

Before S. S. Sandhawalia C.J. and J. V. Gupta, J.

KARTAR SINGH LECTURER,—Appellant.

versus

DIRECTOR, PUBLIC INSTRUCTIONS, PUNJAB and others,—
Respondents.

Letters Patent Appeal No. 414 of 1976

April 19, 1980.

Punjabi University Calendar Volume I—Rule 3—Whether stipulates automatic confirmation of a probationer employee on the expiry of his probationary period—Time specified in the Rule for notifying such employee about the extension of his probation—Whether directory—Delay in sending such notice—Whether results in automatic confirmation of the employee.

Held, that Rule 3 of the Punjabi University Calendar is not so mandatory in nature as to amount to a specific stipulation for the automatic confirmation of a probationer employee irrespective of his work and conduct and *de hors* any express order of confirmation. A bare look at the opening part of this would show that the core and substance of the matter here is the satisfactory nature of the work of the probationer. He has to be confirmed if his work and conduct measure up to the satisfaction of the employer and not merely by the efflux of time. The basic emphasis here is on the quality of the work during the prescribed period of probation. However, in order to avoid inordinate delays on the part of the employer to decide the issue, a safeguard has been provided that in case the original one year period of probation is to be extended, the employee must have notice of the same. Obviously, such a notice should normally be within the probationary period and the rule so provides. However, neither the language nor the intent can possibly indicate that the timing of the notice to extend the period of probation is of so mandatory nature that any delay, even well explained, would be fatal. This is further evident from the succeeding sentence which permits the extension of the probationary period but limits it upto two years. It is not as if the notice, if not given within the normal period, would act as a legal bar to the power of the employer to extend the period of probation. Thus, the point

of time specified in the rule for notifying the probationer about the extension of his period of probation is directory in nature.

(Paras 6 and 7).

Held, that Rule 3 cannot be raised to the pedestal of prescribing that confirmation would automatically follow either at the end of one year probation or on the expiry of the very day of the extended probation, if any. Since the reference to the period within which the notice for the extension of probation is to be made is directory in nature, the consequences flowing therefrom cannot be extended so as to lead to the result that a mere failure to notify the extension of period would result in automatic confirmation. Both on principles and precedent it must be held that rule 3 is in no way a stipulation for the automatic confirmation of a probationary employee on the very day of the expiry of his period of probation.

(Paras 8 and 10).

Letters Patent Appeal under Clause X of the Letters Patent, against the Judgment of Hon'ble Mr. Justice Gurnam Singh, dated 26th August, 1976 passed in Civil Writ No. 755 of 1976.

Inderjit Malhotra, Advocate, for the Appellant.

Kuldip Singh, Advocate, for the Respondent.

JUDGMENT

S. S. Sandhawalia, C.J.

1. Whether Rule-3 of the Punjabi University Calendar, Volume-1, is a stipulation for the automatic confirmation of a probationer employee on the very day of the expiry of his period of probation? — is the somewhat meaningful question which arises in this appeal under Clause 10 of the Letters Patent.

2. Kartar Singh, appellant, was appointed as a Lecturer in English in a private institution styled as 'Sant Baba Attar Singh Khalsa College, Sangrur, on June 28, 1973 and actually joined service on July 16, 1973. The letter of appointment, annexure P/1 provided *inter alia* that he would be on probation for one year, and one month's notice or one month's salary in lieu of that will be

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necessary for either party to leave or terminate the services. Further, it was mentioned therein that all University and College Rules will be binding upon the appellant.

3. The clear stand of the private respondents herein is that when the initial period of one year's probation of the appellant was nearing completion, his service record did not merit confirmation and the President of the Managing Committee, after consulting other members thereof, directed respondent No. 3, the Principal of the College to extend the period of probation of the appellant by one year in anticipation of the approval of the Managing Committee. Accordingly, on July 22, 1974, the Principal of the College intimated the petitioner to this effect. It does not seem to be in dispute that owing to the absence of the President of the Managing Committee from station, no meeting of the Managing Committee could be held till August 11, 1974 on which date the extension of the probation period was duly ratified. The appellant neither challenged nor protested against this extension of his probation.

4. Before the extended period of probation could expire the Managing Committee, in its meeting held on June 13, 1975, considered the case of the petitioner and apparently finding his work and conduct unsatisfactory, resolved to terminate his services on the expiry of the probationary period on July 15, 1975. The appellant made a representation to the Director of Public Instructions, Punjab, which was, however, considered and filed on November 28, 1975. The appellant then challenged the termination of his services by way of a writ petition and the learned Single Judge, in a considered judgment, has repelled all the contentions raised on his behalf and dismissed the writ petition. Whilst doing so, it was held that even the original appointment of the appellant was not in accordance with the rules of the Punjabi University and therefore, the service rules of the Punjabi University Calendar would be hardly attracted in his case. Further, it was held that the appellant having not raised any objection to the extension of his period of probation before the authorities or challenged the same in a court of law, he must, as a necessary inference, be deemed to have accepted the extension of the period of his probation. Lastly, it was opined that the College and the University Rules did not envisage any automatic confirmation of an employee without any specific order of confirmation.

5. At the very out-set it may be noticed that Mr. Kuldip Singh for the respondent, very fairly took the stand that the case may well be examined on the assumption that the appellant was validly appointed and the University Rules were applicable to him. In view of this stand, it becomes wholly unnecessary to examine the findings of the learned Single Judge that even the original appointment of the appellant was not in accordance with the relevant statutory provisions.

6. What first meets the eye in this case is the admitted position that way back on July 22, 1974, the Principal of the College squarely intimated the appellant that in anticipation of the approval of the Managing Committee of the College, the period of his probation had been extended upto July 16, 1975. The appellant did not raise a finger of protest against this action, nor is it in doubt that later the Managing Committee, in its meeting held on August 11, 1974, ratified the action of the Principal. Even at this stage, the appellant chose neither to raise any protest against the same — whether oral or in writing — nor did he seek to challenge the action of the respondents in a court of law. We are wholly unable to agree with the stand of the learned counsel for the appellant that these orders were *non est* and the appellant could choose to ignore them altogether. Rather his conduct would indicate that he indeed accepted a further lease of life and an extended opportunity to improve his work and conduct in order to secure confirmation. He had virtually a whole year to do so, but obviously he still did not come up to the satisfaction of employer and before the extended period of probation expired, his services were terminated by due notice to him. In this context the learned Single Judge seems to be right in his conclusion that the petitioner by his conduct acquiesced and accepted the extension of the period of his probation and therefore, it would now hardly lie in his mouth to assail the termination merely because the assessment of the totality of his work over the extended period of probation did not measure upto the standards required by the employer. The appellant cannot possibly be allowed to sit on the fence and first willingly take the benefit of the extended period of probation and when he failed therein to turn-round and assail the said extension. I would, therefore, affirm the learned Single Judge's finding that in view of the acceptance and acquiescence of the appellant with regard

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to the extension of the period of probation, he cannot be permitted to challenge the same.

7. Now apart from the above, I am unable to subscribe to the view that Rule-3 of the Punjabi University Calendar is so mandatory in nature as to amount to a specific stipulation for the automatic confirmation of a probationer employee irrespective of his work and conduct and *de hors* any express order of confirmation. The relevant provision on which basic reliance has been placed may first be noticed in *extenso*:—

“3. Unless appointed temporarily, the employee appointed on one year's probation would be confirmed if his work is found satisfactory. The employer shall notify to the teacher in writing before the expiry of one year's probationary period, if his period of probation is to be extended and in the absence of such a notice the teacher would be deemed to have been confirmed. The probationary period shall in no case be extended beyond two years from the date of appointment. In cases a person appointed temporarily is reappointed on probation, the period of his service in temporary capacity shall be counted towards his probationary period.”

A bare look at the opening part of the aforesaid provision would show that the core and the substance of the matter here is the satisfactory nature of the work of the probationer. He has to be confirmed if his work and conduct measure up to the satisfaction of the employer and not merely by the efflux of time. As is not unusual in the probationary provisions, the basic emphasis here is also on the quality of the work during the prescribed period of probation. However, in order to avoid inordinate delays on the part of the employer to decide the issue, a safeguard has been provided that in case the original one year period of probation is to be extended, the employee must have notice of the same. Obviously, such a notice should normally be within the probationary period and the Rule so provides. However, neither the language nor the intent can possibly indicate that the timing of the notice to extend the period of probation is of so mandatory nature that any delay, even well explained, would be fatal. This is further evident from the succeeding sentence, which permits the extension of the probationary

period, but limits it upto two years. It is not as if the notice, if not given within the normal period, would act as a legal bar to the power of the employer to extend the period of probation. On an overall construction of the provision, it appears to me that the procedural part of the time, within which the notice is to be given is directory in nature and as a necessary consequence the resultant effects thereof. I do not think that the relatively procedural part of the aforesaid provision would override the substance of the matter, namely, the satisfaction of the employer with the work and the conduct of the probationer before confirming him.

8. A somewhat similar question was raised before the Full Bench in *Guru Nanak Dev University v. Dr. (Mrs.) Iqbal Kaur Sandhu and others*, (1), in the context of Statute 31 of the Guru Nanak Dev University, providing for the procedure for the assessment and confirmation of probationer employees. Holding the same to be directory, the Full Bench held as follows :—

“ ... In the recent judgment of their Lordships of the Supreme Court in *Hari Singh Mann v. State of Punjab* (2), it has been reiterated that the power and the right of the employer to judge about the fitness for work or suitability for the post is inherent and he cannot be robbed thereof. Therefore, a construction which tends to rob the employer of his basic right to assess the work and conduct of the probationer by all means and if not satisfied therewith then to refuse to confirm him in the post has to be avoided because it would manifestly defeat the very purpose and object of the whole of Statute 31.”

I am, therefore, inclined to hold that the point of time specified in the Rule for notifying the probationer about the extension of his period of probation, is directly in nature.

9. Again, I am of the view that on a broad construction of Rule 3, the same cannot possibly be construed as laying down a stipulation for the automatic confirmation of a probationer on the very day when his period of probation expired. The true test for

(1) AIR 1976 Pb. & Haryana 69.

(2) (1974) 2 Service Law Reporter 696—(AIR 1974 SC 2263).

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construing the provisions of the service law on probation, has been enunciated by their Lordships of the Supreme Court in *Shri Kedar Nath Behl v. The State of Punjab and others* (3) in the following terms :—

“.... The appellant contends that these orders extending the period of probation were irregular and illegal. Either he should have been discharged within the first six months of probation, or, if he was not so discharged he was entitled to automatic confirmation. We do not think that this contention is correct. The law on the point is now well settled. Where a person is appointed as a probationer in any post and a period of probation is specified, it does not follow that at the end of the said specified period of probation he obtains confirmation automatically even if no order is passed in that behalf. Unless the terms of appointment clearly indicate that confirmation would automatically follow at the end of the specified period, or there is a specific service rule to that effect, the expiration of the probationary period does not necessarily lead to confirmation. At the end of the period of probation an order confirming the officer is required to be passed and if no such order is passed and he is not reverted to his substantive post, the result merely is that he continues in his post as a probationer.”

Applying the aforesaid enunciation of the law, it appears to me that Rule-3 cannot be raised to the pedestal of prescribing that confirmation would automatically follow either at the end of one year's probation or on the expiry of the very day of the extended probation, if any. Earlier, I have taken the view that the reference to the period within which the notice for the extension of probation is to be made, is directory in nature. That being so, the consequences flowing therefrom cannot be extended so as to lead to the result that a mere failure to notify the extension of period would result in automatic confirmation. It is perhaps unnecessary to elaborate the issue on principle because it appears to be well

covered by precedent. A similar argument of automatic confirmation was raised before the Division Bench in *Hari Singh Mann v. The State of Punjab and others* (4). D. K. Mahajan, J., speaking for the Bench examined the matter in the light of the observations of their Lordships of the Supreme Court in *The State of Punjab v. Dharam Singh* (5) and observed as follows :—

“... On principle also, we are inclined to the view that some reasonable time must be permitted to the Dismissing Authority to pass the necessary order either terminating the services of the probationer or confirming him. It will depend on the facts and circumstances of each case as to what is the reasonable time? In *Dharam Singh's* case, the time elapsed, in no circumstances, could be held to be a reasonable time. But that is an extreme case. So far as the present case is concerned, it cannot be said that the period, that elapsed, that is a period of about two months and ten days, is an unreasonable period.”

10. The matter was carried in appeal to the Supreme Court in *Hari Singh Mann v. The State of Punjab and others* (2 supra), and the judgment of this Court was upheld. It deserves recalling that in the aforesaid judgment, the relevant Rules, though certainly not identical were similar in nature. The learned Judges did not choose to construe them as a stipulation for automatic confirmation.

11. Both on principle and precedent, it appears to me that the answer to the question posed at the very outset must be rendered in the negative and it is held that Rule 3 is in no way a stipulation for the automatic confirmation of a probationer-employee on the very day of the expiry of his period of probation.

12. Before parting with this judgment, it deserves highlighting that in *Hari Singh Mann's* case even a period of two months and ten days after the expiry of the period of probation for passing an order dispensing with the service of the probationer was held to be reasonable. In sharp contrast thereto herein the order of extension of probation by the Principal was passed within a week

(4) 1970 S.L.R. 915.

(5) 1968 S.L.R. 247.

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Commissioner and others (G. C. Mital, J.)

of the expiry of the original period of one year's probation. This period of a week, therefore, cannot possibly be deemed unreasonable in the peculiar circumstances of this case. The net result, therefore, is that the appellant would continue to be a probationer till his services were finally terminated after the expiry of the extended period of probation. It was not disputed before us that the provisions of sections 3, 4 and 5 of the Punjab Affiliated Colleges (Security of Service of Teachers) Act, 1974, are not applicable to the case of a probationer. Therefore, the termination of the appellant's services did not require the approval by the Director of Public Instruction, who rightly filed the representation of the appellant.

12. Affirming the judgment of the learned Single Judge, we hold that the appeal is without merit and dismiss the same. There would, however, be no order as to costs.

J. V. Gupta, J.—I agree.

S. C. K.

Before B. S. Dhillon and G. C. Mital JJ.

PUNJAB FILM AND NEWS CORPORATION,—*Petitioner*

versus

REGIONAL PROVIDENT FUND COMMISSIONER and others,
Respondents.

Civil Writ No. 3429 of 1979.

April 23, 1980.

Employees Provident Funds and (Family Pension Funds) Act, 1952—Sections 7-A and 19-A—Order under section 7-A passed against an employer—Employer challenging the same before the Central Government under section 19-A—Mere filing of a representation under section 19-A—Whether automatically stays the recovery proceedings—Central Government—Whether has the power to stay such proceedings.

Held, that a reading of section 19-A of the Employees Provident Funds and (Family Pension Funds) Act, 1952 would show that representation can be made to the Central Government on certain matters