

**SUPREME COURT OF INDIA**

Commissioner of Police, Hubli

Vs.

R. S. More

C.A.No.177 of 2000

(Shivaraj V. Patil and H. K. Sema JJ.)

21.01.2003

**JUDGEMENT**

**H.K.Sema, J.**

1. Aggrieved by the order dated 18-8-1999 passed by the High Court in W.P. No. 607 of 1999 setting aside the order dated 25-9-1998, passed by the Karnataka Administrative Tribunal at Bangalore (hereinafter referred to as the Tribunal) in Application No. 17 of 1998 dismissing the application filed by the respondent, the State has come up in appeal by Special Leave. The respondent was put to notice, but despite receipt of notice, none has entered appearance on his behalf.

2. The respondent was appointed as a Police Constable on probation for a period of two years and six months. He joined service as a Police Constable on 2-6-1992. Though, the period of probation came to an end on 2-12-1994, the respondent however, continued on the post. On 14-3-1996, probation period of the respondent was extended by one year and three months. The respondent was discharged from service by an order dated 12-11-1997 in exercise of powers under Rule 6(1) of *Karnataka Civil Services (Probation) Rules, 1977* (hereinafter referred to as 'the Rules') as his services during the period of probation were stated to be found unsatisfactory. Aggrieved by the order of discharge, the respondent filed an application before the Tribunal on 24-12-1997 being Application No. 17 of 1998, which was dismissed by the Tribunal on 25-9-1998. Aggrieved thereby, the respondent had filed a Writ Petition under Articles 226 and 227 of the Constitution, which was allowed by the High Court setting aside the order of Tribunal and also the order discharging the respondent from service. Hence this appeal.

3. The short question that arises for consideration is as to whether the continuance of the respondent on the post beyond the probation period or extended period, as the case may be, entitled him to have claimed deemed confirmation, in absence of specific order passed by the competent authority to that effect.

4. To answer the aforesaid question, it is necessary to have a quick survey of the Rules relevant for the purpose. Rule 3 of the Rules deals with the period of probation and it provides that the period of probation shall be as may be provided for in the rules of recruitment specially made for any service or post, which shall not be less than two years, excluding the period, if any, during which the probationer was on extraordinary leave. Rule 4 of the Rules deals with the extension or reduction of period of probation and provides that the period of probation may, for reasons to be recorded in writing, be extended by the Governor or the Government by such period as he or it deems fit. Clause (ii) of Rule 4 further empowers any other appointing authority by such period not exceeding half the prescribed period of probation. Sub-rule (2) of Rule 4 empowers the Government to reduce the period of probation of a probationer by such period not exceeding the period during which he discharged the duties of the post to which he was appointed or of a post the duties of which are, in the opinion of the Government, similar or equivalent to those of such post. Rule 5 of the Rules deals with the declaration of satisfactory completion of probation at the end of the prescribed or, as the case may be, the reduced or extended period of probation. Rule 6 of the Rules provides for discharge of a probationer during the period of probation.

5. Sub-rule (2) of Rule 5, which is having direct bearing to the facts of the case reads as under:-

'(2) A probationer shall not be considered to have satisfactorily completed the probation unless a specific order to that effect is passed. Any delay in the issue of an order under sub-rule (1) shall not entitle the probationer to be deemed to have satisfactorily completed his probation.'

6. It is contended by Mr. Sanjay R. Hegde, learned counsel for the appellants, that the continuance of respondent on the post beyond the prescribed probation period or extended period of probation, as the case may be, would not entitle the respondent to claim deemed confirmation, in view of the bar imposed by sub-rule (2) of Rule 5 of the Rules, unless a specific order is passed to that effect. The High Court has proceeded on the assumption that the period of probation of two years and six months has expired on 2-12-1994 and thereafter no order has been passed extending the period of probation as provided under Rule 4 and there was also no consideration in terms of Rule 5 of the Rules, at the end of the prescribed period in 1994, but the respondent was allowed to continue as a probationer till he was discharged from service by the impugned order and, therefore, it cannot be said that the respondent continued to be on probation. This finding of the High Court in our view, is clearly erroneous. In the instant case, the undisputed facts are that the respondent was appointed on probation for a period of two years and six months. The period of two years and six months expired on 2-12-1994. Thereafter, by the order dated 14-3-1996, it was further extended for a period of one year and three months in exercise of powers under Rule 4 of the Rules. It is true that the order of discharge dated 12-11-1997, in exercise of powers under Rule 6 of the Rules, has been passed after the extended period was over. That itself would not entitle the respondent to have claimed deemed confirmation, in view of the bar imposed by sub-rule (2) of Rule 5 of the Rules as noticed above.

7. In High Court of *M.P. and others v. Satya Narayan Jhavar*<sup>1</sup> a three-Judge Bench of this Court, while examining the question of deemed confirmation in service jurisprudence, has categorized three class of cases on the point. It was pointed out in paragraph 11 at page 169 as under:-

'The question of deemed confirmation in service jurisprudence, which is dependent upon the language of the relevant Service Rules, has been the subject-matter of consideration before this Court, times without number in various decisions and there are three lines of cases on this point. One line of cases is where in the service rules or in the letter of appointment a period of probation is specified and power to extend the same is also conferred upon the authority without prescribing any maximum period of probation and if the officer is continued beyond the prescribed or extended period, he cannot be deemed to be confirmed. In such cases there is no bar against termination at any point of time after expiry of the period of probation. The other line of cases is that 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. The inference in such cases is that the officer concerned is deemed to have been confirmed upon expiry of the maximum period of probation in case before its expiry the order of termination has not been passed. The last line of cases is where, though under the rules maximum period of probation is prescribed, but the same requires a specific act on the part of the employer by issuing an order of confirmation and of passing a test for the purposes of confirmation. In such cases, even if the maximum period of probation has expired and neither any order of confirmation has been passed nor has the person concerned passed the requisite test, he cannot be deemed to have been confirmed merely because the said period has expired.'

(Emphasis supplied)

8. In our view, the case at hand falls under category 3. As noticed sub-rule (2) of Rule 5 requires that a probationer shall not be considered to have satisfactorily completed the probation unless a specific order to that effect is passed. No specific order having been passed by any authority, certifying the satisfactory completion of probation period of the respondent, has been brought to our notice. Mr. Hegde, learned counsel, submitted that no order as contemplated under sub-rule (2) of Rule 5 has been passed by the competent authority. Admittedly, the order discharging the respondent, in exercise of powers under Rule 6, has been passed after the extended period of probation was over. In our view, however, that itself would not entitle the respondent to have claimed deemed confirmation in absence of the specific order to that effect. In service jurisprudence confirmation of service on a particular post is preceded by satisfactory performance of the incumbent unless service rules otherwise prescribe. In the instant case sub-rule (2) of Rule 5 of the Rules provides that unless there is a specific order that the probationer has satisfactorily completed the period of probation, he shall not be entitled to be deemed to have satisfactorily completed the probation by reason of his being continued in service beyond the extended period of probation. The High Court has failed to consider this important aspect of the matter, resulting

in miscarriage of justice. In our view, the High Court fell into error resulting in miscarriage of justice.

9. In the result, the appeal is allowed by setting aside the impugned order of the High Court. There shall be no order as to costs.

Appeal allowed.

<sup>1</sup>(2001) 7 SCC 161