

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C.) No. 474/2010 & CM No. 994/2010**

% **Date of Decision: 25.01.2010**

MANEESH SINGHAL Petitioner

Through Mr. V.P.S. Tyagi, Advocate

Versus

GOVT. OF NCT of DELHI Respondents

Through Mr. Elgin Matt John for Ms. Anju
Bhattacharya, Advocate for respondent
No.1/ GNCT
Mr. Ravinder Aggarwal, Advocate for
the respondent Nos. 2 & 3.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

MOOL CHAND GARG, J.

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1. By way of this writ petition, the petitioner has assailed the order of Central Administrative Tribunal (hereinafter referred as the Tribunal) dated 14.10.2008 dismissing his Original Application (OA No. 1106/2007) challenging the order passed by the second respondent directing the petitioner to report back to his Cadre Controlling Authority w.e.f. 01.06.2007.

2. The petitioner had been working on a Group 'B' post after his selection to Indian Information Service (IIS) in the pay scale of Rs.6500-

10500/- under Ministry of Information and Broadcasting (Union of India). He applied for the post of Editor on the basis of an advertisement issued by Union Public Service Commission (UPSC) dated 26.07.2003 - 01.08.2003 in the Employment News. The said post was in the pay scale of Rs.10000-15200/-. He was selected for the said post and was appointed vide letter dated 15.04.2004. The terms and conditions of his service are enumerated as under:

- i. The post is permanent but his appointment thereto will be on temporary basis. His claim for appointment thereto in substantive capacity will, however, be considered in accordance with the rules in force.
- ii. The period of probation/trial will be two years. The period can be extended at the discretion of the appointing authority.
- iii. The appointment may be terminated by month's notice given by either side, namely the appointee or the appointing authority without assigning any reasons. The appointing authority however, reserves the right of terminating his services forthwith or before the expiry of stipulated period of notice by making payment to him of a sum equivalent to the pay and allowances for the period of notice or unexpired portion thereof. (emphasis supplied)"

3. The petitioner joined respondent No.3 on the basis of the aforesaid appointment. However, after expiry of two years but before the expiry of three years vide letter dated 01.06.2007, the petitioner was directed to report back to his parent cadre. It is this order, which was assailed by the petitioner before Central Administrative Tribunal

inasmuch as a representation made by him to Lt. Governor of Delhi for cancellation of the aforesaid order was not replied to. Before the Central Administrative Tribunal, it was submitted that the respondents had not issued any order extending the probation of the petitioner by 03.06.2006, when he completed two years of his service, during which period nothing adverse had been alleged against him. The petitioner should, therefore, be considered to have been automatically confirmed in the service.

4. It is also contended that the petitioner did not have any lien on the previous post because he came on the post under Government of N.C.T. of Delhi on direct recruitment and not on deputation. Thus, it was illegal to relegate the petitioner from a scale of Rs. 10500-15200/- to a lower scale of Rs. 6500-10500/-. It has also been stated that the petitioner had not been assigned any post by the Ministry of Information and Broadcasting.

5. It is a matter of record that the petitioner was to remain on probation for a period of two years as per the terms and conditions of his appointment with respondents and in that period he had a lien on his previous service. In fact, he also sought extension of his lien by representing to his parent department on 29.05.2006, which was acceded to by his parent department for another period of one year, i.e., lien was extended for a period of 3 years. Some letters in this regard are reproduced for the sake of reference. In his letter dated 29.05.2006

addressed to Secretary, Ministry of Information and Broadcasting (Annexure R-1), the petitioner made the following request.

“Request for extension of lien under IIS

Sir,

Subsequent to my selection by UPSC for the post of Editor in the pay scale of Rs. 10000-15200/- under Directorate of Information and Publicity, Government of NCT of Delhi, I was relieved from the senior grade of group B of Indian Information Service w.e.f. 02.06.2004 (AN) and was allowed to retain two years' lien with the IIS.

Sir, I was placed under probation for two years in the Directorate of Information and Publicity, Government of NCT of Delhi. The probation period is likely to be over on 2nd June 2006 and only after that the process for my confirmation here shall commence.

I pray to you to kindly consider granting an extended period of lien with IIS under your kind control, for which I shall ever be grateful to you.”

6. The request was acceded to by the second respondent, as per the letter dated 02.07.2007, which reads as under:

“Subject: Regarding extension of Lien under IIS
Sir,

I am directed to refer to your letter No. F.7(22)/04/Estt./DIP/3404 dated 31.07.2006 on the subject cited above and to say that the period of lien in respect of Shri Maneesh Singhal, Editor, Govt. of NCT of Delhi with this Ministry was over on 01.06.2006. In your communication you have not mentioned the reasons for his non-confirmation after expiry of probation period in the post of Editor in the Directorate of Information and Publicity, Govt. of NCT of Delhi nor the reasons as to why he has not been repatriated to present office w.e.f. 01.07.2006. In case the delay in confirmation is purely on account of administrative reasons and extension of his lien has been requested only for this reason and not account of pendency of vigilance/disciplinary action, you may advice Shri Maneesh Singhal to

submit a fresh undertaking to the effect that within the three years w.e.f. 02.06.2004 he shall either revert to this Ministry or resign from the Senior Grade of IIS Group 'B' immediately at the close of extended period on 01.06.2007."

7. Intimation was also sent to the third respondent. Thus, it is a matter of record that at the relevant time the petitioner had a lien on his original service and in fact after the impugned order he had joined his parent department.

8. The only submission made before the Tribunal was that since the petitioner was not on deputation, he had no lien with the Ministry of Information and Broadcasting which for the correspondence stated above has not been found to be correct by the Administrative Tribunal.

9. The other argument addressed by the petitioner was that there was no automatic extension of probation inasmuch as there is nothing on record to show that his probation was extended by the third respondent. It has been submitted that in the absence of any communication by the third respondent it cannot be presumed that his probation was extended and, therefore, he would be deemed to have been confirmed in service after the expiry of two years.

10. The respondents had repelled this contention before the Tribunal by submitting that as per the terms and conditions of appointment in the Govt. of NCT of Delhi the initial period of probation was two years and the said period of probation would have been extended at the discretion of the Appointing authority. In such an event, unless there is

positive act of declaration of the successful completion of probation period or a positive act by issue of an order of confirmation, the employee remains probationer only and cannot be deemed to have confirmed. All the judgments cited on behalf of the parties were discussed by the Tribunal in the impugned order. The Tribunal has heavily relied on the judgment of Supreme Court in the case of Karnataka State Road Transportation Corporation and Anr. Vs. R. Govindraj, AIR 2000 SC 2070 where the law with regard to extension of probation was discussed. The relevant observation extracted from the said judgment which has been relied upon by the Tribunal are reproduced hereunder:

16. However, even when the Rules prescribe a maximum period of probation, if there is a further provision in the Rules for continuation of such probation, beyond the maximum period the Courts have made an exception and said that there will be no deemed confirmation in such cases and the probation period will be deemed to be extended. In this category of cases we can place Samsher Singh Vs. State of Punjab (AIR 1974 SC 2192; 1974 Lab IC 1380) which was the decision of a Bench of seven Judges where the principle of probation not going beyond the maximum period fixed was reiterated but on the basis of the Rules which were before the Court, this Court said that the probation was deemed to have been extended. A similar view was taken in the case of Municipal Corporation Vs. Ashok Kumar Mishra, (1991 AIR SCW 1241; AIR 1991 SC 1402; 1991 Lab IC 1266). In Satya Narayan Athya Vs. High Court of M.P. (1996 AIR SCW 55; AIR 1996 SC 750; 1996 Lab IC 757) although the Rules prescribed that the probationary period should not exceed two years, and an order of confirmation was also necessary, the termination order was issued within the extended period of probation. Hence the termination was upheld.

17. The other line of cases deals with Rules where there is no maximum period prescribed for probation and either there is a Rule providing for extension of probation or there is a Rule which requires a specific act on the part of the employer (either by issuing an order of confirmation or any similar act) which would result in confirmation of the employee. In these cases unless there is such an order of confirmation, the period of probation would continue and there would be no deemed confirmation at the end of the prescribed probationary period. In this line of cases, one can put Sukhbans Singh Vs. State of Punjab (AIR 1962 SC 1711), State of U.P. Vs. Akbar Ali Khan (AIR 1966 SC 1842), Kedar Nath Bahl Vs. State of Punjab (AIR 1972 SC 873: 1972 Lab IC 433), Dhanjibhai Ramjibhai Vs. State of Gujarat (AIR 1985 SC 603: 1985 Lab IC 744) and Tarsem Lal Verma Vs. Union of India (1997 (9) SCC 243), Municipal Corporation Vs. Ashok Kumar Mishra (1991 AIR SCW 1241: AIR 1991 SC 1402: 1991 :an OC 1266) and State of Punjab Vs. Baldev Singh Khosla (1996 AIR SCW 2518: AIR 1996 SC 2093: 1996 Lab IC 1739). In the recent case of Dayaram Dayal Vs. State of M.P. (1997 AIR SCW 3331: AIR 1997 SC 3269: 1997 Lab IC 3330) (to which one of us was a party) all these cases have been analysed and it has been held that where the Rules provide that the period of probation cannot be extended beyond the maximum period there will be a deemed confirmation at the end of the maximum probationary period unless there is anything to the contrary in the Rules.”

11. After quoting the aforesaid observation of the Apex Court, the Tribunal also made the following observations:

It would, therefore, be seen that the interpretation of probation clause would vary from case to case, depending on the rules applicable in this regard in each case. In the aforesaid case before the Honourable Supreme Court, Karnataka State Road Transport Corporation had specific Regulation 11 regarding probation in cases of directly recruited and promoted employees. The case has been decided on an analysis of the provision of the Regulation. There is no hard and fast rule that an employee would be automatically confirmed after the prescribed period of probation, if an order to extend the probation is not passed. Moreover, the Applicant's reliance on

the office memorandum of 1959 circulated by the Ministry of Home Affairs, to the effect (as per the Applicant's interpretation) that the maximum period of probation can only be one year, extendable by one more year, is totally misconceived. The Karnataka State Transport Corporation case (cited supra) does not advance the cause of the Applicant. In Tarsem Lal Verma (cited supra) the facts of the case were that his service had been terminated under Rule 5 (1) CCS (Temporary Service) Rules 1965. The service of the petitioner in the case was dispensed with by an order dated 05.05.1993. The petitioner had been appointed to the post in 1986. The Applicant had, in fact, come before the Tribunal before the order of termination from service had been passed alleging harassment by his superior officer. The petitioner had produced a note by the Director of the Ministry of Defence in which it had been recorded that the petitioner's superior office had been harassing him and trying to get rid of him in spite of petitioner's good work. The petitioner's service was terminated during the pendency of OA, which was accordingly modified. The petitioner in this case had not come to his post in the Ministry of Defence from some other post, where he had been holding a lien. This case is, therefore, distinguishable from the instant case both in fact and law.

13. In the case in hand, the Applicant was appointed on temporary basis to the post on probation for two years, which was extendable at the discretion of the appointing authority. The Applicant was aware that his probation had not been extended as is clear from the correspondence placed on record by the Respondents, which has been quoted in the preceding paragraphs. It is unfortunate that the Applicant has concealed this fact altogether in his pleadings and project an attitude of injured innocence. His lien extended till 01.06.2007 in his parent cadre. He cannot now turn around and say that he believed that his service had been confirmed two years after his joining service, when the initial period of probation was over. He knew all along that it was not so. We do not appreciate the Applicant's efforts to malign the Director, Information and Publicity, the second Respondent by alleging that latter got rid of him when he got bad press and attributed adverse reporting to the applicant. No foundation has been laid for such a far fetched conclusion. The Applicant was immediately given a posting on his reversion in June 2007 and there is no justification for his pleading in May 2008, when

the OA was filed that he was concerned about his future.

12. Thus, the argument of the petitioner that there could not have been automatic extension of probation also made before us is mis-conceived. One more argument submitted is that the impugned order asking the petitioner to go back to his parent department amounts to termination of his services as an Editor without holding any enquiry or without telling any reasons of his termination. However, this argument is mis-conceived in terms of Rule 5(1) of CCS Temporary Services Rules 1965. It is apparent from the appointment letter issued to the petitioner by respondent No.3 that he was appointed temporarily though against a permanent post. He was reverted back during the period of probation. Thus, the said order cannot be taken as stigmatic as there is nothing in the said order which may be treated as stigmatic, rather giving an opportunity to the petitioner to go back to his parent department can only be taken as something in his favour and for his benefit.

13. The petitioner also relied upon a judgment delivered in the case of Nehru Yuva Kendra Sangthan Vs. Mehbub Alam Laskar 2008(2)SCC 479. However, the said judgment was given in different facts where a preliminary enquiry was held against the respondent and on that basis his services were terminated during the period of probation which is not the case before us.

14. In these circumstances, we find no reason to interfere with the order passed by the Tribunal dismissing the petition filed by the petitioner as we do not find any reason to exercise jurisdiction vested in this Court under Article 226 of the Constitution of India in the facts of this case. Accordingly, the writ petition is dismissed.

CM No. 994/2010 (Stay)

In view of the orders passed above, the application has become infructuous and is dismissed as such.

MOOL CHAND GARG, J.

JANUARY 25, 2010

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ANIL KUMAR, J.