

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

+ **Writ Petition (Civil) No.6318 of 2010**

% *Judgment Reserved On: 17th September, 2010.*
Judgment Pronounced On: 29th October, 2010.

GAUTAM KANT NIMAAN . . . Appellant

through : Mr. P.P. Khurana, Sr. Advocate
with Ms. Tamali Wad, Advocate.

VERSUS

GNCT OF DELHI AND OTHERS . . . Respondent

through: Mr. Rattan Lal, Advocate for
Respondent No.1.
Mr. Viraj R. Datar, Advocate with
Mr. Chetan Lokur, Advocate and
Mr. S.M. Afzal, Advocate for
respondent No.2.

CORAM :-

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE MANMOHAN SINGH

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J.

1. The services of the petitioner, who was appointed as a Judicial Officer in the Delhi Judicial Service, have been terminated vide orders dated 18th August, 2010 invoking the provisions of Rule 22 of the Delhi Judicial Service Rules, 1970, which reads as under:

“The services of a person on probation are liable to be terminated without assigning any reason.”

This order is challenged by filing the present writ petition, primarily on two counts:

- (i) The petitioner was no more a probationer and therefore invocation of the aforesaid Rule was impermissible.
 - (ii) The order of termination though is couched as termination simplicitor, in fact it is punitive in nature and therefore without serving the charge sheet and holding a Departmental inquiry, the services of the petitioner could not have been terminated.
2. In order to gauge the merit, or otherwise, all these contentions we would like to traverse through the factual matrix leading to the passing of the aforesaid orders.
3. The petitioner was appointed as a Member of the Delhi Judicial Service in Scale of ₹9000 – 14,500 vide orders dated 23.01.2007 issued by the Lieutenant Governor of National Capital Territory of Delhi. In pursuance thereto, the petitioner joined the service on 02.04.2007. The Delhi Judicial Service is covered by the Delhi Judicial Service Rules, 1970 (hereinafter referred to as 'the Rules'), as amended from time to time. Part V of Rules which contains Rules 20 to 23 deals with 'probation'. Rule 20 (2) thereof stipulates that a person so appointed shall be on probation for a period of two years. The petitioner was also placed on probation for two years. The appointment letter dated 23.01.2007 contained specific to this effect as well and that reads as under:
- “1. The appointment shall be initially made on probation for a period of two years in accordance with the provisions of the Delhi Judicial Service Rules, 1970.”
4. The period of two years expired on 01.04.2009. However, proviso to Rule 21 provides for extension of period of probation and at the

same time, it also stipulates that the period of probation would not extend beyond the period of three years. In the case of the petitioner, no order for confirmation was passed at the end of initial period of two years. At the same time, there was no order in writing either to extend the period of probation.

5. According to the petitioner, he completed even three years period from the date of his appointment, which is the maximum period provided under the Rules. Therefore, in no case the probation of the petitioner could have been extended beyond 01.04.2010. It is on this premise the first argument raised by the learned Senior counsel for the petitioner is that Rule 22 of the Rules could not have been invoked while terminating his service vide orders dated 18.08.2010.
6. To complete the narration of facts, we note that it is stated in the petition that while the petitioner was performing his duty as Metropolitan Magistrate at the District Court Rohini, New Delhi, two lawyers, one of whom introduced himself as the President of the Bar Association came towards the dais and disrupted the Court forcing him to stop the Court proceedings and to go to his chamber. The said lawyers thereafter entered the chamber of the petitioner and unabashedly locked the door with intent to cause alarm and threatened the petitioner with injury to his person in case he refused to pass certain orders favourable to the accused persons in a case titled **State Vs. Varun Pal and Others** (FIR No.787/96) under Section 506/34 of the IPC which was pending in the Court of the petitioner and was listed before him on the said date. By this unruly behaviour, the petitioner was disabled to hold

the Court from 11.30 a.m. to 12.30 p.m. On resumption of his judicial functions, the petitioner recorded the entire incident as part of the order in the said case and sent a copy of the proceedings to the learned District Judge, Rohini as well as to this Court for appropriate action on the very same day. Some weeks later, however, the petitioner was served with a letter from the District Judge, Rohini forwarding a letter dated 17.06.2010 from the Registrar General, Delhi High Court, calling upon the petitioner to furnish his comments on a complaint dated 26.05.2010 received against him from the Rohini Bar Association. In the complaint, certain other averments were made. It was in this context that his version on the said complaint was sought for by inviting his comments. He was also directed to provide details on his activities and his location on the night intervening 23/24.05.2010.

7. To state in brief, it was averred that the petitioner was seized of a matter on judicial side pertaining to FIR No.787/96 under Section 506/34 IPC, P.S. Shalimarbagh titled as State Vs. Varun Pal and Others. It was found that on the intervening night of 23/24.05.2010, the petitioner had shared the drink with the accused persons in the aforesaid FIR in a Wagon-R car bearing No. DL 37778 in the areas of Shakti Nagar Extension. He allegedly remained in the company of said persons till 2.15 a.m. and got down from the said car at Shakti Nagar Extension. It was further pointed out in the said FIR that the accused persons were held guilty and convicted vide orders dated 14.05.2010 and the case was fixed for arguments on the point of sentence on 26.05.2010.

It is also stated in the complaint that during his stay with the accused persons on that date, version which transpired between him and accused persons was duly recorded. The Bar Association claimed that the President of Bar Association had confronted with the petitioner about his purported meeting with the accused persons on the intervening night of 23/24.05.2010 and also played the tape-recorded discussion which transpired between him and the accused persons. As per the complaint, the petitioner had admitted his meeting with the said accused persons and the talks which were held between them. He also requested the President, Bar Association that he should be excused and in future he would not commit any such blunder. It was for this reason that the said version of petitioner was called for by the High Court. The petitioner submitted his reply dated 24.06.2010 denying the allegations made in the complaint. He reiterated that the incident which took place in the Court on 26.05.2010 which led his filing of the complaints against the Members of the Bar Association as well as registering of FIR.

8. On 26.07.2010, the judicial work was withdrawn from the petitioner by the High Court, which was conveyed to the petitioner as per the communication received from the Registrar General of this Court. Thereafter the impugned order termination his service invoking the provisions of Rule 22 of the Rules was passed. It is in this backdrop, second argument of the petitioner is that, if at all, the termination is punitive in nature and the services of the petitioner are terminated because of the allegations made by the

Bar Association, which were of serious in nature and he should have been given an opportunity to prove his innocence.

9. When this matter came up for hearing on admission on 17.09.2010, counsel for the respondent No.1 and 2 were present on advance notice. Mr. Datar, learned counsel for the respondent No.2, the High Court of Delhi was ready with the records of the case. In these circumstances, arguments were heard on admission and orders reserved.
10. As the necessary facts on the basis of which the present writ petition is filed have been unfolded above, we now proceed to discuss twin contentions on which strenuous submissions were made by Mr. P.P. Khurana, learned Senior counsel who appeared for the petitioner.

(i) Whether the petition stood confirmed with the expiry of two year/three years period from the date of his appointment?

For deciding this issue, we may scan through Rules relating to probation as contained in Delhi Judicial Service Rules. Reading of these Rules would be necessary to appreciate the controversy, we reproduce these Rules in their entirety.

“PART V
Probation
20.

- (1) Persons appointed to the service at the initial recruitment shall stand confirmed with effect from the date of appointment.
- (2) All other candidates on appointment to the service shall be on probation for a period of two years.

21. All persons appointed to the service on probation shall be confirmed at the end of the said period of two years:

Provided that the Administrator may, on the recommendations of the High Court, extend the period of

probation, but in no case shall the period of probation extend beyond the period of three years.

22. The services of a person on probation are liable to be terminated without assigning any reason.

23. After successful completion of the period of probation the officer shall be confirmed in the service by the Administrator in consultation with the High Court and the same shall be notified in the Gazette."

11. In the present case, though the petitioner had completed maximum period of probation, admittedly there was no order of confirmation in writing. Thus, having regard to the aforesaid Rules, can it be concluded that on the completion of maximum period of probation, the petitioner is deemed confirmed in the services? This very issue has invited the attention of the Apex Court time and again by series of judgments. The legal position now stands firmly crystallized. It may not be necessary to refer to all these judgments and our purpose would be served by taking note of the principles of law revisited by the Supreme Court in the case of **Dayaram Dayal Vs. State of M.P. and Another** [(1997) 7 SCC 443]. The matter came up for consideration before the Supreme Court again in **Wasim Beg Vs. State of Uttar Pradesh & Ors.** [(1998) 3 SCC 321]. The Court again reviewed the entire gamut of case law and opined that the answer to the question posed would depend upon particular service rule/regulations. The Court classified the case into three categories which was spelt out in the following manner:

" 15. Whether an employee at the end of the probationary period automatically gets confirmation in the post or whether an order of confirmation or any specific act on the part of the employer confirming the employee is necessary, will depend upon the provisions in the relevant Service Rules relating to probation and confirmation. There are broadly two sets of authorities of this Court dealing with this question. In those

cases where the Rules provide for a maximum period of probation beyond which probation cannot be extended, this Court has held that at the end of the maximum probationary period there will be a deemed confirmation of the employee unless Rules provide to the contrary. This is the line of cases starting with *State of Punjab v. Dharam Singh*, *M.K. Agarwal v. Gurgaon Gramin Bank*, *Om Parkash Maurya v. U.P. Coop. Sugar Factories Federation*, *State of Gujarat v. Akhilesh C. Bhargav*.

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 *Samsheer Singh v. State of Punjab* 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 v. Ashok Kumar Mishra*. In *Satya Narayan Athya v. High Court of M.P.* 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 v. State of Punjab*, *State of U.P. v. Akbar Ali Khan*, *Kedar Nath Bahi v. State of Punjab*, *Dhanjibhai Ramjibhai v. State of Gujarat* and *Tarsem Lal Verma v. Union of India*, *Municipal Corporation v. Ashok Kumar Misra* and *State of Punjab v. Baldev Singh Khosla*. In the recent case of *Dayaram Dayal v. State of M.P.* (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."

12. Both these decisions, along with other cases, were taken note of by the Supreme Court again in the case of ***Karnataka State***

Road Tpt. Corporation & Anr. Vs. S. Manjunath [(2000) 5 SCC 250]. In Para 9 of the judgment, it was again highlighted that the law on the subject has been varying, depending upon the peculiar pattern of the service rules/regulations concerned and the scheme underlying the same in spite of more than one Constitution Bench judgments of this Court declaring the general and basic principles governing the rights of a probationer. There was a keen observation made by the Court, in the process, that there had always a keen tussle between the employer and employee in the application of those principles to individual or class or category of cases. The Court thereafter in Para 10 and 11 referred to the two Constitution Bench cases as well as aforesaid decisions in **Dayaram Dayal (supra)** and **Wasim Beg (supra)** and analyzed these cases in the following manner:

“10. This Court had an occasion, to review, analyse critically and clarify the principles on an exhaustive consideration of the entire case law in two recent decisions reported in Dayaram Dayal's case (supra) and Wasim Beg's case (supra). One line of cases has held that if in the Rule or Order of appointment, a ; period of probation is specified and a power to extend probation is also conferred and the officer is allowed to continue beyond the prescribed period of probation, he cannot be deemed to be confirmed and there is no bar : on the power of termination of the officer after the expiry of the initial or extended period of probation. This is because, at the end of probation he becomes merely qualified or eligible for substantive permanent appointment. The other line of cases are those where even though there is a provision in the rules for initial probation and extension thereof, a maximum period for such extension is also provided beyond which it is not permissible to extend probation. The Constitution Bench which dealt with the case reported in State of Punjab v. Dharam Singh [1968]3SCR1 , while distinguishing the other line of cases held that the presumption about continuation, beyond the period of probation, as a probationer stood negated by the fixation of a maximum time limit for the extension of probation. Consequently, in such cases the termination after expiry of the maximum period upto which probation could be extended was held to be invalid, inasmuch as the officer concerned must be deemed to have been confirmed.

11. The principles laid down in Dharam Singh's case (supra) though were accepted in another Constitution Bench of a larger composition in the case reported in Samsher Singh, etc. v. State of Punjab and Anr. (1974) 11 LLJ 465 SC , the special provisions contained in the relevant rules taken up for consideration therein were held to indicate an intention not to treat the officer as deemed to have been confirmed, in the light of the specific stipulation that the period of probation shall be deemed to be extended if the officer concerned was not confirmed on the expiry of his period of probation. Despite the indication of a maximum period of probation, the implied extension was held to render the maximum period of probation a directory one and not mandatory. Hence, it was held that a probationer in such class of cases is not to be considered confirmed, till an order of confirmation is actually made. The further question for consideration in such category of cases where the maximum period of probation has been fixed would be, as to whether there are anything else in the rules which had the effect of whittling down the right to deemed confirmation on account of the prescription of a maximum period of probation beyond which there is an embargo upon further extension being made, and such stipulation was found wanting in Dayaram Dayal's case (supra)."

13. It, thus, follows from the reading of the aforesaid judgments that one has to look into the provisions of the applicable service rules/regulations to find out which of the three categories of the case at hand would fall. Keeping this position in law, we may examine the Rules relating to probation in the instant case :

- (a) Initial period of probation is two years;
- (b) The service of a probationer shall be confirmed after successful completion of the period of probation. This is to be done by the Administrator in consultation with the High Court;
- (c) This probation can be extended by the Administrator, on the recommendation of the High Court, but the probation is not to extend beyond three years;
- (d) An officer who is on probation is to be confirmed after successful completion of the period of probation;

(e) Order of confirmation has to be in writing and the same is to be notified in the gazette.

(f) Services of the probationer can be terminated without assigning any reason.

14. Rule position that follows from the aforesaid is that though maximum period of probation is provided, at the same time rules also provide that Judicial Officer would be confirmed subject to his fitness. In these circumstances, it cannot be said that at the end of the maximum period of probation, the probationer would be deemed to be confirmed automatically.

15. In somewhat similar circumstances, the Supreme Court in the case of **Jai Kishan Vs. Commissioner of Police and Anr. [AIR 1996 SC 660]** held such a probationer would not be treated as confirmed. That was a case where the services of temporary Constable were terminated under Rule 5(e) of the Central Services Temporary (Service) Rules, 1966. The Court was not convinced that the incumbent should be treated as confirmed as he had rendered five years of services as against maximum period of three years of probation. The Court held that the successful completion of probation is a condition precedent for confirmation as envisaged in the Rules. The governing rule therein and the discussion in this behalf reads as under:

“3.....

Rule 5(e) of the Rules reads as follows:

(e) (i) All direct appointments of employees shall be made initially on purely temporary basis. All employees appointed to the Delhi Police shall be on probation for a period of two years.

Provided that the competent authority may extend the period of probation but in no case shall the period of probation extend beyond three years in all.

(ii) The services of an employee appointed on probation are liable to be terminated without assigning any reason.

(iii) After successful completion of period of probation, the employee shall be confirmed in the Delhi Police by the competent authority, subject to the availability of permanent post.

4. A reading thereof clearly indicates that all direct recruits are required to be on probation for a period of two years and in no case the probation would extend beyond the period of three years. During the period of probation the probationer is required to complete successfully the probation complying with the conditions of passing the test etc. Thereafter, they need be confirmed in the Delhi Police service. The confirmation into the service, therefore, is a condition precedent, to continue as a member of Delhi Police Service. In spite of giving repeated opportunities to improve himself he failed to improve his performance. So he was given notice on 14-9-1988 terminating his service by the impugned order.

5. It is contended by the learned Counsel for the appellant, placing reliance on *State of Punjab v. Dharam Singh* [1968] 3 SCR 1, that even if the appellant was not confirmed by passing any order, on expiry of three years he must be deemed to have been confirmed as a member of the Service. Thereafter, the respondents had no jurisdiction to terminate his service. It is difficult to accept the contention. Dharam Singh's case bears no relevance, as similar provision was not there in the concerned rule. Successful completion of probation is a condition precedent for confirmation as envisaged in Clause (iii) of Rule 5(e) of the Rules. The authorities have power to allow maximum period of 3 years of probation. In this case instead of giving him three years, they have giving long 5 years period so as to see whether the appellant would improve his performance in the service. Since they found that there was no satisfactory improvement, his probation was terminated and was removed from service as a probationer. Under these circumstances, we do not find any illegality in the action taken by the respondents warranting interference.

6. The appeal is accordingly dismissed. No costs."

16. The same issue has been discussed at much greater length by a recent judgment dated 16.08.2010 of the Division Bench of this Court in LPA No.342 of 2010 in the case entitled **Dy. Director of Education & Anr. Vs. Veena Sharma**. The position in law based

on various judgments of the Supreme Court was discussed holding that there was no automatic confirmation even after the maximum period of probation and the Rule stipulates that the employee shall be confirmed only on satisfactory completion of probation period. The entire gamut of discussion contained in the said judgment is relevant for us and we reproduce the same:

“12. In this context, we may refer with profit to a three-Judge Bench decision in **High Court of Madhya Pradesh through Registrar and Others v. Satya Narayan Jhavar**, AIR 2001 SC 3234 = (2001) 7 SCC 161. In the said case, the Apex Court was considering the effect and impact of Rule 24 of the Madhya Pradesh Judicial Service (Classification, Recruitment and Conditions of Service) Rules, 1955. Be it noted, their Lordships were considering the correctness of the decision in **Dayaram Dayal v. State of M.P. & Another**, AIR 1997 SC 3269, which was also a case under Rule 24 of the Rules wherein it was laid down that as no order of confirmation was passed within the maximum period of probation, the probationer judicial officer could be deemed to have been confirmed after the expiry of four years period of probation. Their Lordships, after referring to the decisions rendered by the Constitution Bench in **Dharam Singh** (supra) and **Samsher Singh v. State of Punjab & Another**, AIR 1974 SC 2192 = (1974) 2 SCC 831 and after scanning the anatomy of Rule 24, came to hold as follows:

“11. The question of deemed confirmation in service Jurisprudence, which is dependent upon the language of the relevant service rules, has been the subject matter of consideration before this Court, times without number in various decisions and there are three lines of cases on this point. One line of cases is where in the service rules or in the letter of appointment a period of probation is specified and power to extend the same is also conferred upon the authority without prescribing any maximum period of probation and if the officer is continued beyond the prescribed or extended period, he cannot be deemed to be confirmed. In such cases there is no bar against termination at any point of time after expiry of the period of probation. The other line of cases is that where while there is a provision in the rules for initial probation and extension thereof, a maximum period for such extension is also provided beyond which it is not permissible to extend probation. The inference in such cases is that the officer concerned is deemed to have been confirmed upon expiry of the maximum period of probation in case before its expiry the order of termination has not been passed. The last line of cases is where, though under the rules maximum period of probation is prescribed, but the same requires a specific act on the part of the employer by issuing an order of confirmation and of passing a test for the purposes of confirmation. In such cases, even if the maximum period of probation has expired and neither any order of confirmation has been passed nor has the person

concerned passed the requisite test, he cannot be deemed to have been confirmed merely because the said period has expired."

13. After so holding, their Lordships referred to the decision in **Sukhbans Singh v. State of Punjab** (supra) wherein the Constitution Bench was considering the question of confirmation under Rule 22 of the Punjab Civil Service (Executive Branch) Rules, 1930 which provided that a candidate on first appointment to the service shall remain on probation for a period of 18 months and the proviso thereto enabled the respondents not to extend the period of probation. Rule 24 of the said Rules provided that on completion of the period of probation prescribed or extended, a member of the service would be qualified for substantive appointment. The three-Judge Bench observed that the fact that a person is a probationer implies that he has to prove his worth and suitability for the higher post in which he is officiating and if his work is not found to be satisfactory, he is liable to be reverted to his original post even without assigning any reason.

14. Thereafter, their Lordships referred to the decision in **G.S. Ramaswamy & Ors.** (supra), another Constitution Bench decision which was considering a case of promotion of Sub-Inspector of Police under Rule 486 of the Hyderabad District Police Manual which provided that all officers who are promoted will be on probation for a period of two years and they would be reverted at any time during the aforesaid period if their work and conduct were not found to be satisfactory or they were found unsuitable for the appointment to which they had been promoted. The three-Judge Bench while discussing the ratio of the Constitution Bench came to hold that the Constitution Bench had repelled the contention and held that such a Rule does not contemplate automatic confirmation after the probationary period of two years, as a promoted officer can be confirmed under the Rules only if he has given satisfaction, which conduct of giving satisfaction must be fulfilled before a promoted officer can be confirmed under the Rules and the same obviously means that the authority competent to confirm an officer must pass an order to the effect that the probationer has given satisfaction.

15. After dealing with the ratio of the aforesaid two Constitution Benches, their Lordships proceeded to deal with the view expressed in **Akbar Ali Khan** (supra) wherein the Constitution Bench has held thus:

"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. ...The terms of appointment do not show that the appellant would be automatically confirmed on the expiry of the first six months of probation nor is any rule brought to our notice which has the effect of confirming him in the post after six months of probation. The position of the appellant, therefore, till the abolition of the post on 4.11.1958, was that he continued to be a probationer and has no right to the post. It, therefore, follows that when the tenure of the post came to an end, he was automatically reverted to his original post as an Inspector on which he had the lien."

16. At this juncture, we may state with profit that in **Satya Narayan Jhavar** (supra), their Lordships distinguished the decision in **Dharam Singh** (supra). After noting Rule 6(3) of the relevant Rules and reproducing a passage from the decision, their Lordships opined thus:

"19. From the aforesaid passage, it would be clear that as Rule 6 did not require a person to pass any test or to fulfill any other condition before confirmation, this Court was of the view that upon the expiry of maximum period of probation the probationer could be deemed to have been confirmed which goes to show that if such provision would have been there in the Rules, the conclusion might have been otherwise."

17. Be it noted, the decision rendered in **Wasim Beg** (supra) was pressed into service which has also been heavily relied upon by Mr. Khan in the case at hand. While dealing with the ratio in the said case, their Lordships referred to the relevant Rule relating to confirmation, which is as follows:

"Confirmation - An employee directly appointed or promoted to any post in the Corporation shall be deemed to have become a confirmed employee in that grade after he has successfully completed the period of probation."

18. After referring to the said Rule, their Lordships referred to the facts and eventually came to hold as follows:

"21. In the said case no maximum period of probation was prescribed either by the letter of appointment or the rules. The Rules laid down that an employee shall be deemed to have become a confirmed employee after he has successfully completed the period of probation. From the affidavit filed by the Corporation as well as from the report of the Managing Director, it was clear that the incumbent was considered by the Board as having satisfactorily completed his period of probation on 9.1.1979 i.e. before expiry of one year period of probation and was considered as a regular employee from 10.1.1979. From the affidavit filed by the Corporation it was clear that the services of the incumbent were satisfactory for the first few years and work was very good and only thereafter his work deteriorated as a result of which the Corporation suffered losses. Thus in view of the stand taken that the incumbent had successfully completed the period of probation, he was deemed to have become a confirmed

employee, as enumerated in the Rules referred to above.”

19. After distinguishing the said case, the three-Judge Bench referred to **Samsher Singh** (supra), **Municipal Corporation, Raipur v. Ashok Kumar Misra**, (1991) 3 SCC 325, **Jai Kishan v. Commissioner of Police**, 1995 Supp (3) SCC 364, **State of Punjab v. Baldev Singh Khosla**, (1996) 9 SCC 190 and **Chief General Manager, State Bank of India v. Bijoy Kumar Mishra**, (1997) 7 SCC 550 and expressed the view as follows:

“37. Ordinarily a deemed confirmation of a probationer arises when the letter of appointment so stipulates or the Rules governing service conditions so indicate. In the absence of such term in the letter of appointment or in the relevant Rules, it can be inferred on the basis of the relevant Rules by implication, as was the case in Dharam Singh (supra). But it cannot be said that merely because a maximum period of probation has been provided in the Service Rules, continuance of the probationer thereafter would ipso facto must be held to be a deemed confirmation which would certainly run contrary to the seven-Judge Bench judgment of this Court in the case of Shamsher Singh (supra) and the Constitution Bench decisions in the cases of Sukhbans Singh (supra), G.S. Ramaswamy (supra) and Akbar Ali Khan (supra).

20. In this context, it is apposite to refer to **Commissioner of Police, Hubli & Another v. R.S. More**, AIR 2003 SC 983 wherein the Apex Court was addressing itself to the question whether the continuance of the probationer on the post beyond the probation period or extended period, as the case may be, entitled him to have any claim to deemed confirmation in the absence of any specific order passed by the competent authority to that effect. Their Lordships referred to the decision in **Satya Narayan Jhavar** (supra) and held as follows:

“8. In our view, the case at hand falls under category 3. As noticed, Sub-rule (2) of Rule 5 requires that a probationer shall not be considered to have satisfactorily completed the probation unless a specific order to that effect is passed. No specific order having been passed by any authority, certifying the satisfactory completion of probation period of the respondent, has been brought to our notice. Mr. Hegde, learned counsel, submitted that no order as contemplated under Sub-rule (2) of Rule 5 has been passed by the competent authority. Admittedly, the order discharging the respondent, in exercise of powers under Rule 6, has been passed after the extended period of probation was over. In our view, however, that itself would not entitle the respondent to have claimed deemed confirmation in absence of the specific order to that effect. In service jurisprudence, confirmation of service on a particular post is preceded by satisfactory performance of the incumbent unless service rules otherwise prescribe. In the instant case, Sub-rule (2) of Rule 5 of the Rules provides that unless there is a specific order that the probationer has satisfactorily completed the period of probation, he shall not be entitled to be deemed to have

satisfactorily completed the probation by reason of his being continued in service beyond the extended period of probation. The High Court has failed to consider this important aspect of the matter, resulting in miscarriage of justice. In our view, the High Court fell into error resulting in miscarriage of justice.”

17. It is clear that the Delhi Judicial Services Rules categorically lay down that the services of an Officer shall be confirmed only after “successful completion of period of probation”. In the present case, the petitioner could not successfully complete his probation. That was a reason that no order of confirmation was passed in his case.
18. Coming to the second ground of challenge posed by the petitioner to the termination order, we are of the clear opinion that it is a termination simplicitor and order is not punitive in nature. No doubt, there was some complaint against the petitioner, which was looked into. At the same time, after going through the records, it can clearly be discerned that it was not the foundation of the order, though it provide certain motivation inasmuch as from the said conduct and other material, it could be seen that the petitioner was not able to complete his probation satisfactorily.
19. We would like to highlight at this stage that in a recent judgment dated 21.09.2010 delivered by the Supreme Court in **Rajesh Kohli Vs. High Court of J. & K. & Anr.** (in Writ Petition (Civil) No.95 of 2004), the Court has again reiterated and emphasized that it was imperative for the Judicial Officer to maintain a high benchmark of honesty, accountability and good conduct. That was also a case of a probationer, who was appointed in the Higher Judicial Services as Additional District Judge and kept on probation. While he was serving as an Additional District and Sessions Judge,

a complaint was received against him alleging that while acting as a counsel for the complainant, the petitioner fraudulently withdrew an amount of ₹2.6 lacs deposited with the Registrar (Judicial), High Court of Jammu & Kashmir, which was payable to the complainant. The complaint was enquired into by the Registrar (Vigilance) of the High Court, who submitted his report which *inter alia* stated that the petitioner (as a counsel) identified someone else as complainant before the Registrar (Judicial), Jammu & Kashmir High Court and received an account payee cheque in the name of complainant. He then introduced the said impersonator to Vijaya Bank at the time of opening of the bank account and thereby managed to unlawfully receive an amount of ₹2.6 lacs while the real beneficiary, i.e., the complainant did not receive the amount. On the basis of the aforesaid, the High Court in its Full Court meeting resolved to dispense with the services of the petitioner on the ground that his services were not found satisfactory. The petitioner challenged the said termination and one of the grounds of challenge was that the termination was based on alleged misconduct and therefore, it was punitive in nature. The Court dealt with both the aspects with which we are concerned in the present case, viz., neither there was confirmation of the petitioner nor they were stigmatic orders. On the latter aspect, the Court explained the legal position as under:

“18. In our considered opinion, none of the aforesaid two orders could be said to be a stigmatic order as no stigma is attached. Of course, aforesaid letters were issued in view of the resolution of the full court meeting where the full court of the High Court held that the service of the petitioner is unsatisfactory. Whether or not the probation period could be or should be extended or his service should be confirmed is required to be considered by the full court of the High Court and while doing so necessarily the service

records of the petitioner are required to be considered and if from the service records it is disclosed that the service of the petitioner is not satisfactory it is open for the respondents to record such satisfaction regarding his unsatisfactory service and even mentioning the same in the order would not amount to casting any aspersion on the petitioner nor it could be said that stating in the order that his service is unsatisfactory amounts to a stigmatic order.

19. This position is no longer *res integra* and it is well-settled that even if an order of termination refers to unsatisfactory service of the person concerned, the same cannot be said to be stigmatic. In *Pavanendra Narayan Verma v. Sanjay Gandhi PGI Of Medical Sciences* reported in (2002) 1 SCC 520, this Court has explained at length the tests that would apply to determine if an order terminating the services of a probationer is stigmatic. On the facts of that case it was held that the opinion expressed in the termination order that the probationer's "work and conduct has not been found satisfactory" was not *ex facie* stigmatic and in such circumstances the question of having to comply with the principles of natural justice do not arise. In this case court had the occasion to determine as to whether the impugned order therein was a letter of termination of services simpliciter or stigmatic termination. After considering various earlier decisions of this Court in para 21 of the aforesaid decision it was stated by this Court thus: (SCC p. 528)

"21. One of the judicially evolved tests to determine whether in substance an order of termination is punitive is to see whether prior to the termination there was (a) a full-scale formal enquiry (b) into allegations involving moral turpitude or misconduct which (c) culminated in a finding of guilt. If all three factors are present the termination has been held to be punitive irrespective of the form of the termination order. Conversely if anyone of the three factors is missing, the termination has been upheld."

In para 29 of the judgment, it further held thus: (SCC, p.529)

"29. Before considering the facts of the case before us one further, seemingly intractable, area relating to the first test needs to be cleared viz. what language in a termination order would amount to a stigma? Generally speaking when a probationer's appointment is terminated it means that the probationer is unfit for the job, whether by reason of misconduct or ineptitude, whatever the language used in the termination order may be. Although strictly speaking, the stigma is implicit in the termination, a simple termination is not stigmatic. A termination order which explicitly states what is implicit in every order of termination of a probationer's appointment, is also not stigmatic. The decisions cited by the parties and noted by us earlier, also do not hold so. In order to amount to a stigma, the order must be in a language which

imputes something over and above mere unsuitability for the job.”

20. In the case of Krishnadevaraya Education Trust v. L.A. Balakrishna reported in (2001) 9 SCC 319, the services of respondent-Assistant Professor were terminated on the ground that his on the job proficiency was not upto the mark. This Court held that merely a mention in the order by the employer that the services of the employee are not found to be satisfactory would not tantamount to the order being a stigmatic one. This Court held in para 5 thus: -

“5. There can be no manner of doubt that the employer is entitled to engage the services of a person on probation. During the period of probation, the suitability of the recruit/appointee has to be seen. If his services are not satisfactory which means that he is not suitable for the job, then the employer has a right to terminate the services as a reason thereof. If the termination during probationary period is without any reason, perhaps such an order would be sought to be challenged on the ground of being arbitrary. Therefore, normally services of an employee on probation would be terminated, when he is found not to be suitable for the job for which he was engaged, without assigning any reason. If the order on the face of it states that his services are being terminated because his performance is not satisfactory, the employer runs the risk of the allegation being made that the order itself casts a stigma. We do not say that such a contention will succeed. Normally, therefore, it is preferred that the order itself does not mention the reason why the services are being terminated.”

6. If such an order is challenged, the employer will have to indicate the grounds on which the services of a probationer were terminated. Mere fact that in response to the challenge the employer states that the services were not satisfactory would not ipso facto mean that the services of the probationer were being terminated by way of punishment. The probationer is on test and if the services are found not to be satisfactory, the employer has, in terms of the letter of appointment, the right to terminate the services.”

21. In the case of Chaitanya Prakash v. H. Omkarappa reported in (2010) 2 SCC 623, the services of respondent were terminated by the appellant company. During the period of probation, his services were not found to be satisfactory and he was also given letters for improvement of his services and his period of service was also extended and ultimately company terminated him. Court after referring to a series of cases held that the impugned order of termination of respondent is not stigmatic.

22. In the case of State of Punjab v. Bhagwan Singh reported in (2002) 9 SCC 636 this Court at paragraphs 4 & 5 held as follows: -

"4. In our view, when a probationer is discharged during the period of probation and if for the purpose of discharge, a particular assessment of his work is to be made, and the authorities referred to such an assessment of his work, while passing the order of discharge, that cannot be held to amount to stigma.

5. The other sentence in the impugned order is, that the performance of the officer on the whole was "not satisfactory". Even that does not amount to any stigma."

23. In the present case, the order of termination is a fall out of his unsatisfactory service adjudged on the basis of his overall performance and the manner in which he conducted himself. Such satisfaction even if recorded that his service is unsatisfactory would not make the order stigmatic or punitive as sought to be submitted by the petitioner. On the basis of the aforesaid resolution, the matter was referred to the State Government for issuing necessary orders."

20. We are, thus, of the opinion that this petition is totally devoid of any merit and dismiss the same *in limine*.

(A.K. SIKRI)
JUDGE

(MANMOHAN SINGH)
JUDGE

OCTOBER 29, 2010

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