

\$~17

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

% *Date of Decision : August 03, 2015*

+ **LPA 502/2015**

RAJNEESH KUMAR Appellant

Represented by: Mr.Anuj Aggarwal, Advocate

versus

STATE FARMS CORPORATION OF
INDIA LTD THR ITS CHAIRMAN
CUM MANAGING DIRECTOR

..... Respondent

Represented by: None

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE V. KAMESWAR RAO

PRADEEP NANDRAJOG, J. (Oral)

CM No.13631/2015

Allowed subject to just exceptions.

CM No.13630/2015

For the reasons stated in the application the delay of 57 days in filing the appeal is condoned.

LPA No.502/2015

1. Appointed as a Marketing Manager by the respondent on January 15, 2010 and treating him still to be under probation, vide order dated November 17, 2011 service of the appellant was terminated indicating to him that since during first year of probation his performance was not satisfactory it was extended by six months with effect from November 18, 2010, and on appraisal of his performance which was found to be not

satisfactory his services were being terminated.

2. The appellant filed a writ petition which has been dismissed by the learned Single Judge vide impugned decision dated February 20, 2015.

3. The grievance of the appellant in the appeal is that though the learned Single Judge has noted, but has misapplied the law declared by the Supreme Court in the decision reported as AIR 1968 SC 1210 State of Punjab Vs. Dharam Singh, in which Rule 6 of the Punjab Educational Service (Provincialised Cadre) Class III Rules, 1961 was considered and interpreted by the Court that if a probationer continued in probation for three years he would be deemed to have been confirmed in service notwithstanding a formal order confirming the employee was not passed. Learned counsel urged that the staff regulations of the first respondent were pari-materia.

4. The Rule considered by the Supreme Court reads as under:-

“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.

(3) On the completion of the period of probation the authority competent to make appointment 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.”

5. The applicable regulations of the staff regulations of the respondent 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.”

6. The law on deemed confirmation of a probationer is clear and stands very clearly noted in the decision reported as 2001(7) SCC 161 High Court of MP Vs.Satya Narayan Jhavar followed with approval by the Supreme Court in the decision reported as (2005) 13 SCC 179 Rajender Singh Chauhan & Ors. Vs.State of Haryana & Ors. Three situations result in two different results is the ratio which can be culled out from the said two decisions. Situation one is where in the service rules or in the letter of appointment a period of probation is specified with a power to extend the same without prescribing any maximum period of probation and no order is passed confirming the probationer. The second situation is where the rules for initial probation and extension thereof provide a maximum period it is not permissible to extend the probation. The third is where the rules

prescribe a maximum period of probation but also require a specific act on the part of the employer to issue an order confirming the appointment. It was held that cases falling under situation one or three cannot be treated as a case of deemed confirmation. Only under situation two would it be treated as a case of deemed confirmation.

7. The logic of the reasoning is clear. If, as in situation two a maximum period for probation is provided with a negative stipulation that beyond said period probation cannot continue, it follows automatically that if the probation continues beyond the maximum period it has to be treated as a case of deemed confirmation for the reason the negative stipulation prohibiting continuation of probation beyond the maximum period prescribed must take its effect.

8. In the instant case Regulation 36 positively mandates an order to be passed declaring that the probationer has successfully and satisfactorily completed the probation and thereupon would be entitled to continue in that post on a regular basis; such a provision did not exist in the Punjab Educational Service (Provincialised Cadre) Class III Rules, 1961. This distinguishes the law declared by the Supreme Court in Dharam Singh's case relied upon by learned counsel for the appellant.

9. The appeal is accordingly dismissed in limine, but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(V. KAMESWAR RAO)
JUDGE

AUGUST 03, 2015/mamta