LETTERS PATENT APPEAL

Before S. S. Dulat and P. C. Pandit, JJ.

DHARAM SINGH,—*Appellant*

versus

THE STATE OF PUNJAB, —*Respondent*

Letters Patent Appeal No. 354 of 1963

1964

November, 26th.

Punjab Educational Service (Provincialized Cadre), Class III, Rules (1961)—Rule 6—Teachers taken into service by State Government—Whether temporary—Period of probation—Whether can be extended—Probationer—Whether automatically confirmed after three years' service if neither reverted nor his services dispensed with, even if no order of confirmation has been passed.

Held, that all the District Board school teachers were taken into the State Service and obviously, therefore, permanent posts were created to enable each of these teachers to be permanently absorbed in the Service. It was to regulate this particular service that special rules under Article 309 of the Constitution called the Punjab Educational Services (Provincialized Cadre), Class III, Rules, 1961, were framed. It cannot, therefore, be said that there was no permanent post against which the appellant was allowed to work. There is no rule nor even a hint in any rule that any member of the Service was to be considered or deemed a temporary employee. It is clear from the rules, therefore, that the school teachers taken over by the State from the District Board schools were to fall into two categories—(1) those deemed to be confirmed in the Service in accordance with rule 5, and (2) those deemed to be probationers in the first instance for one year in accordance with rule 6. No other category is mentioned anywhere in the rules.

Held, that it is, no doubt, true that the confirmation of a probationer is a formal act of judgment and unless that act is performed, no probationer can be said to have been confirmed. But there can exist a rule providing that in certain contingencies a probationer may be taken to have been confirmed, although no formal order of confirmation may have been made. Rule 6 is so framed that if at the end of the period of three years' probation which is incapable of being further extended, the probationer is neither reverted nor his services dispensed with but he is allowed to continue in the same post, then he must be taken to have been confirmed.

Letters Patent Appeal under clause 10 *of the Letters Patent against the order of the Hon'ble Mr. Justice A. N. Grover, dated* 20*th September,* 1963, *passed in Civil Writ No.* 447 *of* 1963.

ABNASHA SINGH, ADVOCATE, for the Appellant.

M. S. PANNU, DEPUTY ADVOCATE-GENERAL, for the Respondent.

JUDGMENT

Dulat, J.

DULAT, J.—Dharam Singh, appellant was employed as a junior teacher in the District Board School at Hoshiarpur. That school was along with all other District Board schools provincialized, that is, taken over by the Government, with effect from the 1st October, 1957, and in consequence all the teachers including the appellant were taken into State service and in fact a special cadre was created and for governing the conditions of that service special rules were framed by the Governor. The appellant continued to work as a junior teacher in Government service in various schools till the beginning of 1963 but on the 11th of February, that year, the Director of Public Instruction made an order terminating the appellant's services after giving him one month's notice. The order said that this was being done "in accordance with the terms of his (the appellant's) employment." To challenge the validity of that order terminating his services in this manner, the appellant, Dharam Singh, filed a writ petition in this Court under Article 226 of the Constitution which was heard by Grover, J., sitting alone. The appellant claimed that he was on probation as from the 1st October, 1957, in accordance with the rules of his service framed by the Governor under Article 309 of the Constitution and that the period of probation expired at the completion of three years, that is, on the 1st October, 1960, and thereafter he was holding the post in a substantive capacity and the termination of his service was consequently a punishment and amounted to his removal which could not have been done without an enquiry under Article 311 of the Constitution. The petition was resisted by the State and it was said that the appellant was never a probationer nor did he ever hold the post substantively, but that he was throughout a 'temporary' employee and as such his services could be lawfully terminated on one month's notice. Grover, J. felt that the question, whether the appellant was a temporary employee or had been a probationer till 1960, was of no great consequence and he proceeded on the assumption that the petitioner was a probationer. He then found that the appellant had not been confirmed and the only question, therefore, was whether the termination of his services amounted to punishment or was *mala fide* and on the evidence the learned Single Judge felt that it was not safe to hold that the appellant had been punished or that

the action against him was *mala fide*. In the result, the writ petition was dismissed. Hence this appeal under clause 10 of the Letters Patent.

Mr. Abnasha Singh, points out that although the learned Single Judge accepted the suggestion that the appellant had become a probationer with effect from the 1st October, 1957, in accordance with the rules governing his service, full effect to those rules was not given by the learned Judge and the full import of rule 6 of the Rules called the Punjab Educational Service (Provincialized Cadre), Class III, Rules, 1961, was missed. To appreciate the argument it is necessary to go back a little. The appellant was a school teacher employed in a District Board school before the 1st October, 1957 and it is admitted that the appellant's services, like the services of a large number of teachers, were taken over by the State along with the schools which were provincialized. The Governor later framed rules for the Service thus created regulating, as the rules say, the "conditions of service of the teaching staff taken over by the State Government from the local authorities consequent upon the provincialization of schools maintained by them." Rule says—

> "3(1) The Service shall comprise the posts shown in Appendix 'A',"

and the post held by the appellant is admittedly in the Appendix. Rule 5 runs thus—

> "Members of the Service, who were confirmed prior to the provincialization of local authority schools shall be deemed to have been confirmed in the Service".

and then comes rule 6 thus—

> "6(1) Members of the Service, officiating or to be promoted against permanent posts, shall be on probation, in the first instance, for one year.
>
> (2) Officiating service shall be reckoned as period spent on probation, but no member, who has officiated in any appointment for one year shall be entitled to be confirmed unless he is appointed against a permanent vacancy.

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(3) On the completion of the period of probation the authority competent to make appointments 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."

There is no rule nor even a hint in any rule that any member of the Service was to be considered or deemed a temporary employee. It is clear from the rules, therefore, that the school teachers taken over by the State from the District Board schools were to fall into two categories—(1) those deemed to be confirmed in the Service in accordance with rule 5, and (2) those deemed to be probationers in the first instance for one year in accordance with rule 6. No other category is mentioned anywhere in the rules. It is, in the circumstances, difficult to appreciate the suggestion that the appellant was neither a probationer nor confirmed in the Service, but was somehow a temporary employee. Mr. Pannu on behalf of the State, although admitting that the rules in question do cover the appellant, suggests that the categories mentioned in rules 5 and 6 were not exhaustive of the Service and that certain school teachers employed in the District Board schools, who were employed there temporarily, were to remain temporary and were not to be on probation. There is, as I have said, no hint of this in the rules at all. The next suggestion made by Mr. Pannu is that the appellant was not officiating in a post against a permanent vacancy and consequently he could not be a probationer under rule 6. This suggestion is unsupported by any evidence and runs counter to all the known facts. It is clear that all the District Board School teachers were taken into the State Service and obviously, therefore, permanent posts were created to enable each of these teachers to be permanently absorbed in the Service. It was to regulate this particular Service that special rules under Article 309 of the Constitution were framed. It is inconceivable, in the circumstances,

that there was no permanent post against which the appellant was allowed to work. Nor is this said in the return filed on behalf of the State. All that is asserted is that the appellant was a temporary employee, but no ground for this assertion is mentioned. Another suggestion made by Mr. Pannu, again unsupported by the return, was that the post held by the appellant before provincialization may have been a temporary post. Again there is no foundation for the suggestion. As I have said, the rules make it clear that every one of the school teachers taken over by the State was to fall in one of the two categories—either deemed to be confirmed in Service or deemed to be a probationer. It is not surprising, therefore, that the learned Single Judge assumed that the appellant was a probationer.

The next step in the argument is that, having been a probationer for more than three years, the appellant became either entitled to be confirmed or liable to be reverted or his services dispensed with if his work or conduct was unsatisfactory, but that, in any case, the probation as such could not in view of sub-rule (3) continue beyond the period of three years. This argument is unanswerable and Mr. Pannu has not suggested that the rules contemplated the extension of the period of probation beyond three year. The sub-rule in question forbids such extension. The controversy is about the effect of what actually happened in the present case, namely, that no formal order confirming the appellant was made nor any order dispensing with his services at the completion of the three years' probation and the appellant was allowed to continue. It seems to me that if the appellant could not continue as a probationer, and he was neither reverted nor were his services dispensed with on account of unsatisfactory work or conduct, then he must be taken to have been confirmed. There appears to me in view of the express rules no other conclusion possible. Mr. Pannu's submission is that the confirmation of a probationer is a formal act of judgment and unless that act is performed, no probationer can be said to have been confirmed. The argument is perfectly sound so far as it goes. It does not go, however, far enough, for it does not deny that there can exist a rule providing that in certain contingencies a probationer may be taken to have been confirmed, although no formal order of confirmation may have been made. That is precisely the submission made on behalf

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of the appellant and what is urged is that rule 6 is so framed that if at the end of the period of three years' probation which is incapable of being further extended, the probationer is neither reverted nor his services dispensed with, but he is allowed to continue in the same post, then he must be taken to have been confirmed. Mr. Pannu, referred in the course of arguments to the observations of the Supreme Court in some cases that even if the period of probation is not formally extended, but the probationer continues without having been formally confirmed, he is not to be taken as having been actually confirmed but must be deemed to be still on probation. Those cases, however, concerned service rules which permitted the extension of a period of probation for an indefinite time and not where a limit had been placed on the total period of probation. Those decisions are, therefore, of no assistance. In particular, Mr. Pannu, sought to rely on the decision in *Narain Singh Ahluwalia* v. *The State of Punjab and another* (Civil Appeal 492 of 1963), decided by the Supreme Court on the 29th January, 1964, as, according to Mr, Pannu, the service rule considered in that case did actually provide for a maximum period of probation beyond which the period could not extend. Actually, however, the report shows that that part of the rule was never considered by the Supreme Court nor in fact any question like the present arose in that case. The point for consideration was different. The appellant before the Supreme Court, Narain Singh Ahluwalia, had been appointed to officiate as a Superintendent in an office for some time, but was subsequently reverted and his claim was that his reversion amounted to reduction in rank, which could not be done without an enquiry. The argument in support of that claim was that under the rules nobody could be appointed in a substantive capacity unless he had first served as a probationer for a minimum period of two years in the case of certain probationers and one year in the case of others and because the appellant had actually served that minimum period of probation he was entitled to be confirmed and must be deemed to have been confirmed. The Supreme Court negatived that claim on the ground that mere service as a probationer for a certain period of time did not entitle any one to claim that he was confirmed. There was no claim in that case that the maximum period of probation had been served and had long expired and the claimant had continued in that post in spite of such expiry. That

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case, therefore, does not help the respondent's contention. As observed by the Supreme Court in that very decision a rule of service can certainly provide for automatic confirmation in certain contingencies, and, as I view the service rules governing the appellant, they do provide by making it impossible for the period of probation to be extended beyond three years that if the person concerned does continue to hold the same post and his services are not dispensed with at the end of three years and he is not reverted, then he must be taken to have been confirmed. It is clear that the appellant in fact continued to hold the post for more than two years after the maximum period of probation had expired and he must, therefore, be taken to have so continued in a substantive capacity. Mr. Pannu agrees that on that conclusion, that the appellant was in February, 1963, holding his post substantively, the termination of his services necessarily amounted to a punishment and must be deemed to be 'removal' from service, which of course, was not permissible without a proper enquiry. The conclusion must, therefore, be that the termination of the appellant's services was illegal. I would in the circumstances, allow this appeal and set aside the order terminating the appellant's services, dated the 11th Febuary, 1963, leaving the parties, however, to their own costs.

Pandit, J.

PREM CHAND PANDIT, J.—I agree.

R.S.

CIVIL MISCELLANEOUS

Before Mehar Singh and P. C. Pandit, JJ.

BAWA SATYA PAUL SINGH,—*Petitioner*

versus

INCOME-TAX OFFICER AND OTHERS,—*Respondents*

Civil Writ No. 724—D of 1963

1964

December, 16th.

Income-tax Act (XI of 1922)—S. 41— Receiver appointed of the business of the assessee—Income-tax levied on the assessee—Whether can be recovered from the Receiver only.