

PETITIONER:
THE DIRECTOR MINISTRY OF COAL & ORS.

Vs.

RESPONDENT:
BIMLENDU KUMAR

DATE OF JUDGMENT: 28/10/1996

BENCH:
K. RAMASWAMY, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Leave granted

We have heard learned counsel for the parties .

This appeal by special leave arise from the order of the Division Bench of the Patna High Court made on 24.11.1994 in LPA No.35/91 and the order of the learned single Judge made on 26.2.1991 in CWJC No.1111/89.

The admitted position is that the respondent was appointed on probation to a temporary post under Rule 7(1) of the coal Mine Provident fund (Employees Recruitment) Rules, 1982 (for short , the 'Rule'). His appointment was terminated on May 14 ,1989 which was challenged by contending that since his probation was not extended beyond three years under Rule 7(6) of the Rule, the order of termination is bad in law. The learned single Judge has held that he is a temporary appointee; therefore, his termination is bad in law. He is accordingly entitled to the payment of the salary for the period of three year and three months. On appeal the Division Bench set aside the order of the learned single Judge and held that the respondent should be deemed to have been confirmed and directed payment of wages amounting to six years salary. Thus, this appeal by special leave.

The question is: whether the view taken by the Division Bench and the learned single Judge is correct in law? Rule 7(1) contemplates that the person appointed to a post by direct recruitment, with a view to his eventual substantive appointment to that post shall be on probation for a period of two years. For an eventual substantive appointment, on successful completion of probation, Rule 7(6) contemplates thus:

"(6) The appointing authority may in suitable case extend the period of probation by not more than one year, but no person in any case be kept on probation for a total period exceeding three years in any post. In the case of extension of probationary period the employee shall be informed of

his short coming well in advance to enable him to make special effort for improvement."

Sub-rule (7) of Rule 7 speaks of confirmation of the probationer after completion of the period of probation. It envisages thus:

"(7) Confirmation of a probationer after completion of the period of probation shall not be automatic. As long as no specific order of confirmation or satisfactory completion of probation is issued to a probationer such probationer shall be deemed to have continue on probation notwithstanding sub-rule(6)."

A conjoint reading of Rule 7(1), 7(6) and 7(7) would show that Rule 7(6) is subject to the operation of Rule 7(1). It is, no doubt, true, as contended by Mr. P.P. Malhotra, learned senior counsel for the appellants, that after the expiry of the period of two year, the appellant has power to extend the period of probation for more than three years to enable the probationer to improve his efficiency in the service so that he could improve his efficiency as may be pointed out, and improve his quality of service for confirmation. However, in view of the language in sub-rule (7) of Rule 7, the operation of Rule 7(6) is subject to the confirmation on satisfactory completion of the probation. In this case, there is no express order of confirmation of probation and substantive appointment, after completion of the probation. It must be deemed that after the expiry of three years, he remained to be a probationer. Therefore, the declaration that he was a confirmed probationer is bad in law. Learned counsel seeks to place reliance on the judgement of this Court in *Om Prakash Maurya vs. U.P. Cooperative Sugar Factories Federation, Lucknow & Ors.*[1986 Supp. SSC 95] in particular, in paragraph 3 thereof. In that case, there was no provision similar to sub-rule (7) of Rule 7. That relates to appointment by promotion and the period of probation was prescribed for two year. Under this situation, this Court had held that after the expiry of two years, he cannot be reverted to the substantive post but deemed to be confirmed. The ratio therein has no application to the fact situation and the rule position in this case. The probationer appointed under Rule 7(1) requires to be appointed eventually to a substantive appointment by separate order. Therefore, satisfactory completion of the probation and the declaration of the probation are two condition precedent to eventual substantive appointment to the post in which he was recruited and appointed on probation.

In the above legal position, the eventual substantive appointment to the post in which he was appointed on probation .

In the above legal position, the view taken by the Division Bench is clearly in error. The learned single Judge also was not right in directing to pay compensation for the period of three years and three months in view of the fact that probation was terminated in term of Rule 7(7) of the Rules.

The appeal is accordingly allowed. The writ petition and the LPA stand dismissed. No cost.