification, Recruitment & Condition of Service) Rules 1955, probation cannot be extended beyond 2 years in addition to the initial period of 2 years (i.e. in all four years) and that therefore the appellant must be deemed to have been confirmed and hence a simple order of termination by issuing one notice or one month salary in lieu

of notice, was not sufficient. This contention was Rejected stating that "the 1955 Rules are not applicable" and that therefore, the "so called limitation on the extension of probation period cannot be accepted". The charges framed against the appellant were acts of misconduct from April, 1989, which were well within the period of four years of service of the appellant. It was held that, in the circumstances, there could be no presumption that by not extending the probation or by not confirming him within the period of four years, it was intended to confirm him in service. The contention as to lack of opportunity was rejected. It is against this judgment that the appeal has been filed by the writ petitioner.

3. In this appeal, it is contended by the learned counsel for the appellant that the relevant rule in Madhya Pradesh applicable to Judicial Officers Class II, namely, Rule 24 of the M.P. Judicial Services (Classification, Recruitment and Conditions of Service) Rules, 1955 (hereinafter called the 'Rules') states that an officer shall initially be on probation for 2 years and the same can be extended for a period not exceeding another two years. The probationers' may, at the end of the period of their probation, be confirmed subject to their fitness for confirmation and if they have passed all such departmental examinations as may be prescribed. Learned counsel submits that whenever such a maximum period of probation is fixed by the Rules, then if the officer is continued beyond the maximum period prescribed, the officer must be deemed to have been confirmed in view of the judgment of the Constitution Bench. in *State of Puniab Vs. Dharam Singh* [1968 (3) SCR 1].

4. On the other hand learned counsel for the respondents, contends that the maximum period of probation extended upto 22.5.90 and that before that date, the High Court had taken note of the charges served on the appellant on 3.3.90 during the period of probation and the notes of inspection of the appellant's court on 3.5.92, and that in view thereof, the Full Court decided initially on 3.5.92, he was not for confirmation/promotion and then decided on 30.4.93, 1st and 2nd May, 1993 that his services had to be terminated on one month notice. As long as there was no order of confirmation even after the expiry of the 4 years period, the appellant could not be deemed to have been confirmed and must be deemed to be continuing under probation. If he was continuing under probation even after 22.5.90, then his termination with one month salary on 8.11.93 was valid. He relies upon *Beena Tiwari Vs. State of M.P.* (1988 Suppl. SCC 2131 to say that the powers of the High Court under Article 235 are not subject to anything in the Rules.

5. The point that arises for consideration in the appeal is: Whether in View of the fact that Rule 24 of the Rules prescribes not only the original period of 2 years of probation but also provides for extension of probation subject to a maximum of another 2 years, the appellant must be deemed to have been confirmed at the end of 4 years of probation even though no order of confirmation was issued and whether termination of his services without any inquiry must be held to be in violation of Article 311 of the Constitution of India?

6. We have already set out the facts and the contentions. We shall now set out the rule which both sides tried to interpret in their favour. Rule 24 of the Rules reads as follows:

"24.(1) Every candidate appointed to the cadre shall undergo training for a period of six months before he is appointed on probation for a period of two years which period may be extended for a further period not exceeding two years. The probationers may, at the end of the period of their probation be confirmed subject to their fitness for confirmation and to having passed by the higher standard, all such departmental examination as may be prescribed.

(2) During the period of probation, he shall be required to do magisterial work and acquire experience in office routine and procedure.

(3) If during the period of probation has not passed the prescribed departmental examinations, or has been found otherwise unsuitable for the service, the Governor may, at any time, therefore, dispense with his service."

It will be noticed that the rule does not merely fix a period of probation but also fixes a maximum period beyond which the probation cannot be continued and if that be so, the question is whether by implication the officer who is continued beyond the said maximum period must be deemed to have been, confirmed by implication?

7. An examination of the rulings of this Court on the question of probation and confirmation shows that in some cases this Court has held that mere continuation beyond the period of probation does not amount to confirmation unless the order of appointment or the rule contains a deeming provision while in some other cases, it has been held that in certain exceptional Situations, it is permissible to hold that the services must be deemed to be confirmed. We shall show that there is no real conflict between the two sets of decisions and it depends on the conditions contained in the order of appointment and the relevant rules that are applicable.

8. One line of cases has held that if in the rule or order of appointment a period of probation is specified and a power to extend probation is specified the officer is continued beyond the period of probation, he cannot be deemed to be confirmed and there is bar on the power of termination of the officer after the expiry of the, initial period of probation. In the case before a Constitution Bench of this Court in Sukhbans Singh Vs. State of Punjab [1963 (1) SCR 416], rule 22 of the relevant rules provided a period of probation and contained a provision for extension of probation, Rule 23 for termination during probation and Rule 24 for substantive appointment on completion of probation. It was held that "a probationer cannot ...automatically acquire the status of a permanent member of a service, unless of course the rules under which he is appointed expressly provides for such a result. The rules governing the Provisional Civil Services of Punjab do not contain any provision whereby a probationer at the end of the probation period is automatically absorbed as a permanent member of the Civil Service." At the end of the probation, he is merely qualified or eligible for Substantive permanent appointment. Thus termination after expiry of initial power of probation was held not invalid. Another Constitution Bench followed the above judgment (vide) G.S. Ramaswamy Vs. I.G. of Police, Mysore to say that Rule 436 of the relevant Hyderabad Rules did not provide for automatic confirmation after 2 of probation unless the officers "have given satisfaction". Similar was the position in the case before another Constitution Bench in State of U.P. Vs, Akbar Ali Khan [1966 SCR 82]. Here also the Court held that on completion of 2 years of probation as per rules, the officer continued to be a probationer until an order of confirmation was passed. Sukhbans Singh's case was followed and it was stated that the order of appointment or the rule said that at the end of the probationary period, if no order was passed, the officer is to be deemed to have been confirmed, the officer continued to be on probation. We may state that the facts in Kedar Nath Vs. State of Punjab [1974 (3) SCC 21] decided by a three Judge Bench are also similar and the earlier rulings set out above were followed in Dhamjibhai Ramjibhai Vs. State of Gujarat, (1985 (2) SCC 51), also the period of probation fixed under the Rules was two years and there was also provision for extension but no maximum was prescribed. The termination was after the expiry of the period of 2 years of probation. A three Judge Bench took the view that there could be no automatic confirmation at the end of two years and that the termination after 2 years was valid.

9. The other line of cases are those where while there is a provision in the rules for initial probation and extension thereof, a maximum period for such extension is also provided beyond which it is not permissible to extend probation. Question as to its effect arose before the Constitution Bench in *State of Punjab Vs. Dharam Singh* - 1968 (3) SCR 1. The relevant rule there provided initially for a one year probation and then for extension thereof subject to a maximum of three years. The petitioner that case was probation from 1.10.57 for one year and was continued beyond the extended period of three years (in all four years) and terminated in 1963 without any departmental inquiry. A Constitution Bench of this Court referred *Sukbhans Singh, G.S. Ramaswamy and Akbar Ali* cases and distinguished the same as cases where the rules did not provide for a maximum period of probation but that if the rule, as in the case before them provided for a maximum, then that was an implication that the officer was not in the position of a probationer after the expiry of the maximum period. The presumption of his continuing as a probationer was negated by the fixation of a maximum time limit for the extension of probation. The termination after expiry of four years, that is after the maximum period for which probation could be extended, was held to be invalid. This view has been consistently followed in *Om Prakash Maurya Vs. U.P. Coop. Sugar Factories Federation* [1956 Suppl. SCC 95] *M.K. Agarwal Vs. Gurgaon Gramin Bank* [1987 Suppl. SCC 643] and *State of Gujarat Vs. Akhilesh C. Bhargav* [1987 (4) SCC 482] which are all cases in which a maximum period for extension of probation was prescribed and termination after expiry of the said period was held to be invalid inasmuch as the officer must be deemed to have been confirmed.

10. The decision of the Constitution Bench in *State of Punjab Vs. Dharam Singh* was accepted by the Seven Judge Bench in *Samsher Singh Vs. State of Punjab* [1974 (2) SCC 831]. However it was distinguished on account of a further special provision in the relevant rules applicable in *Samsher Singh's* case. The rule there provided for an initial period of 2 years of probation and for a further period of one year as the maximum. One of the officers, *Ishwar Chand Agarwal* in that case completed the initial period of 2 years on 11.11.1967 and the maximum on 11.11.1968, and after completion of total 3 years his services were terminated on 15.12.1969. But still *Dharam Singh's* case was not applied because the Rules contained a special provision for continuation of the probation even beyond the Maximum of 3 years. The Explanation to Rule 7(1) stated (see p. 852) that the period of probation shall be deemed extended if a Subordinate Judge is not confirmed on the expiry of his period of probation. The Court held (p.853) that this provision applied to the extended period of probation: It observed:

"This explanation in the present case does not mean that the implied extension of the probationary period is only between two or three years. The explanation on the contrary means that the provision regarding the period of probation for three years is directory and not mandatory unlike in *Dharam Singh's* case and that a probationer is not in fact confirmed till an order of confirmation is made." Thus, *Samsher Singh's* case while it accepted *Dharam Singh's* case, is still not covered by that case because of the special Explanation which clearly deemed the probation as continuing beyond the maximum period of probation as long as no confirmation order was passed.

11. Similarly, the case in *Municipal Corporation Raipur Vs. Ashok Kumar Misra* [1991 (3) SCC 325] accepted *Dharam Singh's* case and the cases which followed it but distinguished that line of cases on account of another special provision in the rules. There the relevant rule provided for a maximum of one year for the extended period of probation but there was a Note under Rule 8(2) of the *Madhya Pradesh Govt. Servant's General Conditions of Service Rules, 1961*. Rule 8 (2) of the Rules and the Note read:

"8(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."

It was held that by this Court as follows:

"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 if his services being terminated on the expiry of a notice of one calendar month given in writing by either side."

The consequence of the Note was explained further as follows:

"As per sub-rule (6), on passing the prescribed departmental examinations 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 a probationer. Confirmation or probation would be subject to satisfactory completion of probation or to pass in the prescribed examinations. Expiry of the period of probation therefore, does not entitle him with a right of 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 an end, which was done in this case." It is clear that the Court distinguished Dharam Singh, Om Prakash Maurya, M.K. Agarwal, and Akhilesh Bhargava because of the Note under Rule 8(2), even though Rule itself provided a maximum of one year for extension of probation.

12. Thus, even though the maximum period for extension could lead to an indication that the officer is deemed to be confirmed, still special provisions in such rules could negative such an intention.

13. It is, therefore, clear that the present case is one where the Rule has prescribed an initial period of probation and then for the extension of probation subject to a maximum, and therefore the case squarely falls within the second line of cases, namely, Dharam Singh's case and the provision for a maximum is an indication of an intention not to treat the officer as being under probation after the expiry of the maximum period of probation. It is also significant that in the case before us the effect of the rule fixing a maximum period of probation is not whittled down by any other provision in the rules such as the one contained in Samsher Singh's case or in Ashok Kumar Mishra's case. Though a plea was raised that termination of service could be effected by serving one month notice or paying salary in lieu thereof, there is no such Provision in the order of appointment nor was any rule relied upon for supporting such a contention.

14. Learned counsel for the respondents however relied upon *Beena Kumari vs. State of M.P.* [1988 Suppl. SCC 213]. In that case, it is true that while dealing with Rule 16(5) of the M.P.Govt.,

Service(Temporary and Quasi Judicial Service) Rules, 1960, this Court held that Rule 3-A thereof was not attracted but that the question of confirmation fell squarely under Article 235 of the Constitution of India and that Rule 16(5) of the rules itself provided that if the person concerned is not considered fit for confirmation at the end of such period, or fails to pass the prescribed departmental examinations, his services shall be dispensed with. The termination after the maximum period of probation was upheld relying on the above position. The attention of the Court was not drawn to the decision of the Constitution Bench in Dharam Singh's case and the long line of cases which followed that decision.

15. Learned counsel for the respondents also relied upon Satya Narain Athya Vs. High Court of M.P. [1996 (1) SCC 560]. But that case is one where the Court, after referring to the M.P. Judicial Service (Classification, Recruitment and Conditions of Service) Rules, 1955 and to the fact that the initial period of probation was 2 years and the extension of probation could therefore be for another 2 years, found that the termination was within the extended period of 2 years and not after a total period of 4 years as in the case before us. Certain observations regarding there being no deemed confirmation (at p. 562) are obviously made with reference to the initial period of 2 years. This case cannot also help the respondents.

16. For the aforesaid reasons, this appeal is allowed and the judgments of the High Court are set aside and the writ petition of the appellant is allowed. The termination order is set aside and it will be deemed that the appellant's services were confirmed on the expiry of 4 years of probation as Civil Judge i.e., w.e.f. 22.5.1990 and the appellant is reinstated into service w.e.f. 22.5.1990 and will be entitled to all arrears of emoluments from the date of reinstatement and he shall also be entitled to all consequential benefits, in accordance with law. It will be open to the respondents to hold a departmental enquiry and terminate his services or otherwise punish him if charges are proved against him. There shall be no order as to costs.