

PETITIONER:
SATYA NARAYAN ATHYA

Vs.

RESPONDENT:
HIGH COURT OF M.P. & ANR.

DATE OF JUDGMENT 24/11/1995

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
HANSARIA B.L. (J)

CITATION:
1996 AIR 750 1996 SCC (1) 560
1995 SCALE (7) 138

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Delay condoned.

The petitioner was appointed on probation as a Civil Judge by proceedings dated July 13, 1979. On completion of six months period, he was put on probation with effect from February 16, 1980. Though two years period had expired, no order of confirmation was issued and he continued on probation. In view of the non-satisfactory nature of the service, the Full Court decided that he could not be confirmed. Accordingly, orders were issued on August 5, 1983 discharging him from service under Rule 52(a) of M.P. Government Service (Temporary, Quasi-permanent Service) Rules, 1960. When the petitioner filed writ petition in the High Court, he was unsuccessful in Letters Patent Appeal, though he succeeded before learned single Judge. Thus this petition for special leave has been filed against the order of the Division Bench passed on February 3, 1993 in L.P.A. No.122/85.

The question, therefore, is whether the petitioner has to be deemed to have been confirmed after his completion of two years of probation. Rule 24(1) of the M.P. Judicial Service (Classification, Recruitment and Condition of Services) Rules, 1955, (for short 'the Rules'), provides thus :

"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 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."

A reading thereof would clearly indicate that every candidate appointed to the cadre shall undergo training initially for a period of six months before he is appointed on probation for a period of two years. On his completion of two years probation, it may be open to the High Court either to confirm or extend the probation. At the end of the probation period, if he is not confirmed on being found unfit, it may be extended for a further period not exceeding two years. It is seen that though there is no order of extension, it must be deemed that he was continued on probation for an extended period of two years. On completion of two years, he must not be deemed to be confirmed automatically. There is no order of confirmation. Until the order is passed, he must be deemed to continue on probation.

It is contended on his behalf by the learned counsel for the petitioner that since the later record was found satisfactory as per the norms laid down by the High Court, the finding that his performance was not satisfactory is not correct. Therefore, his discharge from service is clearly arbitrary. We find no force in the contention. The Division Bench held that during the relevant period his performance was not satisfactory and that subsequent good or bad performance of the petitioner became meaningless. We find that the approach adopted by the High Court cannot be said to be unjustified. Even the strong reliance placed by the learned counsel for the petitioner on the report of the learned District Judge indicates that he needed improvement in disposal of the cases which would show that the Full Court of the High Court considered his performance as not satisfactory.

Under these circumstances, the High Court was justified in discharging the petitioner from service during the period of his probation. It is not necessary that there should be a charge and an enquiry on his conduct since the petitioner is only on probation and during the period of probation, it would be open to the High Court to consider whether he is suitable for confirmation or should be discharged from service.

It is thus not a fit case warranting our interference under Article 136 of the Constitution. The S.L.P. is accordingly dismissed.