

Jagmohan Singh Dhillon v. The Punjab State and others (Sarkaria, J.)

cause against the proposed action of the imposition of minor punishment of censure and also as regards the reduced emoluments directed to be payable to him for the period of his suspension. No rule of natural justice has, therefore, been violated in passing either of the impugned orders.

(23) For the foregoing reasons, the writ petition has no merit and is, hereby, dismissed. In the peculiar circumstances of this case, there will be no order as to costs.

R.N.M.

CIVIL MISCELLANEOUS

Before Ranjit Singh Sarkaria, J.

JAGMOHAN SINGH DHILLON,—Petitioner.

versus

THE PUNJAB STATE AND OTHERS,—Respondents.

Civil Writ No. 2237 of 1967

March 10, 1969

*Punjab Police Rules (1934)—Rules 13.16 and 13.18—Construction and scope of—Period of service in officiating capacity against a substantive post—Whether to be treated automatically as period on probation—Special order of the appointing authority—Whether necessary—Service Rules fixing maximum period of probation—Probationer allowed to continue in the post beyond the maximum period and to draw grade increments—Such probationer—Whether deemed to be confirmed by implication.*

*Held*, that Punjab Police Rule 13.16 read along with Rule 13.18 indicates that all substantive vacancies in the rank of Inspector shall be filled by appointment on probation, while sub-rule (2) of Rule 13.16 indicates that only temporary vacancies (as distinguished from substantive vacancies) in the rank of Inspector shall be filled on officiating basis by promotion of officers of 'F' List. Rules 13.18, when it says that all Police Officers promoted in rank shall be on probation for two years, apparently envisages appointments by promotion to substantive vacancies spoken of in sub-rule (1) of Rule 13.16. The periods of officiating promotion which the appointing authority may by a special order direct to be counted towards the period of probation, mentioned in Rule 13.18, refer to the officiating promotion against temporary vacancies spoken of in sub-rule (2) of Rule 13.16. No special order of the appointing authority for converting hitherto officiating status into that of one on probation is necessary. Such change from 'officiating' capacity to that of person 'on probation' automatically comes about by the operation of Police Rule 13.18 from the date when a person becomes employed in or against a substantive vacancy. Rule 13.18 is mandatory as is indicated by

the word 'shall'. The first clause of that rule contains a general imperative principle that all Police Officers promoted in rank, presumably against substantive vacancies, shall be on probation. The proviso to this general rule is in the nature of an exception. If it were not there, periods of officiating service against temporary or non-substantive vacancies occurring from time to time would in no case count towards the period of probation, which might work hardship. In order to avoid such hardship a discretion is given to the appointing authority under the proviso in Rule 13.18, to direct that the several periods of officiating service of the incumbent be counted towards the period of probation. The use of the word 'periods', in plural, in this rule is deliberate and significant. Thus construed, it is clear that the proviso does not cover the case of those promotees from List 'F' who have been appointed in or against substantive vacancies. The period of service spent by such promotees against substantive vacancies will automatically, by the force of Rule 13.18, be treated as a period of probation. (Para 14)

*Held*, that where 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 negatived by the service rule forbidding extension of the probationary period beyond the maximum period fixed by it. When an employee is allowed to continue in the post after the completion of the maximum period of probation and is even allowed to draw grade increments, in such a case it is permissible to draw the inference that the employee has been confirmed in the post by implication. (Para 17)

*Petition under Article 226 of the Constitution of India praying that a writ in the nature of Mandamus or any other directions or orders be issued directing the respondents to appoint the petitioner as Prosecuting Inspector of Police from the date of impugned order, i.e., 1st May, 1962, and to post him as such in the Punjab and to allow him all his emoluments for the post of Prosecuting Inspector of Police from 1st May, 1962, to date.*

D. D. JAIN, ADVOCATE, for the Petitioner.

R. K. CHHIBBER, ADVOCATE, FOR ADVOCATE-GENERAL, PUNJAB, for the Respondents.

#### JUDGMENT

SARKARIA, J.—This is a petition under Articles 226 and 227 of the Constitution for the issuance of a writ in the nature of *mandamus* directing the respondents to appoint the petitioner as Prosecuting Inspector of Police, Punjab.

(2) The petitioner joined the Police Department, Punjab, according to him, on October 18, 1943, as Probationary Prosecuting Sub-Inspector of Police. He was placed on the Promotion List 'F' in the

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year 1949 and was promoted to the rank of Prosecuting Inspector of Police on December 9, 1949, and he earned eleven increments. His twelfth increment was due on May 28, 1962. He was officiating in the vacancy caused by the departure on leave preparatory retirement of Malik Kishori Lal, Prosecuting Inspector, who eventually retired without resuming his duty. Except for a number of innocuous reversions occasioned by return from leave or deputation of officers senior to him, he continued to officiate as Prosecuting Inspector of Police till his impugned reversion on May 1, 1962, by the Inspector-General of Police, Punjab, respondent No. 3 (Copy of that order is Annexure 'A' to the writ petition). No reasons are given in that order, dated May 1, 1962, for reverting the petitioner. Prosecuting Sub-Inspector Darshan Singh, No. J/105, who stood 56 places below him in seniority, was appointed Prosecuting Inspector of Police on his (petitioner's) reversion on May 1, 1962. (Extract from the Civil List showing the seniority of the petitioner vis-a-vis Darshan Singh is Annexure 'B' to the writ petition). After the reversion of the petitioner, the officers at Nos. 21, 31 and 50 in Annexure 'B', who were all junior to the petitioner, were confirmed as Prosecuting Inspectors of Police. Officers at Nos. 30, 31 and 50, who were below the petitioner in seniority, were also placed on the Promotion List 'G' and thus made eligible for the post of Police Prosecuting Inspector, whereas the petitioner was reverted to the lowest rank of Prosecuting Sub-Inspector.

(3) The petitioner alleges that his reversion operates as a punishment inasmuch as persons junior to him have been promoted and confirmed; that he has lost his seniority; that he was drawing Rs. 485 per mensem at the time of his reversion, and, on his reversion he was paid Rs. 320 it has caused him a loss of Rs. 165 per mensem. It is further stated that the impugned reversion has caused him loss financially, socially, ethically and materially and has degraded his status in life in the eyes of his colleagues, brotherhood and society. The impugned reversion has also, it is added, barred his future promotion. The petitioner was never given any show-cause notice prior to his impugned reversion, which is violative of the provisions of Articles 14 and 311 of the Constitution of India. The petitioner is governed by the Punjab Police Rules, according to which his seniority and promotion could not be interfered with; nor could he be reverted without service of any show-cause notice or his being afforded an opportunity of personal hearing or explanation. It is further stated that the impugned order is violative of Article 309 and that the petitioner could be reverted under rule 16.10

of the Punjab Police Rules, which *inter alia* depended on his suspension, or under Rule 13.16(2) read with Rule 13.12(1) of the Punjab Police Rules, but none of these provisions was available to the respondents. It is added that the impugned reversion is against the principles of natural justice, inasmuch as no show-cause notice was served upon him before his reversion was ordered. The petitioner made representations which were rejected. He filed a memorial to the Governor of Punjab on October 20, 1962 and followed it up by several reminders, but he has not been informed about the fate of that memorial.

(4) Respondent No. 2, Kanwar Shamsher Singh, Inspector-General of Police, Punjab, and Joint Secretary to Government, Punjab, has filed an affidavit in which it is averred that the petitioner joined the Police Department, with effect from October 16, 1943, and not October 18, 1943, as Prosecuting Sub-Inspector. It is admitted that the petitioner was brought on List 'F' (Prosecuting) with effect from September 12, 1949. He was promoted as Prosecuting Inspector in short-term vacancies during 1953 and 1954 and continuously officiated as Prosecuting Inspector from June 3, 1954 to April 30, 1962, the allegation of the petitioner that he had earned eleven grade increments till his reversion is denied. It is pleaded that the record of the year 1949 was destroyed and consequently the averment of the petitioner in paragraph 4 of his writ petition could not be verified. It is admitted that the petitioner was reverted to his substantive rank of Prosecuting Sub-Inspector with effect from May 1, 1962, and Shri Darshan Singh was promoted as officiating Prosecuting Inspector in the vacancy caused by the petitioner's reversion. It is admitted that officers mentioned at Nos. 31 and 50 (Sarvshri Ram Kishan and Harbans Lal) in Annexure 'B' were confirmed as Prosecuting Inspector. It is further admitted that officers junior to the petitioner, mentioned against serial Nos. 30, 31 and 50 in Annexure 'B', superseded the petitioner in the matter of promotion and confirmation as Prosecuting Inspectors. Since the petitioner was reverted to his substantive rank of Prosecuting Sub-Inspector, the question of considering him for promotion does not arise. It is added that the petitioner's name still exists on List 'F' and, as such, he is still to be considered for promotion to the higher rank on the basis of his reports, etc. It is admitted that the petitioner's reversion has resulted in decrease in his pay, but it is averred that reversion was not made by way of punishment. The petitioner had no right to hold the officiating rank of Prosecuting Inspector. His seniority in his substantive rank of Prosecuting Sub-Inspector has not been affected. The reversion of the petitioner

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was made in terms of Police Rule 13.18 for administrative reasons. Consequently, Articles 14 and 311 of the Constitution were not attracted.

(5) In reply to para 31, it is stated that the memorial submitted by the petitioner is still under the consideration of the Government and the petitioner ought to have awaited the result of that memorial before approaching this Court under Articles 226 and 227 of the Constitution.

(6) By my order, dated 15th October, 1968, I requisitioned the complete service record pertaining to the petitioner to ascertain the correct factual position as to whether the petitioner was working/ appointed in or against a temporary vacancy as officiating in the rank of Prosecuting Inspector, and what were the durations of each kind of his appointment, and whether after 30th April, 1962 he had been considered every year for promotion. The service record was consequently produced by the respondent, who filed an additional affidavit, dated 29th October, 1968. In the additional affidavit, the respondent has stated that the petitioner was demoted from the officiating post of Prosecuting Inspector to his substantive rank as Prosecuting Sub-Inspector as he was not found fit to hold the post of officiating Prosecuting Inspector. His case for promotion as officiating Prosecuting Inspector was considered in 1967, but he was not found fit for such promotion. It is also added that Shri Kishori Lal, Prosecuting Inspector, retired with effect from 2nd October, 1956 and thereupon a substantive vacancy had occurred in the rank of Prosecuting Inspector. The petitioner, it is further averred, was officiating Prosecuting Inspector and not a probationer Prosecuting Inspector. No specific orders under Rule 13.18 of the Punjab Police Rules, to put him on probation, were passed, obviously due to the reason that the appointing authority is competent to treat officiating service to count towards the period of probation.

(7) The contention of the learned counsel for the petitioner is two-fold. Firstly, it is urged that the impugned order reverting the petitioner to the rank of Prosecuting Sub-Inspector operates as punishment, because it visits him with evil consequences, namely, monetary loss in pay, loss of seniority, supersession by junior persons and postponement of future chances of promotion. In support of this contention, reference has been made to *K. L. Nanda*

v. *The Secretary to the State of Punjab in Administrative Department of P.W.D.* (1), *Madhan Lazman Vaikunth v. The State of Mysore* (2), *S. Sukhdev Singh v. State of Punjab* (3), *P. C. Wadhwa v. The Union of India and another* (4), *Ram Rattan Bakshi v. State of Punjab and another* (5), and *State of Punjab and another v. Sukh Raj Bahadur* (6).

(8) Secondly, it is urged that the petitioner had a right to hold the rank of Prosecuting Inspector because by the operation of the Police Rules 13.16 and 13.18 the petitioner by his continuous probation against a substantive vacancy with effect from 2nd October, 1956 (i.e., the date of the retirement of Shri Kishori Lal) to 30th April, 1962, had become automatically confirmed as a substantive Prosecuting Inspector. In this connection, the learned counsel has cited *The State of Punjab v. Dharam Singh* (7).

(9) Mr. R. K. Chhibber, learned counsel for the respondent contends that this plea has not been taken with particularity by the petitioner and should not be entertained now. I do not think that this objection can prevail. True that in the petition it has not been pleaded in so many words that the petitioner had become automatically confirmed by the operation of the rules governing him. He has, however, in a clumsy and general way stated that the order contravenes not only Articles 311 and 309 of the Constitution, but also certain Police Rules. This is obviously a legal question to which the parties were alive. In fact, in the second affidavit the respondent has pleaded that the petitioner was an officiating Prosecuting Sub-Inspector and not a Probationer Prosecuting Inspector because no specific order was made under Rule 13.18 of the Police Rules that the officiating period of his service would be treated as period spent on probation.

(10) The relevant provisions of the Punjab Police Rules, 1934, may be reproduced as follows :—

“13.1.—(1) Promotion from one rank to another, and from one grade to another in the same rank, shall be made by

(1) I.L.R. (1964) 2 Pb. 30.

(2) A.I.R. 1962 S.C. 8.

(3) A.I.R. 1962 S.C. 1171.

(4) A.I.R. 1964 S.C. 423.

(5) 1968 P.L.R. 590.

(6) 1968 S.L.R. 701—A.I.R. 1968 S.C. 1089.

(7) 1968 Cr.L.J. 696—A.I.R. 1968 S.C. 1210

selection tempered by seniority. Efficiency and specific qualifications, whether in the nature of training courses passed or practical experience, shall be carefully considered in each case. When the qualifications of two officers are otherwise equal, the senior shall be promoted. This rule does not affect increments with in a time-scale.

(2) \* \* \*

(3) For the purposes of regulating promotion amongst enrolled police officers six promotion lists—A, B, C, D, E and F will be maintained.

Lists A, B, C and D shall be maintained in each district as prescribed in rules 13.6, 13.7, 13.8 and 13.9 and will regulate the promotion to the selection grade of constables and to the ranks of head constables and Assistant Sub-Inspector. List E shall be maintained in the office of Deputy Inspector-General as prescribed in sub-rule 13.10(1) and will regulate promotion to the rank of sub-inspector. List F shall be maintained in the office of the Inspector-General as prescribed in sub-rule 13.16(1) and will regulate promotion to the rank of inspector.

Entry in or removal from A, B, C, D or E lists shall be recorded in the order book and in the character roll of the police officer concerned. These lists are nominal rolls of those officers whose admission to them has been authorized. No actual selection shall be made without careful examination of character rolls.

13.4.—(1) Officiating promotions to the rank of Inspector shall be made by Deputy Inspectors-General of ranges and the Assistant Inspector-General, Government Railway Police. If the flow of promotion is unevenly distributed amongst ranges the Inspector-General of Police shall make suitable transfers of Sub-Inspectors on the promotion list from one range to another.

(2) \* \* \*

(3) \* \* \*

13.15.—(1) Recommendations on behalf of Sergeants and Sub-Inspectors considered fit for promotion to the rank of Inspector shall be submitted with their annual confidential

report on the 15th April each year to Deputy Inspectors-General by Superintendents of Police in form 13.15(1).... Deputy Inspectors-General shall finally submit recommendations to the Inspector-General as soon as they are satisfied as to the fitness of officers recommended, but in no case later than October each year.

- (2) Such of the officers recommended as the Inspector-General may consider suitable shall be admitted to promotion list 'F' (Form 13.15(2) which will, however, not be published. Deputy Inspectors-General shall be informed, and shall in turn inform the Superintendents concerned, of the names of those who have been admitted to the Lists;.....
- (3) When submitting recommendations for the entry of fresh names in List F, Deputy Inspectors-General and the Assistant Inspector-General, Government Railway Police, will at the same time submit specific recommendations (which need not be accompanied by detailed confidential reports) as to the retention or removal of officers already admitted to the list. On receipt of these recommendations, the Inspector-General will review the Provincial List, and pass orders regarding the retention or exclusion of names, at the same time communicating his decision to the Deputy Inspector-General and the Assistant Inspector-General, Government Railway Police.

(4) \* \* \*

13.16.—(1) Substantive vacancies in the rank of Inspector, save those which are specially designated for the appointment of probationers, shall be filled by promotion of officers from list F selected according to the principles laid down in rule 13.1. Sergeants are eligible for promotion in the appointments reserved for European Inspectors.

- (2) Temporary vacancies in the rank of Inspector shall be filled by the officiating promotion of officers on list F by the authorities empowered by rule 13.4 to make the appointment. Such officiating promotions shall be made in accordance with the principles laid down in sub-rule 13.12(1) in the case of E list, and the second part of



that rule shall, *mutatis mutandis*, govern the scrutiny of the work of F list officers and the removal from that list of the names of those who are found unfit for the rank of Inspector.

- (3) No officer whose name is not on F list shall be appointed to officiate as Inspector without the special sanction of the Inspector-General. When no officer on F list is available in the range for a vacancy which the Deputy Inspector-General is required to fill, application shall be made to the Inspector-General to appoint a man from another range.

13.18.—All Police Officers promoted in rank shall be on probation for two years, provided that the appointing authority may, by a special order in each case, permit periods of officiating service to count towards the period of probation. On the conclusion of the probationary period, the competent authority may either confirm the probationer or revert him or, if it so thinks fit, extend the period of probation by one year *in the aggregate* and on the conclusion of the extended period of probation, pass such orders as it could have passed on the conclusion of the original period of probation. While on probation, officers may be reverted or their period of probation may be extended without departmental proceedings. Such reversion shall not be considered reduction in rank for the purposes of rule 16.4. This rule shall not apply to Constables and Sub-Inspectors, promoted to the selection grade, whose cases are governed by rules 13.5 and 13.14.”

(11) The first question that falls to be determined is, whether the petitioner was holding the post of Prosecuting Inspector on probation or in an ‘officiating capacity’, within the contemplation of Rule 13.18 of the Police Rules. The expressions “on probation”, ‘probationer’, and ‘officiating service’ have not been defined in the Police Rules. In interpreting these terms, therefore, we have to go to the definitions of these expressions in the Punjab Civil Services Rules, Volume I, Part I, the relevant rules of which read as follows :—

“2.42. *Officiate*.—A Government servant officiates in a post when he performs the duties of a post on which another person holds a lien. A competent authority may, if it

thinks fit, appoint a Government servant to officiate in a vacant post on which no other Government servant holds a lien.

*Note.*—In the case of a Government servant with a substantive post on a permanent establishment who is appointed to officiate in a permanent post which is substantively vacant or which is temporarily vacant in consequence of the substantive incumbent on extraordinary leave or on transfer of foreign service, and is allowed to draw the full officiating pay or salary admissible under the rules, the difference between the substantive pay and officiating pay or salary counts as emoluments for pension.

2.49. *Probationer* means a Government servant employed on probation in or against a substantive vacancy in the cadre of a department. This term does not, however, cover a Government servant who holds substantively a permanent post in a cadre and is merely appointed "on probation" to another post.

*Note 1.*—The status of a probationer is to be considered as having the attributes of a substantive status except where the rules prescribe otherwise.

*Note 2.*—No person appointed substantively to a permanent post in a cadre is a probationer unless definite conditions of probation have been attached to his appointment, such as the condition that he must remain on probation pending the passing of certain examinations.

*Note 3.*—The provisions of this rule and note 2 above are to be taken as complementary and not as mutually exclusive. Taken together, they contain the essence of the tests for determining when a Government servant should be regarded as a probationer, or as merely 'on probation' irrespective of whether he is already a permanent Government servant or is merely a Government servant without a lien on any permanent post. While a probationer is one appointed in or against a post substantively vacant with definite conditions of probation, a person on probation is one appointed to a post (not necessarily vacant substantively) for determining his fitness for eventual substantive appointment to that post. There is nothing in this rule to prevent a Government servant substantive

in one cadre from being appointed (either through selection by a departmental committee or as a result of competitive examination through the Punjab Public Service Commission) as a 'probationer' in or against a post borne on another cadre, when definite conditions of probation such as the passing of departmental examinations are prescribed. In such a case, the Government servant should be treated as a probationer, and (subject to specific rules, if any, to the contrary) allowed only, as initial and subsequent pay the rates of pay prescribed for the probationary period, irrespective of whether these rates are actually included in or shown separately from the time-scales of the services concerned. The case of departmental candidates of the same department promoted by selection is, however, different. If the Departments of the Government of Punjab concerned consider it expedient, these 'promoted' men may properly be put 'on probation' for a period to see if they make good in the actual work of the post to which they are promoted and have liens (active or suspended) retained for them on their former posts meanwhile to provide for their possible reversion; whether the departmental arrangements be to test their capacity, etc., during the 'on probation' period, their initial pay should be fixed under the operation of the normal rules regulating pay fixation."

(12) It is clear with reference to the definition of 'officiate' in Rule 2.42 of the Punjab Civil Services Rules that prior to 2nd October, 1956, the petitioner was 'officiating' in a post on which Shri Kishori Lal held a lien. But from 2nd October, 1956 onwards, he was working in or against a *substantive* vacancy against which no other person held any lien. Thus, with effect from 2nd October, 1956 onwards, he was not, in terms of the above definition in Rule 2.42, 'officiating' in that post, particularly when the competent authority, as required by the second part of the definition, had not made any **express** order that even after 2nd October, 1956, the petitioner would only officiate against the post which had fallen vacant on the retirement of Shri Kishori Lal. In the absence of such an **express** order; Police Rule 13.18 will be attracted which will make his appointment from 2nd October, 1956 onwards as one on probation.

(13) The petitioner satisfies all the *pre-requisites* of the definition of 'probationer' given in Rule 2.49 of the Punjab Civil Services Rules, with effect from 2nd October, 1956. It is true that prior to

2nd October, 1956, the petitioner could not be said to be 'on probation', because he was occupying a non-substantive vacancy of a transient character. After 2nd October, 1956, however, he was employed in or against a *substantive* vacancy and by virtue of Police Rule 13.18 he was 'on probation'. It is not disputed that the post was in the cadre of the Police Department.

(14) It is proposed to elaborate the point further. Police Rule 13.16 read along with Rule 13.18, quoted above, indicates that all *substantive* vacancies in the rank of Inspector shall be filled by appointment *on probation*, while sub-rule (2) of Rule 13.16 indicates that only *temporary* vacancies (as distinguished from substantive vacancies) in the rank of Inspector shall be filled on *officiating* basis by promotion of officers of 'F' List. Rules 13.18, when it says that all Police Officers promoted in rank shall be on probation for two years, apparently envisages appointments by promotion to substantive vacancies spoken of in sub-rule (1) of Rule 13.16. The periods of officiating promotion which the appointing authority may by a special order direct to be counted towards the period of probation, mentioned in Rule 13.18, refer to the officiating promotion *against temporary vacancies* spoken of in sub-rule (2) of Rule 13.16. That is to say, no special order of the appointing authority for converting his hitherto officiating status into that of one on probation was necessary. Such change from his 'officiating' capacity to that of person 'on probation' will automatically come about by the operation of Police Rule 13.18, from 2nd October, 1956, i.e., as soon as the petitioner became employed in or against a substantive vacancy. Rule 13.18 is mandatory as is indicated by the word 'shall'. The first clause of that rule contains a general imperative principle that all Police Officers promoted in rank, presumably against substantive vacancies, shall be on probation. The proviso to this general rule is in the nature of an exception. If it were not there, *periods of officiating service* against temporary or non-substantive vacancies occurring from time to time would in no case count towards the period of probation, which might work hardship. Cases can be conceived where persons on 'F' List officiated in temporary vacancies in the rank of Inspector for long periods which, in aggregate, may far exceed the maximum period of probation contemplated by the Police Rules, but may get a chance for promotion in a substantive vacancy at a time when they have less than two years before attaining the age of superannuation. It is for such cases that a discretion is given to the appointing authority under the proviso in Rule 13.18, to direct that the several *periods of officiating service* of the incumbent be counted towards the period of probation. The use of the word

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'periods', in plural, in this rule is deliberate and significant. Thus construed, it is clear that the proviso does not cover the case of those promotees from List 'F' who have been appointed in or against substantive vacancies. The period of service spent by such promotees against substantive vacancies will automatically, by the force of Rule 13.18, be treated as a period of probation. The contention of the respondent, therefore, that even after 2nd October, 1956, the status of the petitioner continued to be that of an officiating Inspector because no special order under Rule 13.18 for treating him on probation was passed by him (respondent), does not, on a proper construction of the aforesaid rules, appear to be correct.

(15) Thus, there is no manner of doubt that the petitioner was a 'probationer' within the meaning of Police Rule 13.18 read with Rule 2.49 of the Punjab Civil Services Rules, with effect from 2nd October, 1956 onwards. He completed his first period of two years' probation on 1st October, 1958, and, since he was not expressly confirmed in his post on the completion of two years, it will be deemed that, by implication, his period had been extended for another year expiring on 2nd October, 1959. On the completion or expiration of this maximum period of probation delimited by Police Rule 13.18, the appointing authority could either confirm the probationer or revert him to his substantive rank of Prosecuting Sub-Inspector. It could not on the expiry of the aforesaid three years, further extend his period of probation. The words 'in the aggregate' indubitably show that in no case, the maximum period of probation shall exceed three years. It is true that immediately on the expiry of his last day of the period of his probation, the petitioner did not become automatically confirmed, but there is nothing on the record to show that any action against him with regard to his reversion was in contemplation on the completion of the three years' period. Rather, after completing this period, he continued to draw grade increments. In the petition, it is alleged that after his promotion to the rank of Inspector he had earned 11 grade increments in the promoted rank. In the return, Respondent 2 admitted that the petitioner *continuously* officiated as Prosecuting Inspector from 3rd June, 1954 to 30th April, 1962, but in a general way denied that he had earned 11 grade increments. It is not specifically denied that during the period from 3rd June, 1954 to 30th April, 1962, during which period the petitioner continuously worked in the rank of Inspector, he did earn grade increments. At the Bar, it is admitted that during this period he had been allowed to earn 5 or 6 grade increments. It is thus common ground that after the expiry of his maximum period of three years' probation also, he was allowed to

earn two grade increments. Petitioner has alleged that his 12th increment fell due on May 28, 1962. This date of the grade increment being due, is not denied.

(16) The principles laid down by the Supreme Court in *State of Punjab v. Dharam Singh* (8), will, therefore, be attracted. By implication, the petitioner would be deemed to have been confirmed on the completion of his three years' probation on 2nd October, 1959. *Dharam Singh's case* (8), turned on an interpretation of the Punjab Educational Service (Provincialised Cadre) Class III Rules. Rule 6(3) was in these terms :—

“On the completion of the period of probation the authority competent to make appointment may confirm the member in his appointment or if his work or conduct during the period of probation has been in his opinion unsatisfactory he may dispense with his services or may extend his period of probation by such period as he may deem fit or revert him to his former post if he was promoted from some lower post :

Provided that the total period of probation including extensions, if any, shall not exceed three years.”

(17) Though the language of the above-quoted rule is not identical with that of Police Rule 13.18, yet it is substantially similar. The common feature of both these rules, is, that the maximum period of probation, including extensions, has been delimited to a maximum of 3 years. In principle, therefore, there is no difference. In *Dharam Singh's case* (8), the maximum period fixed by Rule 6(3) expired on the 1st October, 1960. Dharam Singh continued to hold the post thereafter, though no formal order confirming him was passed. By an order, dated February 10, 1963, i.e., about 2 years, 4 months and 10 days after the expiry of the maximum period of probation, the appointing authority passed an order terminating the services of the respondents in accordance with the terms of their employment. Their Lordships laid down that where 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 maximum period of probation without an express order of

(8) A.I.R. 1968 S.C. 1210.

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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 probation, has been confirmed in the post by implication.

(18) It was further observed by their Lordships at page 1213 :—

“Immediately upon completion of the extended period of probation on October 1, 1960, the appointing authority could dispense with the services of the respondents if their work or conduct during the period of probation was in the opinion of the authority unsatisfactory. Instead of dispensing with their services on completion of the extended period of probation, the authority continued them in their posts until sometime in 1963, and allowed them to draw annual increments of salary including the increment which fell due on October 1, 1962.”

(19) From this, it was inferred that there was no case for dispensing with the services of the respondents.

(20) The facts of the present case are exactly parallel, if not stronger, so as to attract the rule laid down in *Dharam Singh's case* (8). Here, the impugned order, reverting the petitioner to his substantive post, was passed more than 2 years and 6 months after the expiry of his maximum period of probation. During all this period of his continuous service in the substantive vacancy, he was allowed to draw grade increments. Thus, the petitioner was a substantive permanent employee in the rank of Inspector from 2nd October, 1959 onwards and as such, had a right to hold that post. His services could not be terminated otherwise than in compliance with the procedure contemplated by Article 311(2) of the Constitution. His reversion as Prosecuting Sub-Inspector, therefore, amounts to reduction in rank within the contemplation of Article 311 of the Constitution.

(21) For the foregoing reasons, I would hold that the impugned order being violative of Article 311 of the Constitution, is null and void. I would, therefore, quash it, and allow this writ petition with costs.

Counsel's fee : Rs. 100.

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K. S. K.