

PETITIONER:
KARNATAKA STATE ROAD TPT. CORPORATION & ANR.

Vs.

RESPONDENT:
S. MANJUNATH

DATE OF JUDGMENT: 24/04/2000

BENCH:
Doraiswami Raju, S.S.Ahmad

JUDGMENT:

Raju, J.

These three appeals are dealt with together since not only they involve a common question of law but also for the reason that they were dealt with in common in the High Court and submissions have been also in common before us.

The respondent in Civil Appeal No.113/98 was appointed as Assistant Traffic Manager in Karnataka State Road Transport Corporation (for short 'KSRTC') pursuant to a Select List of candidates prepared and published on 13/15-12-82 for a period of two years and was placed on probation. On 10.1.85, due to certain lapses, which were pending inquiry, an order postponing one increment was passed. On 7.8.85, the period of probation was extended upto 14.6.86. Ultimately, on 13.1.88 his services came to be terminated for the reason that his Performance Report during the period of probation was not satisfactory and he also failed to show any improvement despite having been given a chance to do so. Aggrieved, Writ Petition No.4273/88 was filed before the High Court challenging the said order of termination and for consequential benefits.

The respondent in Civil Appeal No.114/98 joined the service in KSRTC as a Clerk on 5.3.63. Thereafter, he was considered for appointment and included in a Select List for appointment (not by way of promotion) as Assistant Traffic Manager. On 22.11.82, the respondent was offered appointment as such initially for a period of two years and was placed on probation for a period of two years. On 13/15-12-82, the appointment order came to be issued as Assistant Traffic Manager and he was also placed on probation for two years. On 14.12.84 when the period of probation was over, he was continued in service without passing any order of confirmation since he was found to be indifferent to the job for which action appears to have also been taken resulting in a punishment of censure and subsequently also of withholding one increment. His appointment as Assistant Traffic Manager came to be terminated and he was reverted to his substantive post of Junior Assistant. This was challenged by means of a Writ Petition in the High Court.

The respondent No.1 in Civil Appeal No.115/98 was selected for appointment as Assistant Mechanical Engineer Class-II and on 28.11.81 he was also appointed as such and

placed on probation. He had incurred certain adverse remarks on deficiency being noticed in his performance. On 6.12.83 though the period of two years had come to an end, the same was extended on 19.4.84 for a period of six months and further extended on 7.6.84 for another six months. During his service, he was found to have been guilty of various acts of misconduct and ultimately on 16.11.85 his services were terminated on the ground of unsuitability as also misconduct. Aggrieved, the respondent filed a Writ Petition before the High Court.

All the three Writ Petitions were initially heard by a learned Single Judge of the Karnataka High Court and by a common order dated 3.11.95 those Writ Petitions were allowed on the view that there was an implicit term in the scheme of Regulation governing their services that on the expiry of the period of probation beyond the maximum term provided therein, an employee will be deemed to have been confirmed inasmuch as the Corporation cannot terminate their services on the expiry of such period. In coming to such a conclusion, the learned Single Judge followed an earlier decision of a Division Bench dated 5.2.82 in Writ Appeal No.100/91 (M. Balachandra Rao Vs. KSRTC & Anr.). The Corporation, aggrieved by such orders, pursued the matter on Appeal before a Division Bench in Writ Appeal Nos.36-38/96. The Division Bench adverted to the decisions of this Court reported in State of Punjab Vs. Dharam Singh [AIR 1968 SC 1210]; Paramjit Singh Vs. Ram Rakha [1979 (3) SCC 478] and M.K. Agarwal Vs. Gurgaon Gramin Bank [AIR 1988 SC 286] and observed that the position in the appeals is no different from the one dealt with in those decisions of this Court and consequently confirmed the order of the learned Single Judge. Hence, the above appeals.

The sheet-anchor of attack for the appellants is based upon Regulation 11, particularly clause (8) of the said Regulation and it is contended that notwithstanding the completion of the period of probation, having regard to the stipulation therein no automatic confirmation or status of a 'permanent employee could be claimed to have been acquired by the respondents. According to the learned counsel, the principles laid down in those decisions of this Court were not properly appreciated and applied with particular reference to the Regulation governing the services of the respondents in the Corporation and, therefore, the orders of termination passed by the Corporation could not have been interfered with. Reliance has been placed on the decisions reported in Jai Kishan Vs. Commissioner of Police & Anr. [1995 Supp. (3) SCC 364] and State of Punjab Vs. Baldev Singh Khosla [(1996) 9 SCC 190]. Regulation 11 (6) has also been relied upon to urge that a specific order of confirmation by the Competent Authority is a condition precedent for claiming confirmation in service or completion of the probation and on account of a mere lapse or delay on the part of the Competent Authority in passing the orders declaring the successful completion of probation, status of confirmation could not be claimed to have accrued to the respondents automatically after the expiry of the period of probation or its extended period.

The learned counsel for the respondents contended that Regulation No.11 has been properly construed by the High Court in the light of the principles laid down in similar cases where almost identical type of service rules/regulations came to be considered by this Court and,

therefore, the decisions under challenge do not call for interference. Reliance has also been placed in this regard on the decisions reported in Dayaram Dayal Vs. State of M.P. & Anr. [(1997) 7 SCC 443] and Wasim Beg Vs. State of U.P. & Ors. [(1998) 3 SCC 321], besides inviting our attention to some of the case law referred to therein. The impugned orders of termination of services of the respondents, though claimed to be orders terminating the probation and consequently their services are in substance only orders of punishment without following the mandatory procedure therefor or giving any opportunity to show- cause or conducting any inquiry in this regard. Argued the learned counsel for the respondents further that the High Court was right in setting aside such orders and the appeals are devoid of any merit.

To appreciate the grievance projected on either side, it is necessary to refer to Regulation No.11, which reads as follows :-

11. Probation 1. Every candidate appointed against a permanent post shall be on probation for a period of two (2) years. This term may be extended at the discretion of the Appointing Authority for reasons to be recorded in writing by a further period not exceeding one (1) year. The period of probation shall not be further extended.

2. On the satisfactory completion of the period of probation and his passing the prescribed tests, if any, within the Period of Probation the candidate shall become eligible for confirmation.

3. If the candidate appointed on probation is not found suitable for the post, his services may at the discretion of the appointing authority, be terminated at any time within the period of probation. In case of an employee of the Corporation, who is appointed on probation on selection such termination shall mean reversion to the post held by him regularly prior to such appointment.

4. All appointments by promotions shall be on an officiating basis for a period of one year which may for reasons to be recorded in writing be extended by the appointing authority by a period not exceeding SIX MONTHS.

5. At the end of the period of officiation the appointing authority shall consider the suitability of the person so promoted to hold the post to which he was promoted.

6. If the Appointing Authority considers that the work of the person so promoted during the period of officiation is satisfactory, it shall, as soon as possible, issue an order declaring the person to have satisfactorily completed the period of officiation and is confirmed in the promoted post. Such an order shall have effect from the date of completion of officiation.

7. If at the end of the period of officiation or the extended period of officiation under Sub-Regulation 4 of this Regulation, as the case may be, the Appointing Authority considers that the person is not suitable for the post to which he is promoted it shall, by order revert, the person to the post which he held prior to his promotion.

8. A person shall not be considered to have satisfactorily completed the period of officiation unless a specific order to that effect is made. Any delay in the issue of an order under Sub-Regulation 3 or Sub-Regulation 4 of this Regulation, shall not entitle the person to be deemed to have satisfactorily completed the period of officiation.

9. A person who has been declared to have satisfactorily completed his officiation under Sub-Regulation (4) shall be confirmed in the category for which he was promoted, at the earliest opportunity, Provided that where the appointment is made by promotion to a temporary post in any service the person concerned shall be continued on an officiating basis in the temporary post.

The law on the subject has been varying, depending upon the peculiar pattern of the service rules/regulations concerned and the scheme underlying the same inspite of more than one Constitution Bench judgments of this Court declaring the general and basic principles governing the rights of a probationer. There was always a keen tussle between the employer and employee in the application of those principles to individual or class or category of cases.

This Court had an occasion to review, analyse critically and clarify the principles on an exhaustive consideration of the entire case law in two recent decisions reported in Dayaram Dayals case (supra) and Wasim Begs case (supra). One line of cases has held that if in the Rule or Order of appointment, a period of probation is specified and a power to extend probation is also conferred and the officer is allowed to continue beyond the prescribed period of probation, he cannot be deemed to be confirmed and there is no bar on the power of termination of the officer after the expiry of the initial or extended period of probation. This is because, at the end of probation he becomes merely qualified or eligible for substantive permanent appointment. The other line of cases are those where even though 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 Constitution Bench which dealt with the case reported in State of Punjab vs Dharam Singh (AIR 1968 SC 1210), while distinguishing the other line of cases held that the presumption about continuation, beyond the period of probation, as a probationer stood negatived by the fixation of a maximum time limit for the extension of probation. Consequently, in such cases the termination after expiry of the maximum period upto which probation could be extended was held to be invalid, inasmuch as the officer concerned must be deemed to have been confirmed.

The principles laid down in Dharam Singhs case (supra) though were accepted in another Constitutional Bench of a larger composition in the case reported in Samsher Singh, etc. vs State of Punjab & Anr. [(1974) 2 SCC 831], the special provisions contained in the relevant rules taken up for consideration therein were held to indicate an intention not to treat the officer as deemed to have been confirmed, in the light of the specific stipulation that the period of probation shall be deemed to be extended if the officer concerned was not confirmed on the expiry of his

period of probation. Despite the indication of a maximum period of probation, the implied extension was held to render the maximum period of probation a directory one and not mandatory. Hence, it was held that a probationer in such class of cases is not to be considered confirmed, till an order of confirmation is actually made. The further question for consideration in such category of cases where the maximum period of probation has been fixed would be, as to whether there are anything else in the rules which had the effect of whittling down the right to deemed confirmation on account of the prescription of a maximum period of probation beyond which there is an embargo upon further extension being made, and such stipulation was found wanting in Dayaram Dayals case (supra).

The decision in Wasim Begs case (supra) also purported to classify these type of cases into three categories, on a review of the entire gamut of law. It was observed therein as follows:

15. Whether an employee at the end of the probationary period automatically gets confirmation in the post or whether an order of confirmation or any specific act on the part of the employer confirming the employee is necessary, will depend upon the provisions in the relevant Service Rules relating to probation and confirmation. There are broadly two sets of authorities of this Court dealing with this question. In those cases where the Rules provide for a maximum period of probation beyond which probation cannot be extended, this Court has held that at the end of the maximum probationary period there will be a deemed confirmation of the employee unless Rules provide to the contrary. This is the line of cases starting with State of Punjab vs Dharam Singh, M.K. Agarwal vs Gurgaon Gramin Bank, Om Parkash Maurya vs U.P. Coop. Sugar Factories Federation, State of Gujarat vs Akhilesh C. Bhargav.

16. However, even when the Rules prescribe a maximum period of probation, if there is a further provision in the Rules for continuation of such probation, beyond the maximum period, the courts have made an exception and said that there will be no deemed confirmation in such cases and the probation period will be deemed to be extended. In this category of cases we can place Samsher Singh vs State of Punjab which was the decision of a Bench of seven Judges where the principle of probation not going beyond the maximum period fixed was reiterated but on the basis of the Rules which were before the Court, this Court said that the probation was deemed to have been extended. A similar view was taken in the case of Municipal Corp'n. vs Ashok Kumar Mishra. In Satya Narayan Athya vs High Court of M.P. although the Rules prescribed that the probationary period should not exceed two years, and an order of confirmation was also necessary, the termination order was issued within the extended period of probation. Hence the termination was upheld.

17. The other line of cases deals with Rules where there is no maximum period prescribed for probation and either there is a Rule providing for extension of probation or there is a Rule which requires a specific act on the part of the employer (either by issuing an order of confirmation or any similar act) which would result in confirmation of the employee. In these cases unless there is such an order of confirmation, the period of probation would continue and

there would be no deemed confirmation at the end of the prescribed probationary period. In this line of cases, one can put Sukhbans Singh vs State of Punjab, State of U.P. vs Akbar Ali Khan, Kedar Nath Bahl vs State of Punjab, Dhanjibhai Ramjibhai vs State of Gujarat and Tarsem Lal Verma vs Union of India, Municipal Corpn. vs Ashok Kumar Misra and State of Punjab vs Baldev Singh Khosla. In the recent case of Dayaram Dayal vs State of M.P. (to which one of us was a party) all these cases have been analysed and it has been held that where the Rules provide that the period of probation cannot be extended beyond the maximum period there will be a deemed confirmation at the end of the maximum probationary period unless there is anything to the contrary in the Rules.

In the light of the position of law, thus laid down it has to be seen under what class or category the cases before us will fall and whether despite of the fixation of the maximum period of probation there are any special provision in the rules which could negate or nullify the inevitable consequence of a deemed confirmation, arising out of a ceiling fixed firmly on the period of probation and extension to be made thereafter, if any. Since much stress has been laid by the counsel on either side on the purport to be of Regulation 11, it becomes necessary to consider the ambit and scope of the stipulations therein. The Regulation deals with the period of probation of an appointee, other than by way of promotion [clauses (1) to (3) of Regulation 11] and also about the period of officiation in respect of an appointee by way of promotion [clauses (4) to (9)]. The Regulation does make, in our view, substantial difference, for purposes of confirmation between an appointee by promotion and one appointed, otherwise than on promotion, and purport to deal with these two categories distinctly and separately, in all respects - the relevant period, subsequent extension and consequences arising out of expiry of such maximum period coupled with the action or inaction on the part of the competent authority for the purposes of the Regulation. The learned counsel for the appellant corporation could not easily get over the dichotomy maintained throughout in the various clauses of this Regulation among the two categories or method of appointment. But, what was strongly pleaded was that Clause (8) of the Regulation takes care of both categories and, therefore, unless a specific order has been made by the competent authority, the person concerned shall not be considered to have satisfactorily completed his period of probation and any delay in the issue of an order shall not entitle the person to be deemed to have satisfactorily completed the probation.

As indicated by us, the Regulation deals with two different categories of cases - one about the probation of an appointee other than by way of promotion and the other relating to officiation of a person appointed on promotion. The similarity of purpose and identity of object apart, of such provision, there is an obvious difference and positive distinction disclosed in the manner they have to be actually dealt with. The deliberate use of two different phraseology probation and officiation cannot be so lightly ignored obliterating the substantial variation in the method of handling such categories of persons envisaged by the Regulations. The mere fact that a reference is made to Clause (3) also in the later part of Clause (8) of the Regulation could not be used to apply all the provisions

relating to the category of appointees on officiation to the other category of appointees on probation. The stipulation in Clause (8) of the Regulation when making the passing of an order, a condition precedent for satisfactory completion specifically refers only to the completion of period of officiation. Similarly, notwithstanding a reference made to Clause (3) alongside Clause (4), in stipulating the consequences of any delay in making an order declaring satisfactory completion, the reference is confined only to deemed satisfaction and completion of the period of officiation, and not of probation. Clause (9) of the Regulation insofar as it provides for confirmation as a sequel to declaration, only deals with a promotee to a temporary post and not of the other category. While dealing with the termination of a candidate, not found suitable for the post, clause (3) of the Regulation envisage such termination being made, at any time within the period of probation, and not at any time after the completion of such maximum period of probation. Consequently, the cases on hand also would fall within the category of cases dealt with in Dayaram Dayals case (supra) and Wasim Begs case (supra) and the services of the respondents could not be put an end to except by means of departmental disciplinary proceedings, after following the mandatory requirements of law. Therefore, the High Court cannot be faulted for interfering with the orders of termination of the services of the respondents.

For all the reasons stated above, we see no merit in the challenge made to the judgment of the High Court and these appeals fail and are hereby dismissed. No costs.