

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

+ **W.P.(C) No.1672/2012**

% **20th February, 2015**

SHRI RAJNEESH KUMAR Petitioner
Through: Mr. Anuj Aggarwal, Adv.

Versus

STATE FARMS CORPORATION OF INDIA LTD. Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition filed under Articles 226 and 227 of the Constitution of India, the petitioner impugns the action of the respondent/employer/State Farms Corporation of India Ltd terminating the services of the petitioner-a probationary officer on the ground that the performance of the petitioner during the period of probation was not found to be satisfactory. The impugned order is dated 17.11.2011 and which reads as under:-

“SFCI/PF-1168/2009-GA

Dated: 17th Nov., 2011

OFFICE ORDER

WHEREAS Shri Rajneesh Kumar was appointed to the post of Marketing Manager vide offer of appointment No.SFCI/2-6/2009-GA dated 3.11.2009 and he joined the services of SFCI on 18th November, 2009. He was posted at Regional Office of SFCI at Bhubaneshwar as Marketing Manager.

WHEREAS in terms of offer of appointment and SFCI Staff Regulation he was on probation for a period of one year during which his performance was assessed by Competent Authority.

WHEREAS since his performance during probation period was not found to be satisfactory by his Controlling Officer i.e. Chief Marketing Manager, his period of probation was extended for a period of 06 months w.e.f. 18.11.2010 and a communication to this effect was sent to him vide Office Order No.SFCI/PF-1168/2009-GA dated: 26.11.2010 duly received by him.

WHEREAS even during this extended period, he did not improve his performance satisfactorily in spite of due guidance and advices of his Controlling Officer.

NOW therefore, in terms of Clause (i) of the Offer of appointment No.SFCI/2-6/2009-GA dated 3.11.2009, the Competent Authority has decided to terminate the services of Shri Rajneesh Kumar from the post of Manager (Marketing) with immediate effect and accordingly his services are hereby terminated and he stand relieved with immediate effect. He shall handover the charge of the post held by him and any other material in his charge to Shri R. Venkada Krishnan, Asstt. HR (Gr-V). He dues shall be paid to him on receipt of No Dues Certificate from all concerned.

Sd/-
(Binod Bihari Saw)
General Manager (HR)
For & On behalf of Competent Authority

Tour Address :-

Shri Rajneesh Kumar, Manager (Marketing),
C/o Maxichem & Fertilizers
Upper Bazar (Bazar Tand),
RANCHI.”

(underlining added)

2. Petitioner was given appointment to the post of Marketing Manager by the respondent vide office order dated 15.1.2010 and this order reads as under:-

“SFCI/PF-1168/2009-GA

Dated: 15th January, 2010

OFFICE ORDER

Shri Rajneesh Kumar, is hereby appointed to the post of Marketing Manager in the Pay Scale of **Rs.20,600-46,500/- (IDA)** at the Regional Office, Bhubaneswar (Orissa) with effect from the forenoon of **18th November, 2009** in a purely temporary capacity until further orders.

As per Staff Regulation of the SFCI Shri Rajneesh Kumar shall be on probation for a period of one year w.e.f. 18.11.2009. He will draw basic pay of Rs.20,600/- which is minimum in the time scale of **Rs.20,600-46,500/- (IDA).**

Sd/-

(Vinod Kumar)

Executive Officer

For Chief Administrative Officer

Distribution:-

1. Shri Rajneesh Kumar, Marketing Manager, Regional Office, Bhubaneswar (Through Regional Manager, Bhubaneswar)
2. All Divisional Chiefs, SFCI, New Delhi
3. Director/Director-Incharge, All Central State Farms and Regional Managers.
4. Secretary, BOT, EPF, SFCI, New Delhi.
5. SA to CMD, SFCI, New Delhi.
6. Executive Officer (Vig.) SFCI, New Delhi
7. Personal File/Guard File

Copy forwarded to Accounts for necessary action.

Sd/-

Regional Manager”
(underlining added)

3. The office order dated 15.1.2010 was pursuant to the appointment letter issued to the petitioner dated 3.11.2009 and para (i) of which appointment letter reads as under:-

“i. You will be on probation for a period of one year from the date of your joining, which may be extended at the discretion of the Competent Authority. During this period, your service may be terminated by either side without notice and without assigning any reason. On satisfactory completion of the probation period, your services will be governed by the normal rules of the Corporation as amended from time to time. Your services may be terminated by giving three months notice by either side or in default by paying pay and allowances for a period short of three months notice.”

(emphasis is mine)

4. Petitioner continued to work on probation for one year w.e.f 18.11.2009 and his probation period was extended for a further period of six months vide order of the respondent dated 26.11.2010. On completion of the probationary period, petitioner continued to work without any specific order of confirmation or permanent appointment for about six months, when, the impugned order dated 17.11.2011 was passed.

5. Counsel for the petitioner argues before this Court that the petitioner is deemed to have been confirmed to the post inasmuch as the petitioner has continued beyond the maximum period of probation of one and a half years as prescribed under Rule 34 of the service rules of the

respondent and to buttress his arguments reliance is placed upon the Constitution Bench judgment of the Supreme Court in the case of *State of Punjab Vs. Dharam Singh AIR 1968 SC 1210*.

6. In my opinion, the argument urged on behalf of the petitioner of the petitioner being deemed to be confirmed after one and a half years' service as probationer, including by placing reliance upon the judgment of the Supreme Court in the case of *Dharam Singh (supra)* is misplaced and reasons for the same are as under.

7. Let me at this stage refer to the relevant rules of probation and which rules besides the Rule 34 relied upon by the petitioner also include Rules 33,35 and 36. These Rules 33 to 36 read as under:-

“33. Every person regularly appointed to any post in the Corporation shall be on probation for a period of one year from the date of appointment.

34. The appointing authority may at its discretion extend the period of probation by a further period not exceeding six months.

35. During the period of probation, an employee directly recruited shall be liable to be discharged from service without any notice and an employee promoted from a lower post to a higher post shall be liable to be reverted to the lower post without notice.

36. An employee who has satisfactorily completed his probation in any post shall thereupon be continued in that post on a regular basis.”

8. A reading of the Rule 36 quoted above shows that there has to

be a decision as to the satisfactory completion of the probationary period of the probationary officer, and only thereupon the probationer has to be continued on the post on a regular basis. It is this Rule 36 which has to be read with Rule 34 which provides the maximum period of probation of one and a half years, and in view of the applicable Rule 36 and the judgments of the Supreme Court which are stated below, it cannot be held that the petitioner was deemed to have been confirmed in his services.

9. The judgment of the Supreme Court in the case of ***Dharam Singh (supra)*** has been considered by the Supreme Court in its recent judgment in the case of ***Mohd. Salman Vs. Committee of Management and Ors. (2011) 12 SCC 308*** and wherein the Supreme Court has held that merely because a maximum period of probation is prescribed does not mean that at the end of the maximum period of probation there is an automatic confirmation. The Supreme Court in the case of ***Mohd. Salman (supra)*** has held that 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 mere expiry of the probationary period does not necessarily lead to confirmation. The judgment in the case of ***Dharam Singh (supra)*** was held in the case of ***Mohd. Salman (supra)*** to be distinguishable on facts and the Supreme Court found the Rule 26 in the case

of *Mohd. Salman (supra)* similar to the rule before the Constitution Bench of the Supreme Court in the case of *State of Uttar Pradesh Vs. Akbar Ali Khan AIR 1966 SC 1842*. The relevant paras of the judgment in the case of *Mohd. Salman (supra)* are paras 12 to 18 and which paras read as under:-

“12. Rule 26 to which reference was made again and again is extracted hereunder:

“The appointment of a candidate against the permanent vacancy shall be made on probation. The period of probation shall be one year. It can be extended by one year. Before the completion of probation period, the Committee of Management shall be entitled to pass an order for removal from service.”

13. Having considered the language of the aforesaid rule, we are of the considered opinion that the decision in the case of *Dharam Singh: AIR 1968 SC 1210* is not applicable to the facts and circumstance of the present case. In fact, the aforesaid Rule 26 is somewhat similar to the Rule which was considered by this Court in the case of *Akbar Ali Khan (supra)*. A constitution Bench of this Court in the case of *Akbar Ali Khan (supra)* examined relevant provisions contained in Rules 12 and 14 of the UP Subordinate Revenue Executive Service (Tahsildar) Rules dealing with the provision of probation period. The said rule provided that the period of probation would be two years which could be extended by the Board to three years. The Constitution Bench of this Court considered as to whether a probationer stood confirmed after the expiry of the period of probation in paragraph 5 of the said judgment. This Court held in paragraph 5 as follows: (*Akbar Ali Khan case (supra)*, AIR p. 1845)

“5. The Respondent was posted as a Tahsildar and placed on probation for two years. The initial period of probation was liable to be extended by the Board of Revenue or by the Governor. There is No. rule that on the expiry of the period of probation the probationer shall be deemed to have been

confirmed in the post which he is holding as a probationer. If a probationer was found not to have made sufficient use of his opportunities or had failed to pass the departmental examination 'completely' or if he had otherwise failed to give satisfaction he may be reverted to his substantive appointment again confirmation in the appointment at the end of the period of probation could only be made if the probationer had passed the departmental examination for Tahsildars 'completely' and the Commissioner reported that he was fit for confirmation and that his integrity was unquestionable. It is common ground in this case that the Respondent had not passed the departmental examination before 1955. He had therefore not qualified himself for confirmation.”

14. Having held thus, this Court recorded its opinion in paragraph 6 in the following manner: (*Akbar Ali Khan case(supra)*, AIR p. 1845)

“6. The scheme of the rules is clear: confirmation in the post which a probationer is holding does not result merely from the expiry of the period of probation, and so long as the order of confirmation is not made, the holder of the post remains a probationer. It has been held by this Court that when a first appointment or promotion is made on probation for a specified period and the employee is allowed to continue in the post, after the expiry of the said period without any specific order of confirmation he continues as a probationer only and acquires No. substantive right to hold the post. If the order of appointment itself states that at the end of the period of probation the appointee will stand confirmed in the absence of any order to the contrary, the appointee will acquire a substantive right to the post even without an order of confirmation. In all other cases, in the absence of such an order or in the absence of such a service rule, an express order of confirmation is necessary to give him such a right. Where after the period of probation an appointee is allowed to continue in the post without an order of confirmation, the only possible view to take is that by implication the period of probation has been

extended, and it is not a correct proposition to state that an appointee should be deemed to be confirmed from the mere fact that he is allowed to continue after the end of period of probation.”

15. The aforesaid rule which is referred to in the case of *Akbar Ali Khan* (supra) appears to be similar to the case in hand. So far the case of *Dharam Singh* (supra) which is relied upon by the learned counsel appearing for the Appellant is concerned, the rule which was considered in that case was Rule 6(3). A bare perusal of the said rule would indicate that by adding a proviso to the substantive rule, a maximum period of probation was provided and in that context, this Court has held that in view of the aforesaid proviso, the Rule postulates that there would be an automatic confirmation after expiry of the period mentioned in Rule 6(3). Because a maximum period of probation was provided in the service rules in the case of *Dharam Singh* (supra), therefore, in that decision, it was held by this Court that continuation of the probationer thereafter would ipso facto be held as deemed confirmation. The said decision is, therefore, not applicable to the present case and is clearly distinguishable.

16. The correspondences which are on record also indicate that the service of the Appellant was also found to be not satisfactory by the Respondent and the said fact was also brought to the notice of the Appellant continuously and repeatedly so as to give him an opportunity to improve his performance. However, despite the said opportunity granted and also extension, his performance and service were not improved and, therefore, the service was terminated under the aforesaid letter dated 3-4-1993.

17. In the case of *Kedar Nath Bahl v. The State of Punjab*:(1974) 3 SCC 21, this Court clearly laid down the proposition of law that 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 on that behalf. It was also held in that decision that unless the terms of appointment clearly indicate that confirmation would automatically follow at the end of the specified period or that there is a specific service rule to that effect, the expiration of the probationary period does not necessarily lead to

confirmation. This Court went on to hold that 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 if he is not reverted to his substantive post, the result merely is that he continues in his post as a probationer.

18. In our considered opinion, the ratio of the aforesaid decision is also clearly applicable to the facts of the present case. In the present case, in the appointment letter issued to the appellant, it was specifically mentioned that his service would be regularised only when his performance during the probation period is found to be good/satisfactory. In view of the aforesaid stipulation, so long an order is not passed holding that the service of the Appellant is good and satisfactory, it could not have been held that his service could be regularised automatically by a deeming provision.” (underlining added)

10. In another recent judgment in the case of ***Kazia Mohammed Muzammil Vs. The State of Karnataka and Anr. (2010) 8 SCC 155***, the Supreme Court has by reference to the case of ***Dharam Singh (supra)*** as also to other judgments of the Supreme Court stated that there are two lines of judgments and whether a person is deemed to be confirmed after completion of probationary period will be seen in the facts of each case and the relevant rules. In the case of ***Kazia Mohammed Muzammil (supra)***, the Supreme Court has referred to the aspect that the rules require an order of satisfactory completion of probation and of confirmation and hence no deemed confirmation was possible. The ratio of the case of ***Khazia Mohammed Muzammil (supra)*** is culled out in head note G of the said case

and which reads as under:-

.....

“G. Service Law-Probation/Probationer-Completion of probation-Satisfactory completion of probation- Issuance of formal order- Held, should not be unnecessarily delayed- Labour Law- Probation/Probationer.

Held:

“Deemed confirmation” is an aspect which is known to the service jurisprudence now for a considerable time. Different views have been taken by the Supreme Court. Firstly, there can be “deemed confirmation” after an employee has completed the maximum probation period provided under the rules whereafter his entitlement and conditions of service are placed at parity with the confirmed employee. Secondly, that there would be no “deemed confirmation” and at best after completion of maximum probation period provided under the rules governing the employee, the employee becomes eligible for being confirmed in his post. His period of probation remains in force till a written document of successful completion of probation is issued by the competent authority. As to what view has to be taken, would depend upon the facts of a given case and the relevant rules in force. It will be cumulative effect of these two basics that would determine the application of the principle of law to the facts of that case.

(paras 19, 20 and 33)

The pith and substance of the state principles of law is that it will be the facts and the rules which will have to be examined by the courts as a condition precedent to the application of the dictum stated in any of the line of cases. There can be cases where the rules require a definite act on the part of the employer before an officer on probation can be confirmed. In other words, there may be a rule or regulation requiring the competent authority to examine the suitability of the probationer and then upon recording its satisfaction, issue an order of confirmation. Where the rules are of this nature, the question of automatic confirmation would not even arise. Every authority is expected to act properly and expeditiously. It cannot and

ought not to keep issuance of such order in abeyance without any reason or justification. While there could be other cases where the rules do not contemplate issuance of such a specific order in writing but merely require that there will not be any automatic confirmation or some act, other than issuance of specific orders, are required to be performed by the parties, even in those cases it is difficult to attract the application of the deemed confirmation doctrine. However, there will be cases where not only are such specific rules absent but the rules specifically prohibit extension of the period of probation or even specifically provide that upon expiry of the period, he shall attain the status of a temporary or a confirmed employee. In such cases, again, two situations would rise: that he would attain the status of an employee being eligible for confirmation and second, that actually he will attain the status of a confirmed employee. The courts have repeatedly held that it may not be possible to prescribe a straitjacket formula of universal implementation for all cases involving such questions. It will always depend upon the facts of a case and the relevant rules applicable to that service.

(Paras 46 to 48, 24 to 27 and 51 to 56)”

11. As stated above, in the present case there is Rule 36 which requires a satisfactory completion of probation and only thereupon the petitioner would be continued in the post on a regular basis and which therefore would require an order of satisfactory completion of probationary services, and which order does not exist in the present case and in fact on the contrary impugned order has been passed after about six months of the completion of the probation period with respect to non-confirmation of the petitioner in the post on account of unsatisfactory services of the petitioner. I may note that after completion of the probationary period of service, surely an employer is entitled to a reasonable time to call for reports of the

reporting and reviewing officers in order to determine the nature of probationary services of a probationer and whether the services are satisfactory or not, and, taking of a reasonable period of about six months without any communication being given to the petitioner that he has been confirmed to the post is not such an unreasonable period for it to be held that there is a deemed confirmation of the petitioner to the post in question. In the case of ***Dharam Singh (supra)*** relied upon by the petitioner, the employment continued after the maximum period of probation for as many as two and a half years (approx) and that too by receiving annual increments, and therefore in the facts in the case of ***Dharam Singh (supra)***, the Supreme Court held that there was deemed confirmation. Hence the facts in the case of ***Dharam Singh (supra)*** are different and not applicable to the facts of the present case.

12. Another recent judgment of the Supreme Court on the aspect of deemed confirmation is in the case of ***Registrar, High Court of Gujarat & Anr. Vs. C.G. Sharma (2005) 1 SCC 132*** and which holds that even if the maximum period of probation is completed and thereafter the employee continues to work, there is no deemed confirmation unless an order is passed of the work of the probationer being found to be satisfactory and which aspect is an essential pre-condition for confirmation. The judgment in the

case of *Dharam Singh (supra)* has also been considered by the Supreme Court in the case of *C.G. Sharma (supra)* and yet it was held that there was no deemed confirmation of the employees in the facts of *C.G. Sharma's* case (*supra*). Paras 26 to 28 of the judgment in the case of *C.G. Sharma (supra)* are relevant and the same read as under:-

“26. A large number of authorities were cited before us by both the parties. However, it is not necessary to go into the details of all those cases for the simple reason that sub-rule (4) of Rule 5 of the Rules is in pari materia with the Rule which was under consideration in the case of *State of Maharashtra v. Veerappa Saboji: (1979) 4 SCC 466* and we find that even if the period of two years expires and the probationer is allowed to continue after a period of two years, automatic confirmation cannot be claimed as a matter of right because in terms of the Rules, work has to be satisfactory which is a pre-requisite or pre-condition for confirmation and, therefore, even if the probationer is allowed to continue beyond the period of two years as mentioned in the Rule, there is no question of deemed confirmation. The language of the Rule itself excludes any chance of giving deemed or automatic confirmation because the confirmation is to be ordered if there is a vacancy and if the work is found to be satisfactory. There is no question of confirmation and, therefore, deemed confirmation, in the light of the language of this Rule, is ruled out. We are, therefore, of the opinion that the arguments advanced by learned counsel for the respondent on this aspect has no merits and no legs to stand. The learned single Judge and the learned Judges of the Division Bench have rightly come to the conclusion that there is no automatic confirmation on the expiry of the period of two years and on the expiry of the said period of two years, the confirmation order can be passed only if there is vacancy and the work is found to be satisfactory. The rule also does not say that the two years' period of probation, as mentioned in the rule, is the maximum period of probation and the probation cannot be extended beyond the period of two years. We are, therefore, of the opinion that there is no

question of automatic or deemed confirmation, as contended by the learned counsel for the respondent. We, therefore, answer this issue in the negative and against the respondent.

27. In this context, it is useful to reproduce para 6 of the judgment of this Court in the case of *State of Maharashtra v. Veerappa R. Saboji(supra)* on the question of deemed confirmation which reads as under: (SCC pp.471-72, para 6)

"6. There are two parts of clause (iv): (1) that it is imperative to put every person appointed under sub-rule (2) on probation for a minimum period of two years "unless otherwise expressly directed", and (2) on the expiry of the said period of two years the person appointed may be confirmed if there is a vacancy and if his work is found to be satisfactory. The plain meaning of the rule is that there is no automatic confirmation on the expiry of the probationary period of two years in the first instance. On the expiry of the said period and on the fulfillment of the requirement of sub-clauses (a) and (b) a Government servant becomes eligible for being confirmed and normally he is likely to be confirmed. But it is a matter of common knowledge in many branches of government service including the judiciary that for administrative reasons or otherwise the confirmation is delayed and is made at a subsequent time. It may also be delayed for watching the work of the government servant for a further period. The expression "unless otherwise expressly directed" governs only the first part of clause (4) and not the second as was attempted to be argued by Mr. Nariman. In my opinion the rule in question, therefore, comes under the ordinary and normal rule that without an express order of confirmation the government servant will not be taken to have been confirmed in the post to which he was appointed temporarily and/or on probation. It is not covered by the exceptional rule like the one which was the subject matter of consideration of this court in *State of Punjab vs. Dharam Singh: AIR 1968 SC 1210.*"

28. In view of our above findings on the question of deemed confirmation, Civil Appeal No. 575 of 2003 filed by Mr C.G. Sharma shall stand dismissed.”

13. In view of the above, I do not find that there has been a deemed confirmation of the petitioner as argued on his behalf, and therefore, it is held that petitioner is not entitled to quashing of the impugned order dated 17.11.2011.

14. Dismissed.

FEBRUARY 20, 2015
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VALMIKI J. MEHTA, J