

Before : Hon'ble H. S. Bedi, J.

ANIL KUMAR CHAUHAN,—Petitioner.

versus

STATE OF HARYANA AND ANOTHER,—Respondents.

Civil Writ Petition No. 1531 of 1987.

May 28, 1992.

*Constitution of India, 1950—Arts. 226/227—Haryana State Supply and Marketing Cooperative Services (Common Cadre) Rules 1969—Rule 2.6—Termination of services—Petitioner appointed on probation of one year—Expiry of said period—Petitioner allowed to continue in service—Thereafter services terminated—Held that if person is allowed to continue in service after completion of maximum period of probation, he be deemed to be confirmed on such completion unless an order terminating his services is passed—Permissible to draw inference that on completion of maximum period of probation employee confirmed in post by implication—Action of respondents terminating petitioners' services set aside.*

*Held, that this petition deserves to succeed. It has been held by a string of authorities including the Constitution Bench in Dharam Singh's case (supra) that if a maximum period of probation is provided under the rules, the person concerned would be deemed to be confirmed on the completion of that period unless an order terminating the services had been made.*

*Further held that it could not be said that on the expiry of the maximum probationary period that the employee concerned could still be deemed to be on probation as, in fact, he stood confirmed by implication.*

(Para 5)

*Civil Writ Petition Under articles 226/227 of the Constitution of India praying that a writ in the nature of Mandamus be issued thereby directing the respondents, in particular respondent No. 2 to consider claim of the petitioner for regularising his services in terms of Government Instructions/Notification issued from time to time and any other writ, order or direction deemed fit and proper in the circumstances of the case may be granted.*

*It is further prayed that pending final disposal of this writ petition Respondents No. 2 be directed not to terminate services of the petitioner and instead allow him to continue in service even thereafter.*

*It is still further prayed that serving of notices of motion/stay on the respondents and filing of originals/certified copies of the documents marked as Annexure P-1 to P-9 may very kindly be ordered to be dispensed with.*

---

*It is still further prayed that costs of this writ petition may also be awarded to the petitioner.*

Nirmal Jit Kaur, for the Petitioner.

H. S. Gill, Sr. Advocate with G. S. Gill, Advocate, for the Respondents.

### JUDGMENT

*Harjit Singh Bedi, J.*

(1) The petitioner, who was working as a Clerk on a regular basis with the Haryana State Co-operative Land Development Bank Limited seeking a better life and prospects for himself, persuaded his employer to forward his application to the Haryana State Co-operative Supply and Marketing Federation Limited (hereinafter called the 'Hafed') for direct appointment to the post of Manager C Grade in response to an advertisement that had been issued. The petitioner was duly selected after having undergone the written examination and interview and was given letter of appointment, Annexure P-2, dated 8th April, 1982. As per this letter as also the statutory rule 2.6 of the Haryana State Supply and Marketing Co-operative Services (Common cadre) Rules, 1969 (hereinafter called the 'Rules'), the petitioner was required to be on probation in the following terms :—

- “1. Every person appointed to any post in the service by promotion or direct recruitment shall be required to be on probation for a period of one year from the date of appointment.
2. The Administrative Committee may at their discretion, extend the period of probation by a further period not exceeding six months.
3. During the period of probation, an employee directly recruited be liable to be discharged from service under the provisions of Shops Commercial Act and an employee promoted from a lower post to a higher post shall be liable to be reverted to the lower per post.”

(2) The petitioner, who took charge on 20th April, 1982, was initially required to be on probation for a period of one year but the period thereafter extended for another six months i.e. up to 20th

October, 1983,—*vide* orders dated 20th April, 1983. The petitioner however, continued to work on the post up to 15th June, 1984, when his services were terminated,—*vide* order Annexure P-3 on the ground that his work and conduct during the entire period of probation had been found to be unsatisfactory. The petitioner was once again at his request granted re-appointment but this time on an *ad hoc* basis for a period of six months,—*vide* letter dated 13th August, 1984, Annexure P-4. The petitioner was thereafter granted six-monthly extensions,—*vide* Annexures P-5 to P-8 and he continued to work on the post till 27th February, 1987, without a day's break. It has been averred by the petitioner that in February 1987, he was absent for a few days due to illness and when he returned to duty he was told that his services stood terminated although no specific order to that effect had been passed. It is the case of the petitioner that he had worked successfully on the post in question for almost five years and, as such, his services which were required to be regularised as per instructions had instead been terminated.

(3) In reply to the petition, the stand taken by the respondent-Hafed by way of preliminary objections was that no writ petition was competent against it as it was not an instrumentality of the State in terms of Article 12 of the Constitution, and that the petitioner, who was a workman, could make his grievance before the Labour Court in case he felt aggrieved. On merits, it has been asserted that the petitioner stood discharged from service on 15th May, 1984 while undergoing probation and it was at his request that he was given a fresh appointment for a period of six months,—*vide* Annexure P-4 and subsequent extensions on the same terms up to 1987, when by the efflux of time, the services of the petitioner stood terminated. It is, however, to be noted that Mr. H. S. Gill, learned counsel for the respondent did not urge any of the preliminary objections at the time of argument.

(4) A four-fold argument has been raised on behalf of the petitioner by Ms. Nirmaljit Kaur, Advocate. She has urged that as the claim of the petitioner was for the regularisation of his services, in order to succeed he has to challenge successfully Annexure P-3 by which his services had been terminated. It was argued that as per rule 2.6 of the Rules, quoted above, and the letter of appointment Annexure P-2 the period of probation could be for a period of one year from the date of appointment extendable by a further period not exceeding six months and as the extended period had also expired on 20th October, 1983, and no order terminating the services of the petitioner having been passed either on that day or soon thereafter, the petitioner stood confirmed by implication. In support

of her arguments she has cited *The State of Punjab v. Dharam Singh* (1), *Paramjit Singh and others v. Ram Rakha and others* (2), *Om Parkash Maurya v. U.P. Co-operative Sugar Factories Federation Lucknow and others* (3) and *Ashok Kumar Sharma and another v. The State of Haryana and another* (4). She has also urged that once it is held that the period of probation had expired and the petitioner stood confirmed by implication then the services of the petitioner could be dispensed with only in terms of rule 2.10 by giving him one month's notice in writing or pay in lieu thereof and as there had been non-compliance with the rule, the order Annexure P-3 was bad in law. In this connection, she has cited *Senior Superintendent RMS Cochin and another v. K. V. Gopinath Sorter* (5) and *Raj Kumar v. Union of India and others* (6). She has also urged with reference to para 10 of the petition and the reply filed by the Hafed that persons junior to the petitioner and similarly situated had been allowed to continue in service while the petitioner had been singled out for adverse treatment. Lastly it has been argued with reference to the judgment of the Supreme Court in *Sushil Kumar Yadunath Jha v. Union of India* (7), that the entire service of the petitioner i.e. first appointment on probation and the second, series of appointments on a six monthly and *ad hoc* basis were to be cumulatively considered for according the various service benefits to the petitioner.

In reply to the submissions made by the counsel for the petitioner, it has been argued by Shri H. S. Gill, learned Senior Advocate for the respondent-Hafed that in the absence of a specific order of confirmation on the expiry of the period of probation, it could not be said that the petitioner was a confirmed hand and, as such, the order Annexure P-3 was in order. Reliance for this proposition has been placed on *Kedar Nath Bahl v. State of Punjab and others* (8), *Dhanjibhai Ramjibhai v. State of Gujarat* (9), *Municipal Corporation Raipur v. Ashok Kumar Misra* (10) and CWP No. 12334 of 1991 (*Suraj Mal, Joint Manager (Cotton) Haryana State co-operative*

- 
- (1) A.I.R. 1968 S.C. 1210.
  - (2) A.I.R. 1979 S.C. 1073.
  - (3) A.I.R. 1986 S.C. 1844.
  - (4) 1986(2) S.L.R. 675.
  - (5) A.I.R. 1972 S.C. 1487.
  - (6) A.I.R. 1975 S.C. 536.
  - (7) 1987 (1) L.L.J. 7.
  - (8) 1972 S.L.R. 320.
  - (9) 1985 (1) S.L.R. 595.
  - (10) 1991 (2) S.L.R. 615.

*Supply Marketing Federation, Rania Road, Sirsa v. The Haryana State Co-operative Supply and Marketing Federation*) decided on 12th December, 1991. It has also been urged that as the petitioner continued to be on probation uptill 15th June, 1984 and the authority concerned having found his work and conduct to be unsatisfactory, the order Annexure P-3 was perfectly in accordance with law. He has also urged that the petitioner was re-appointed afresh at his own request and having accepted the new terms could not claim the benefit of his earlier service for the computation of his service benefits.

(5) After hearing learned counsel for the parties, I am of the view that this petition deserves to succeed. It has been held by a string of authorities including the Constitution Bench in *Dharam Singh's case* (supra) that if a maximum period of probation is provided under the rules, the person concerned would be deemed to be confirmed on the completion of that period unless an order terminating the services had been made. The Bench drew a distinction between cases where a maximum period of probation was not prescribed and those where such a period had been prescribed. In the former case, it was held that an order of confirmation was required to be made failing which the employee concerned would be deemed to be continuing on probation, but in the latter case the Court observed thus : "In the present case, Rule 6(3) forbids extension of the period of probation beyond three years. Where, as in the present case, the service rules fix 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. The reason is that such an implication is negated by the service rule forbidding extension of the probationary period beyond the maximum period fixed by it. In such a case, it is permissible to draw the inference that the employee allowed to continue in the post on completion of the maximum period of probation has been confirmed in the post by implication." *Dharam Singh's case* (supra) was subsequently followed in *Paramjit Singh's case* and *Om Parkash Maurya's case* (supra). It has been held that it could not be said that on the expiry of the maximum probationary period that the employee concerned could still be deemed to be on probation as, in fact, he stood confirmed by implication. The authorities cited by the learned counsel for the respondent-Hafed are completely distinguishable on facts and have no bearing on the facts of the present case. In *Kedar Nath's case* and *Dhanjibhai Ramjibhai's case* (supra) the rule did not provide for the maximum

period of probation whereas in *Ashok Kumar Misra's case* (supra), the rule while providing for a maximum period of probation also required the employee concerned to undergo training and to pass a departmental examination during the period of probation and it was only after the successful completion of the period of probation and the examination could be probationer be confirmed in service. It was in this situation that the Supreme Court while examining *Dharam Singh's case* (supra), held that the rule contemplated the passing of an express order of confirmation in that regard. The reliance of the counsel for the respondents on the judgment rendered in *Suraj Mal's case* (supra) is also untenable. In this case the petitioner was reverted to his substantive rank within the period of two years which was the maximum period of probation provided and the Court observed that merely because the order of extension of probation had not been made soon after the first year of probation had expired would not have the effect of confirming the employee by implication and as such the employee concerned would be deemed to be continuing on probation. It would be seen that in the present case the petitioner completed his maximum period of probation on 20th October, 1983 and he was allowed to continue in his post for almost eight months thereafter i.e. till June 1984. Furthermore, Sub-rule (3) of rule 2.6 provides that during the period of probation an employee directly recruited is liable to be discharged from service, and from this a reasonable inference can be drawn that unless such an employee is discharged under that rule, he would be deemed to be confirmed by implication. The judgment in the aforesaid cited case is, therefore, not applicable to the facts of the present case.

(6) It has next been urged by the learned counsel for the petitioner that while making the order Annexure P-3 there has been non-compliance with rule 2.10 of the Rules inasmuch as that the requirement of the notice period of one month or pay in lieu thereof has not been complied with. The authorities cited by the learned counsel do support her case but in view of the fact that the positive stand of the respondent is that the services of the petitioner were terminated on account of his unsatisfactory work during the period of probation, and as such rule 2.10 was inapplicable, no categorical finding need be recorded on this score.

(7) The next argument on behalf of the petitioner is based on the pleading as given in para 10 of the writ petition and the reply filed thereto. It has been specifically averred that certain named persons who were junior to the petitioner have been allowed to

continue working with the Hafed whereas the services of the petitioner had been terminated. This averment has been denied in the written statement. As I am of the view that the petitioner stood confirmed by implication on the expiry of the maximum period of probation, the petitioner should therefore be entitled to the same benefits that had been made available to the persons named in para 10 of the petition. Viewed in this light the argument of Mr. Gill that as the petitioner had been appointed against a temporary post also loses significance. It is to be noted that the post in question was occupied by the petitioner for almost five years and it is not the case of the respondents that his services were being terminated on account of the fact that the posts had ceased to exist. Moreover, as mentioned above, persons junior to the petitioner but similarly situated had been allowed to continue in their appointments, which clearly goes to show that the posts were in fact available. It has to be born in mind that in Sushil Kumar Yadunath Jha's case (supra) the petitioner therein had also been appointed against a temporary post on probation but the Supreme Court in the facts and circumstances of the case treated that appointment to be a regular one.

(8) The final argument made by the counsel for the petitioner is that keeping in view the judgment of the Supreme Court in Sushil Kumar Yadunath Jha's case (supra) the break in the service of the petitioner between the first and the subsequent appointments was required to be condoned and the entire period from 20th April, 1982 when he was initially appointed to 27th February, 1987 when his services were terminated, was to be taken as one for the purpose of computing his service benefits. I find that even on this aspect the petition needs to succeed. In the cited case the appellant was appointed on probation for a period of one year on a temporary post on 29th June, 1965, but was allowed to continue after the expiry of that period on 29th June, 1966 for about three years in all. On 8th March, 1968, however, his services were suddenly terminated but a fresh appointment was granted to him on 24th June, 1968 with a specific condition that no benefit of the previous service rendered would be admissible. The appellant accepted the terms of his fresh appointment and hereafter made a representation to the authorities that the break in service be condoned and the first and the second appointments be taken into account cumulatively for determining his period of service. This was denied and the High Court having dismissed the writ petition, the matter was taken to the Supreme Court. The apex Court found that although in the first stint the personal behaviour of the petitioner had been open to objection but in the second he seems to have done extremely well and worked to the full

satisfaction of his employer. This is what was ultimately held : "It is true that the terms on which he was appointed afresh expressly stated that he would not be entitled to continuity of service, but we must have regard to the circumstances in which he accepted those terms. He was in no position to bargain for a better deal and in the straightened circumstances in which he found himself he was compelled to accept whatever was dictated to him. We do not for a moment suggest that the sanctity of the contract between the parties should be given a go-bye, but what we do find is that there is a case where the subsequent conduct and the quality of his performance, of which high appreciation was recorded by his superiors, indicated that he should be relieved of the disadvantage suffered by him pursuant to that term in his contract of fresh appointment. Having regard to the interest of justice and in all the circumstances of this case, we are of opinion that the appellant is entitled to an order condoning the break in his service and holding that he should be considered as continuing in service throughout from the date of his original appointment." I find that the facts of the present case are substantially similar to the facts before the Supreme Court. Although it appears from the order Annexure P-3 that during the period of probation the work and conduct of the petitioner had not been found to be up to the mark, yet it appears from the pleadings that during the subsequent period he seems to have done reasonably well. In para 10 of the reply filed by the respondents, in answer to the claim put-forth by the petitioner that he had a brilliant record, the answer is that the overall records of the petitioner had not been good. The inference that I draw from the reply is that the record had generally been good. Moreover, it appears to me from the fact that the petitioner was allowed to continue to work for almost 2½ years even after the order Annexure P-3 had been made, does show that during the second period of employment his work and conduct was satisfactory.

(9) Before I part with the judgment there is one final aspect on which I must express my feelings. From the employees point of view the purpose behind providing a specific period of probation is two-fold: (1) that the employment must be given for a reasonable period so as to enable the employee to prove himself and (2) more importantly, that a probationer who having been tried for the maximum period of probation if still found wanting must be relieved of his duty so as to enable him to find a job more suitable to his capabilities. This is all the more necessary in the case of direct appointment, as in the present case, as an employee allowed to continue on probation indefinitely and then suddenly asked to go may not be in

a position to secure another employment for various reasons. It will be seen that the petitioner who was working as a regular clerk with the Land Development Bank chose to accept a tenuous appointment as a probationer and he was allowed to continue in service long after the maximum period provided under the rules had expired. He was reappointed undoubtedly on his persistence and the re-employment was also continued for 2½ years on a six-monthly basis. I am of the view that the respondents should not have permitted the petitioner to go beyond the maximum probationary period and under no circumstances re-employed him in the second series of appointment having been found to be deficient in the first one, but after having been so reappointed, it would be most inequitable to throw him out after five long years. The agony of an employee and his family—a wife, young children, may be old parents and others fondly and optimistically looking forward to his future, can well be imagined and should be kept in view by the authorities concerned. An administrator has undoubtedly to take hard decisions but those decisions must not only be taken at the appropriate time but must also not appear to be whimsical or capricious failing which a Court of equity in the facts and circumstances would interfere.

(10) In view of what has been stated above, the order Annexure P-3, is quashed and the petitioner is directed to be reinstated in service forthwith. A further direction is issued to the respondent as in *Sushil Kumar Yadunath Jha's case* (supra) that the petitioner will be entitled to all the benefits flowing from continuity of service with effect from 20th April, 1982 and as a confirmed employee of the Department with effect from 20th October, 1983 and he would be entitled to have his service benefits computed on that basis. The arrears of pay and other allowances with interest at the rate of 18 per cent per annum from the date they fell due till the date of payment would be paid to the petitioner within a period of three months from the date of copy of this judgment is received by the respondents. The costs of the petition are assessed at Rs. 1,500.

*J.S.T.*

*Before Hon'ble Mr. Justice G. R. Majithia.*

ARUN KUMAR BHARDWAJ,—*Petitioner.*

*versus*

MS. ANILA BHARDWAJ,—*Respondent.*

*First Appeal from Order No. 157-M of 1990*

March 31, 1992.

*Hindu Marriage Act, 1955—Ss. 13 (1) (i) & (a)—Indian Penal Code (Act 45 of 1860)—S. 193—Divorce—Allegations of adultery—Sole wit-*