SUPREME COURT OF INDIA

Lovedale

Vs.

Jayanthi Raghu

C.A.No……2012

(Dalveer Bhandari and Dipak Misra JJ.)

16.03.2012

JUDGMENT

DIPAK MISRA, J

1. Leave granted.

2. Questioning the legal acceptability of the Judgment and Order dated 26.03.2008 passed by the High Court of Judicature at Madras in W.A. No. 4157 of 2004 whereby the finding recorded by the learned Single Judge in W.P. No. 15963 of 1997 to the effect that the order of termination in respect of the first respondent, a teacher, being stigmatic in nature and having been passed without an enquiry warranted quashment was dislodged-by the Division Bench on the foundation that the order of termination did not cast any stigma, but concurred with the ultimate conclusion on the base that she was a confirmed employee and hence, holding of disciplinary enquiry before passing an order of termination was imperative, the present appeal by special leave has been preferred under Article 136 of the Constitution of India.

3. The factual matrix lies in a narrow compass. The first respondent herein was appointed on the post of a Mistress with effect from 01.09.1993. It was stipulated in the letter of appointment that she would be on probation for a period of two years which may be extended for another one year, if necessary. In November 1995, while she was working as a Mistress in the appellant's school, as alleged, she had received some amount from one Nathan. A meeting was convened on 09.09.1997 and in the proceeding, certain facts were recorded which need not be adverted to inasmuch as the said allegations though treated stigmatic by the learned

Single Judge, yet the Division Bench, on a studied scrutiny of the factual scenario, has opined in categorical terms that the same do not cast any stigma. The said conclusion has gone unassailed as no appeal has been preferred by the first respondent.

4. To proceed with the narration, after the proceeding was recorded on 18.06.1997, an order of termination was passed against the first respondent. As has been stated earlier, the order of termination was assailed before the Writ Court and the learned Single Judge axed the order on the ground that the same was stigmatic in nature. The order passed by the learned Single Judge was challenged in Writ Appeal under Clause 15 of the Letters Patent by the present appellant and at that juncture, a contention was canvassed by the first respondent that by virtue of the language employed in Rule 4.9 of the Rules of Lawrence School, Lovedale (Nilgiris) (for short, `the Rules'), she had earned the status of a confirmed employee having satisfactorily completed the period of probation and, therefore, her services could not have been dispensed with without holding an enquiry. In essence, the proponement was that she was deemed to have been a confirmed employee of the school and hence, it was obligatory on the part of the employer to hold an enquiry before putting an end to her services.

5. The Division Bench interpreted the Rule and placed reliance on a three-Judge Bench Decision of this Court in The High Court of Madhya Pradesh through Registrar and Others v. Satya Narayan Jhaver1 and came to hold as follows:-

> In terms of Rule 4.9 of the Rules, the maximum period of probation would be only three years and the rule does not provide any further extension of probation. If that be so, the Headmaster of the school would be entitled to pass orders as to the confirmation before the expiry of the maximum period of three years i.e., 1 (2001) 7 SCC 161 : AIR 2001 SC 3234 1.9.1996. Factually no such order was passed in this case and the teacher was allowed to serve beyond the period of 1.9.1996 till the order of termination dated 18.6.1997 was passed. In the absence of any provision for extension beyond a period of three years, in law, as stated by the Supreme Court, the services of the teacher would be treated as confirmed after 1.9.1996. Mr. K. R. Vijayakumar, learned counsel for the school has submitted that the said rule 4.9 contemplates that only if confirmed the probation would come to an end. The said submission is based on the rule that the appointee, if confirmed, shall continue to hold office till the age of 55 years. In our opinion, the said rule relates to the upper age limit for the entire service, i.e., in the event of a probationer is confirmed, he would be entitled to continue till the age of 55

> years. The said rule does not in any way empowers the Headmaster or the Chairman, as the case may be, to extend the period of probation beyond the maximum period of three years.

6. Assailing the legal substantiality of the order, Mr. K.V. Viswanathan, learned senior counsel, has submitted that the Division Bench has grossly erred by coming to the conclusion that after the expiry of the probation period, the first respondent became a confirmed employee. It is his further submission that if the language employed in Rule 4.9 of the Rules, especially the words if confirmed, are appreciated in proper perspective, there can be no trace of doubt that an affirmative act was required to be done by the employer without which the employee could not be treated to be a confirmed one. The learned senior counsel would further contend that the High Court has clearly flawed in its interpretation of the Rule by connecting the factum of confirmation with the fixation of upper age limit for superannuation. It is also urged by him that the Division Bench has clearly faulted in its appreciation of the law laid down in Satya Narayan Jhaver (supra) inasmuch as the case of the first respondent squarely falls in the category where a specific act on the part of the employer is an imperative requisite.

7. Combating the aforesaid submissions, Ms. Shweta Basti, learned counsel appearing for the first respondent, submitted that the order passed by the High Court is absolutely impeccable since on a careful scanning of the Rule, it is discernible that it does not confer any power on the employer to extend the period of probation beyond the maximum period as stipulated in the Rule and, therefore, the principle of deemed confirmation gets attracted. It is proponed by her that the emphasis placed on the term if confirmed by the appellant is totally misconcieved and unwarranted because its placement in the Rule luminously projects that it has an insegregable nexus with the age of retirement and it has no postulate which would destroy the concept of deemed confirmation. It has been further put forth that the Rule neither lays down any postulate that the employee shall pass any test nor does it stipulate any condition precedent for the purpose of confirmation. Lastly, it is contended that a liberal interpretation is necessary regard being had to the uncertainties that is met with by a probationer after the expiry of the probation period and unless the beneficent facet is taken note of, the caprice of the employer would prevail and the service career of an employee would be fossilized.

8. To appreciate the rivalised submissions raised at the Bar, we have carefully perused the letter of appointment and on a plain reading of the same, it is apparent that the first respondent was appointed as a Mistress in the School on probation for a period of two years with a stipulation that it may be extended by another year.

There is nothing in the terms of the letter of appointment from which it can be construed that after the expiry of the period of probation, she would be treated as a deemed confirmed employee. In this factual backdrop, the interpretation to be placed on Rule 4.9 of the Rules assumes immense signification. The said Rule reads as follows: - 4.9 All appointments to the staff shall ordinarily be made on probation for a period of one year which may at the discretion of the Headmaster or the Chairman in the case of members of the staff appointed by the Board be extended up to two years. The appointee, if confirmed, shall continue to hold office till the age of 55 years, except as otherwise provided in these Rules. Every appointment shall be subject to the conditions that the appointee is certified as medically fit for service by a Medical Officer nominated by the Board or by the Resident Medical Officer of the School.

9. Keeping in abeyance the interpretation to be placed on the Rule for a while, it is obligatory to state that there is no dispute at the Bar that the first respondent had completed the period of probation of three years. Thus, the fulcrum of the controversy is whether the appellant-school was justified under the Rules treating the respondent-teacher as a probationer and not treating her as a deemed confirmed employee. We have reproduced the necessary paragraph from the decision of the High Court and highlighted how the Division Bench has analysed and interpreted the Rule in question. The bedrock of the analysis, as is perceivable, is the sentence in Rule 4.9 the appointee, if confirmed, shall continue to hold office till the age of 55 years fundamentally relates to the fixation of the upper age limit for the entire service. It has been held that it deals with the entitlement of an employee to continue till the age of 55 years.

10. Before we proceed to appreciate whether the interpretation placed on the Rule is correct or not, it is apposite to refer to certain authorities in the field. In Sukhbans Singh v. State of Punjab2, the Constitution Bench has opined that a probationer cannot, after the expiry of the probationary period, automatically acquire the status of a permanent member of the service, unless of course, the rules under which he is appointed expressly provide for such a result.

2 AIR 1962 SC 1711 3 AIR 1966 SC 175

11. In G.S. Ramaswamy and Ors. v. Inspector-General of Police, Mysore3, another Constitution Bench, while dealing with the language employed under Rule 486 of the Hyderabad District Police Manual, referred to the decision in Sukhbans Singh (supra) and opined as follows: -

> It has been held in that case that a probationer cannot after the expiry of the probationary period automatically acquire the status of a permanent member of a service, unless of course the rules under which he is appointed expressly provide for such a result. Therefore even though a probationer may have continued to act in the post to which he is on probation for more than the initial period of probation, he cannot become a permanent servant merely because of efflux of time, unless the Rules of service which govern him specifically lay down that the probationer will; be automatically confirmed after the initial period of probation is over. It is contended on behalf of the petitioners before us that the part of r. 486 (which we have set out above) expressly provides for automatic confirmation after the period of probation is over. We are of opinion that there is no force in this contention. It is true that the words used in the sentence set out above are not that promoted officers will be enable or qualified for promotion at the end of their probationary period which are the words to be often found in the rules in such eases; even so, though this part of r. 486 says that promoted officers will be confirmed at the end of their probationary period, it is qualified by the words if they have given satisfaction. Clearly therefore the rule does not contemplate automatic confirmation after the probationary period of two years, for a promoted officer can only be confirmed under this rule if he has given satisfaction.

12. In State of Uttar Pradesh v. Akbar Ali Khan4, another Constitution Bench ruled that if the order of appointment itself states that at the end of the period of probation, 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 the period of probation.

> 4 AIR 1966 SC 1842

13. In State of Punjab v. Dharam Singh5, the Constitution Bench, after scanning the anatomy of the Rules in question, addressed itself to the precise effect of Rule 6 of the Punjab Educational Service (Provincialised Cadre) Class III Rules, 1961. The said Rule stipulated that the total period of probation including extensions, if

any, shall not exceed three years. This Court referred to the earlier view which had consistently stated that when a first appointment or promotion is made on probation for a specific period and the employee is allowed to continue in the post after the expiry of the period without any specific order of confirmation, he should be deemed to continue in his post as a probationer only in the absence of any indication to the contrary in the original order of appointment or promotion or the service rules. Under these circumstances, an express order of confirmation is imperative to give the employee a substantive right to the post and from the mere fact that he is allowed to continue in the post after 5 AIR 1968 SC 1210 the expiry of the specified period of probation, it is difficult to hold that he should be deemed to have been confirmed. When the service rules fixed a certain period of time beyond which the probationary period cannot be extended and an employee appointed or promoted to a post on probation is allowed to continue in that post after completion of the maximum period of probation without an express order of confirmation, he cannot be deemed to continue in that post as a probationer by implication. It is so as such an implication is specifically - negatived by the service rule forbidding extension of the probationary period beyond the maximum period fixed by it.

14. In Samsher Singh v. State of Punjab and another6, the seven-Judge Bench was dealing with the termination of services of the probationers under Rule 9 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952 and Rule 7(3) of the Punjab Civil Services (Judicial Branch) Rules, 1951. In the said case, the law laid down by the Constitution Bench in 6 (1974) 2 SCC 831 the case of Dharam Singh (supra) was approved but it was distinguished because of the language of the relevant rule, especially explanation to Rule 7(1), which provided that every subordinate Judge in the first instance be appointed on probation for two years and the said period may be extended from time to time either expressly or impliedly so that the total period of probation including extension does not exceed three years. The explanation to the said Rule stipulated that the period of probation shall be deemed to have been extended if a subordinate Judge is not confirmed on the expiry of the period of probation. Be it noted, reliance was placed on the decision in Dharam Singh (supra). –

> The larger Bench discussed the principle laid down in Dharam Singh's case and proceeded to state as follows: - In Dharam Singh's case (supra) the relevant rule stated that the probation in the first instance is for one year with the proviso that the total period of probation including extension shall not exceed three years. In Dharam Singh's case he was allowed to continue without an order of confirmation and therefore the only possible view in the

> absence of anything to the contrary in the Service Rules was that by necessary implication he must be regarded as having been confirmed. After so stating, the Bench referred to Rule 7(1) and came to hold as follows: -
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> .....the explanation to rule 7(1) shows that the period of probation shall be deemed to have been extended impliedly if a Subordinate Judge is not confirmed on the expiry of this period of probation. This implied extension where a Subordinate Judge is not confirmed on the expiry of the period of probation is not found in Dharam Singh's case (supra). This explanation in the present case does not mean that the implied extension of the probationary period is only between two and three years. The explanation on the contrary means that the provision regarding the maximum period of probation for three years is directory and not mandatory unlike in Dharam Singh's case (supra) and that a probationer is not in fact confirmed till an order of confirmation is made. (Emphasis supplied)

15. In Om Prakash Maurya v. U.P. Co-operative Sugar Factories Federation, Lucknow and others7, a two-Judge Bench was dealing with the case of confirmation under the U.P. Cooperative Societies Employees Service Regulations, 7 AIR 1986 SC 1844 1975. After referring to Regulations 17 and 18, it was held that as the proviso to Regulation 17 restricts the power of the appointing authority in extending the period of probation beyond the period of one year and Regulation 18 provides for confirmation of an employee on the satisfactory completion of the probationary period, it could safely be held that the necessary result of the continuation of an employee beyond two years of probationary period is that he would be confirmed by implication.

16. In Municipal Corporation, Raipur v. Ashok Kumar Misra8, while dealing with Rule 14 of the Madhya Pradesh Government Servants' General Conditions of Service Rules, 1961, after referring to earlier pronouncements, it has been held that 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 - 8 AIR 1991 SC 1402 confirmation it is an indication of the satisfactory completion of probation.

17. It is apt to note here that the learned counsel for both the sides have heavily relied on the decision in High Court of Madhya Pradesh thru. Registrar and others v. Satya Narayan Jhavar9. In the said case, the three-Judge Bench was considering the effect and impact of Rule 24 of the Madhya Pradesh Judicial Service (Classification, Recruitment and Conditions of Services) Rules, 1955. It may be

mentioned that the decision rendered in Dayaram Dayal v. State of M.P.10, which was also a case under Rule 24 of the said Rules, was referred to the larger Bench. In Dayaram Dayal (supra), it had been held that if no order for confirmation was passed within the maximum period of probation, the probationer judicial officer could be deemed to have been confirmed after expiry of four years period of probation. After referring to the 9 (2001) 7 SCC 161 : AIR 2001 SC 3234 10 AIR 1997 SC 3269 decisions in Dharam Singh (supra), Sukhbans Singh (supra) and Shamsher Singh (supra) and other authorities, the three- Judge Bench expressed thus:-

> 11. The question of deemed confirmation in service Jurisprudence, which is dependent upon language of the relevant service rules, has been 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 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. 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 officer concerned is deemed to have been confirmed upon expiry of the maximum period of probation in case before its expiry 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 require 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 the person concerned has passed the requisite test, he cannot be deemed to have been confirmed merely because the said period has expired.
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> (underlining is ours)
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> After so stating, it was further clarified as follows: - -
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> 38. Ordinarily a deemed confirmation of a probationer arises when the letter of appointment so stipulates or the Rules governing service condition so

> indicate. In the absence of such term in the letter of appointment or in the relevant Rules, it can be inferred on the basis of the relevant Rules by implication, as was the case in Dharam Singh (supra). But it cannot be said that merely because a maximum period of probation has been provided in Service Rules, continuance of the probationer thereafter would ipso facto must be held to be a deemed confirmation which would certainly run contrary to Seven Judge Bench Judgment of this Court in the case of Shamsher Singh (supra) and Constitution Bench decisions in the cases of Sukhbans Singh (supra), G.S. Ramaswamy (supra) and Akbar Ali Khan (supra).

18. Regard being had to the aforesaid principles, the present Rule has to be scanned and interpreted. The submission of Mr. Viswanathan, learned senior counsel for the appellant, is that the case at hand comes within the third category of cases as enumerated in para-11 of Satya Narayan Jhaver (supra). That apart, it is urged, the concept of deemed confirmation, ipso facto, would not get attracted as there is neither any restriction nor any prohibition in extending the period of probation. On the contrary, the words if confirmed require further action to be taken by the employer in the matter of confirmation.

19. On a perusal of Rule 4.9 of the Rules, it is absolutely plain that there is no prohibition as was the rule position in Dharam Singh (supra). Similarly, in Om Prakash Maurya (supra), there was a restriction under the Regulations to extend the period of probation. That apart, in the rules under consideration, the said cases did not stipulate that something else was required to be done by the employer and, therefore, it was held that the concept of deemed confirmation got attracted.

20. Having so observed, we are only required to analyse what the words if confirmed in their contextual use would convey. The Division Bench of the High Court has associated the said words with the entitlement of the age of superannuation. In our considered opinion, the interpretation placed by the High Court is unacceptable. The words have to be understood in the context they are used. Rule 4.9 has to be read as a whole to understand the purport and what the Rule conveys and means. In Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. and others11, it has been held as follows: -

> Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. The interpretation is best which makes the textual interpretation match the

> contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be 11 (1987) 1 SCC 424 construed so that every word has a place and everything is in its place.
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> Keeping the said principle in view, we are required to appreciate what precisely the words if confirmed contextually convey. Regard being had to the tenor of the Rules, the words if confirmed, read in proper context, confer a status on the appointee which consequently entitles him to continue on the post till the age of 55 years, unless he is otherwise removed from service as per the Rules.

21. It is worth noting that the use of the word if has its own significance. In this regard, we may usefully refer to the decision in S.N. Sharma v. Bipen Kumar Tiwari and others12. In the said case, a three-Judge Bench was interpreting the words if he thinks fit as provided under Section 159 of the Code of Criminal Procedure, 1898. It 12 (1970) 1 SCC 653 related to the exercise of power by the Magistrate. In that context, the Bench observed thus: -

> The use of this expression makes it clear that Section 159 is primarily meant to give to the Magistrate the power of directing an investigation in cases where the police decide not to investigate the case under the proviso to Section 157(1), and it is in those cases that, if he thinks fit, he can choose the second alternative. If the expression if he thinks fit had not been used, it might have been argued that this section was intended to give in wide terms the power to the Magistrate to adopt any of the two courses of either directing an investigation, or of proceeding himself or deputing any Magistrate subordinate to him to proceed to hold a preliminary enquiry as the circumstances of the case may require.
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> Without the use of the expression if he thinks fit, the second alternative could have been held to be independent of the first; but the use of this

> expression, in our opinion, makes it plain that the power conferred by the second clause of this section is only an alternative to the power given by the first clause and can, therefore, be exercised only in those cases in which the first clause is applicable.

22. In State of Tamil Nadu v. Kodaikanal Motor Union (P) Ltd.13, the Court, while interpreting the words if the offence had not been committed as used in Section 10-A(1) of the Central Sales Tax Act, 1956, expressed the view as follows: - In our opinion the use of the expression `if' simpliciter, was meant to indicate a condition, the condition being that at the time of assessing the penalty, that situation should be visualised wherein there was no scope of committing any offence. Such a situation could arise only if the tax liability fell under sub-section (2) of Section 8 of the Act.

23. Bearing in mind the aforesaid conceptual meaning, when the language employed under Rule 4.9 is scrutinised, it can safely be concluded that the entitlement to continue till the age of superannuation, i.e., 55 years, is not absolute. The power and right to remove is not obliterated. The status of confirmation has to be earned and conferred. Had the rule making authority intended that there would be automatic confirmation, Rule 4.9 would have been couched in a different language. That being not so, the wider interpretation cannot 13 (1986) 3 SCC 91 be placed on the Rule to infer that the probationer gets the status of a deemed confirmed employee after expiry of three years of probationary period as that would defeat the basic purpose and intent of the Rule which clearly postulates if confirmed. A confirmation, as is demonstrable from the language employed in the Rule, does not occur with efflux of time. As it is hedged by a condition, an affirmative or positive act is the requisite by the employer. In our considered opinion, an order of confirmation is required to be passed. The Division Bench has clearly flawed by associating the words `if confirmed' with the entitlement of the age of superannuation without appreciating that the use of the said words as a fundamental qualifier negatives deemed confirmation. Thus, the irresistible conclusion is that the present case would squarely fall in the last line of cases as has been enumerated in paragraph 11 of Satya Narayan Jhaver (supra) and, therefore, the principle of deemed confirmation is not attracted.

24. In the result, the appeal is allowed and the judgment and order passed by the High Court are set aside to the extent that the first respondent had acquired the status of confirmed employee and, therefore, holding of enquiry is imperative. As far as the conclusion recorded by the Division Bench that no stigma was cast on

the respondent is concerned, the same having gone unchallenged, the order in that regard is not disturbed. The parties shall bear their respective costs.