

**SUPREME COURT OF INDIA**

Mohd. Salman

Vs.

Committee of Management & Ors.

C.A.No. 6601-6602 of 2008

(Mukundakam Sharma and Anil R.Dave,JJ.,)

08.09.2011

**ORDER**

1. We propose to dispose of both the appeals by this common judgment and order as the issues involved are inter-connected.

2. The issue that arises for consideration in these appeals is whether the appellant is entitled to claim deemed confirmation of his service as an Assistant Teacher in the respondent no. 1 institution on an interpretation of Rule 26 of the Uttar Pradesh Ashaskiya Arabi Tatha Farsi Madarson Ki Manyata Niyamawali. However, before we deal with the contentions on the legal issues which arise for our consideration, it would be necessary to state certain facts for proper appreciation of the issues.

3. The appellant was appointed on 1st March, 1989 as an Assistant Teacher in the primary section of Madarsa Hanifa Ahle Sunnat Bahrul Uloom, Mau. A copy of the appointment order dated 22.2.1989 is placed on record. The said order not only states that by virtue of the said order, the appellant was appointed in the said Madarsa to the post of Assistant Teacher Tahtania(primary) but it was also mentioned therein that the said appointment is purely on probationary basis. In the said letter, the appellant was further informed that his services could regularised but only if his performance during probation period was found to be good/satisfactory. It was also indicated therein that if his performance during the aforesaid period is not satisfactory, then he could be terminated from the service of Madarsa anytime without assigning any reason.

4. The appellant was appointed initially on probation for a period of one year. The said period of probation was extended for a further period of one year. The respondent no. 1 in the counter affidavit filed has annexed a series of letters issued on behalf of respondent no. 1 to the appellant. One of such letters is dated 10.4.1992. By writing the aforesaid letter, the respondent no. 1 informed the appellant that his application for extension of probation period was received but since his teaching work was not satisfactory, therefore, respondent no. 1 had decided to give him a chance again to improve his work so that in future his services

could be made permanent. By the said letter, his probation period was extended for one year more.

5. There is yet another letter which is also placed on record which is dated 13.2.1993 wherein by referring to the earlier letter dated 10.4.1992, respondent no. 1 informed the appellant that earlier the committee extended his probation time and again to improve his performance and teaching work but it appeared to them that the appellant did not possess teaching capability at all. By the said letter, the appellant was directed to show cause as to why his service should not be dispensed with from the Madarsa.

6. Even thereafter, there is a letter issued on 3.4.1993 wherein his attention was drawn to the earlier letters directing him to improve his performance to which according to respondent no. 1, the appellant did not pay any heed or attention. The appellant was, therefore, intimated that his service now stood terminated in terms of clause 26 of Rules, 1987.

7. The aforesaid order came to be challenged by the appellant by filing a writ petition in the Allahabad High Court which was allowed on the ground that on expiry of the two years' period of probation, there is an automatic confirmation of the service of the appellant and, therefore, the decision of this Court in the case of *The State of Punjab Vs. Dharam Singh* AIR 1968 1210 becomes applicable. Consequent upon the aforesaid findings, the order of termination dated 3.4.1993 was set aside with a further direction that the appellant be reinstated in service.

8. Being aggrieved by the said judgment and order passed by the learned Single Judge of the Allahabad High Court, the respondents filed an appeal before the Division Bench which was entertained and was registered as Special Appeal No. 329 of 2005. By the impugned judgment and order, the appeal was allowed and judgment and order of the learned Single Judge was set aside and the writ petition filed by the present appellant was dismissed. The appellant, therefore, has filed the present appeal as against the said impugned judgment and order in which we have heard learned counsel appearing for the parties who have taken us through the records as also the relevant rule concerning the service of the appellant as also the decisions which are referred to and relied upon by the learned Single Judge as also by the Division Bench of the High Court.

9. The contention of Ms. Purnima Bhat, learned counsel appearing for the appellant is that the service of the appellant must be accepted as a case of deemed confirmation on expiry of the period of probation of two years as held by the learned Single Judge. In support of the aforesaid contention, the counsel has relied upon the decision of this Court in *Dharam Singh*(supra). She has also drawn our attention to the decision of this Court in the case of *M.K. Agarwal Vs. Gurgaon Gramin Bank and Others*'

10. Learned counsel appearing for the respondent nos. 1 and 2 Mr. Anis Suhrawardy and Mr. Shrish Mishra respectively, however, has drawn our attention to the aforesaid correspondences between respondent no. 1 and the appellant. In support of their submission that the service of the appellant continued on probation they referred to the contents of the

order of appointment and the series of the letters. In terms and conditions of his appointment, his services could be terminated without assigning any reason or on the ground of suitability at any point of time. In support of their contentions, they have also relied upon the decisions of this Court in *State of Uttar Pradesh Vs. Akbar Ali Khan*<sup>2</sup> and also the decision in the case of *Kedar Nath Bahl Vs. The State of Punjab and Others*<sup>3</sup> In the light of the aforesaid submissions of the learned counsel appearing for the parties, we have considered the records.

11. There is no dispute with regard to the fact that the appointment of the appellant as the Assistant Teacher in the primary Section of the aforesaid school was on probation initially for a period of one year. The appointment letter also specifically conveys the position and the stipulation that his services could be regularised only if his performance during probation period was found to be good/satisfactory. Rule 26 to which reference was made again and again is extracted hereunder:-

"The appointment of a candidate against the permanent vacancy shall be made on probation. The period of probation shall be one year. It can be extended by one year. Before the completion of probation period, the Committee of Management shall be entitled to pass an order for removal from service."

12. Having considered the language of the aforesaid rule, we are of the considered opinion that the decision in the case of Dharam Singh(supra) is not applicable to the facts and circumstance of the present case. In fact, the aforesaid Rule 26 is somewhat similar to the Rule which was considered by this Court in the case of Akbar Ali Khan(supra). A constitution Bench of this Court in the case of Akbar Ali Khan (supra) examined relevant provisions contained in Rules 12 and 14 of the UP Subordinate Revenue Executive Service (Tahsildar) Rules dealing with the provision of probation period. The said rule provided that the period of probation would be two years which could be extended by the Board to three years. The Constitution Bench of this Court considered as to whether a probationer stood confirmed after the expiry of the period of probation in paragraph 5 of the said judgment. This Court held in paragraph 5 as follows:-

"The respondent was posted as a Tehsildar and placed on probation for two years. The initial period of probation was liable to be extended by the Board of Revenue or by the Governor. There is no rule that on the expiry of the period of probation the probationer shall be deemed to have been confirmed in the post which he is holding as a probationer. If a probationer was found not to have made sufficient use of his opportunities or had failed to pass the departmental examination "completely" or if he had otherwise failed to give satisfaction he may be reverted to his substantive appointment again confirmation in the appointment at the end of the period of probation could only be made if the probationer had passed the departmental examination for tahsildars "completely" and the Commissioner reported that he was fit for confirmation and that his integrity was unquestionable. It is common ground in this case that the respondent had not passed the departmental examination before 1955. He had therefore not qualified himself for confirmation."

13. Having held thus, this Court recorded its opinion in paragraph 6 in the following manner:-

"The scheme of the rules is clear: confirmation in the post which a probationer is holding does not result merely from the expiry of the period of probation, and so long as the order of confirmation is not made, the holder of the post remains a probationer. It has been held by this Court that when a first appointment or promotion is made on probation for a specified period and the employee is allowed to continue in the post, after the expiry of the said period without any specific order of confirmation he continues as a probationer only and acquires no substantive right to hold the post. If the order of appointment itself states that at the end of the period of probation the appointee will stand confirmed in the absence of any order to the contrary, the appointee will acquire a substantive right to the post even without an order of confirmation. In all other cases, in the absence of such an order or in the absence of such a service rule, an express order of confirmation is necessary to give him such a right. Where after the period of probation an appointee is allowed to continue in the post without an order of confirmation, the only possible view to take is that by implication the period of probation has been extended, and it is not a correct proposition to state that an appointee should be deemed to be confirmed from the mere fact that he is allowed to continue after the end of period of probation."

14. The aforesaid rule which is referred to in the case of Akbar Ali Khan(supra) appears to be similar to the case in hand. So far the case of Dharam Singh(supra) which is relied upon by the learned counsel appearing for the appellant is concerned, the rule which was considered in that case was rule 6(3). A bare perusal of the said rule would indicate that by adding a proviso to the substantive rule, a maximum period of probation was provided and in that context, this Court has held that in view of the aforesaid proviso, the Rule postulates that there would be an automatic confirmation after expiry of the period mentioned in Rule 6(3). Because a maximum period of probation was provided in the service rules in the case of Dharam Singh(supra), therefore, in that decision, it was held by this Court that continuation of the probationer thereafter would ipso facto be held as deemed confirmation. The said decision is, therefore, not applicable to the present case and is clearly distinguishable.

15. The correspondences which are on record also indicate that the service of the appellant was also found to be not satisfactory by the respondent and the said fact was also brought to the notice of the appellant continuously and repeatedly so as to give him an opportunity to improve his performance. However, despite the said opportunity granted and also extension, his performance and service were not improved and, therefore, the service was terminated under the aforesaid letter dated 3.4.1993.

16. In the case of *Kedar Nath Bahl Vs. The State of Punjab and Others reported in*<sup>3</sup> this Court clearly laid down the proposition of law that where a person is appointed as a probationer in any post and a period of probation is specified, it does not follow that at the end of the said specified period of probation he obtains confirmation automatically even if no order is passed on that behalf. It was also held in that decision that unless the terms of appointment

clearly indicate that confirmation would automatically follow at the end of the specified period or that there is a specific service rule to that effect, the expiration of the probationary period does not necessarily lead to confirmation. This Court went on to hold that at the end of the period of probation an order confirming the officer is required to be passed and if no such order is passed and if he is not reverted to his substantive post, the result merely is that he continues in his post as a probationer.

17. In our considered opinion, the ratio of the aforesaid decision is also clearly applicable to the facts of the present case. In the present case, in the appointment letter issued to the appellant, it was specifically mentioned that his service would be regularised only when his performance during the probation period is found to be good/satisfactory.

18. In view of the aforesaid stipulation, so long an order is not passed holding that the service of the appellant is good and satisfactory, it could not have been held that his service could be regularised automatically by a deeming provision.

19. In that view of the matter, we find no merit in these appeals which are dismissed leaving the parties to bear their own costs.

**Judgment Referred.**

<sup>1</sup>(1987) Suppl. SCC 0643

<sup>2</sup>AIR 1968 SC 1842

<sup>3</sup>(1974) 3 SCC 0021