

***IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.***

CWP No.11466 of 2013

Date of Decision: 02.08.2016

Dr. Arun Bansal and others

....Petitioners

Versus

State of Punjab and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Surinder Garg, Advocate
for the petitioners.

Mr. Avinit Avasthi, A.A.G., Punjab
for the respondent-State.

DAYA CHAUDHARY, J.

The prayer in the present petition is for issuance of a writ in the nature of *certiorari* for quashing the action of the respondents, vide which, the petitioners have not been confirmed even on completion of probation period. A further prayer has also been made for issuance of direction to the respondents to regularize the probation period by confirming their services and to release the annual grade increments along with arrears of pay and interest.

Briefly, the facts of the case are that in pursuance to advertisement dated 10.10.2008, the petitioners applied for the post of Medical Officers. One more advertisement was issued on 19.02.2009 for appointment of 212 Medical Officers. However, on the basis of recommendations made by the Punjab Public Service Commission, Patiala (here-in-after called as 'PPSC'), the petitioners were appointed as Medical

Officers for the Batches 2008 and 2009 in the pay scale of ₹ 7880-13500/- with starting basic pay of ₹ 8000/-, whereas, the 2009 Batch, Medical Officers were appointed in the pay scale of ₹ 15600-39100+5400 G.P+NPA. Thereafter the petitioners joined their duties and were put on probation for a period of two years in view of Punjab Civil Medical Services (Class II) Rules, 1982 (now Class I Service) (here-in-after referred to as 'the Rules, 1982'). Rule 11 provides that in case, during the period of probation, the work and conduct of any employee is not found satisfactory, then his/her services would be terminated. Proviso to Rule 11(3) further provides that the maximum period of probation cannot be more than three years, whereas, the petitioners have already completed more than eight years of service as on today but still they are not being confirmed on the ground that their appointment is under consideration before this Court and aggrieved by the same, petitioners have filed the present petition.

Learned counsel for the petitioners submits that the petitioners were put on probation initially for a period of two years, which was extendable as per Rules and maximum probation period could not be more than three years but still they have not been confirmed despite completing their period of probation satisfactorily and successfully, only on the ground that their appointment is under challenge and that case is still pending.

Learned counsel for the petitioners further submits that the petitioners are liable to be confirmed. He has also relied upon the judgment of larger Bench of Hon'ble the Apex Court in case ***The State of Punjab vs Dharam Singh 1968 AIR (SC) 1210*** in support of his contentions, wherein, it was held that the probationer must be deemed to have been confirmed on the post after expiry of period of probation.

Learned counsel for the respondent-State, on the basis of reply , submits that bunch of writ petitions are pending, wherein, the appointment of the petitioners and other doctors has been challenged. The Vigilance Department has also conducted an inquiry into the selection of Medical Officers pertaining to Batches-2008 and 2009. A Special Investigation Team was constituted to hold an enquiry into the selection of doctors and report to that effect has been submitted and the same has been accepted by the Government.

Heard the arguments of learned counsel for the parties and have also perused the record available on the file.

Admittedly, the petitioners have applied in pursuance to advertisement dated 10.10.2008 published by the 'PPSC'. Thereafter, one more advertisement dated 19.02.2009 was published for appointment of Medical Officers (General) in the Health and Family Welfare Department, Punjab. The petitioners applied for appointment as Medical Officers in view of abovesaid advertisements and on the basis of recommendations made by 'PPSC', they were appointed by granting regular pay scale and were put on probation for a period of two years. The conditions of service of the petitioners are governed by the Rules, 1982. As per Rule 11 of the Rules, 1982, in case, during the period of probation, the work and conduct of any employee is not found satisfactory, then his/her services could be terminated. In view of proviso contained in sub-Rule (3) of Rule 11, the maximum period of probation could be three years. Rule 11 of the Rules, 1982 is reproduced as under :-

“11. **Period of Probation** :- (1) Persons appointed to the service shall remain on probation for a period of two years, if appointed by direct appointment and one

year, if appointed otherwise :-

Provided that :-

(i) any period, after such appointment, spent on deputation on a corresponding or highest post shall count towards the period of probation;

(ii) any period of officiating appointment to the service shall be reckoned as period spent on probation, but no person who has so officiated shall, on the completion of the prescribed period of probation, be entitled to be confirmed unless he is appointed against a permanent vacancy.

(2) If, in the opinion of the appointing authority, the work or conduct of a person during the period of probation is not satisfactory, it may -

(a) if such person is appointed by direct appointment, dispense with his services or revert him to a post on which he held lien prior to his appointment to the service by direct appointment ; and

(b) if such person is appointed otherwise :-

(i) revert him to his former post ; or

(ii) deal with him in such other manner as the terms and conditions of previous appointment permit.

(3) On the completion of the period of probation of person, the appointing authority may -

(a) If his work or conduct has, in its opinion, has satisfactory :-

(i) confirm such person from the date of his appointment if appointed against a permanent vacancy ; or

(ii) confirm such person from the date on which a permanent vacancy occurs, if appointed against a temporary vacancy ; or

(iii) declare that he has completed his period of probation satisfactory, if there is no permanent vacancy ;

(b) if his work or conduct has not been, in its opinion satisfactory -

(i) dispense with his services if appointed by direct appointment or if appointed otherwise, revert him to his former post or deal with him in such other manner as the terms and conditions of his previous appointment may permit ; or

(ii) extend his period of probation and thereafter pass such orders as it could have passed on the expiry of the period of probation specified in sub-rule (1);

Provided that the total period of probation including extension, if any, shall not exceed three years.”

Rule 11(3) is identical to Rule 6(3) of the Punjab Educational (Provincialised Cadre) Class III Rules, 1961. In view of the ratio of law laid down by the Constitution Bench, Hon’ble the Apex Court in ***Dharam Singh’s*** case (supra), the petitioners are deemed to have been confirmed after expiry of period of three years from the date of their appointment. It is mentioned in the appointment letter also that the services of the petitioners shall be governed by Punjab Civil Medical (State Group A Service) Rules, 1972, whereas, they are governed by the Rules, 1982 and as per Rule 11 of the said Rules, the probation period could be extended only upto three years.

The petitioners are still on probation and in spite of making repeated request to the respondents, they have not been confirmed. Even the petitioners have not been granted annual grade increments, whereas, it was not the condition in the appointment letter. Not only the increments have been withheld but even the ‘No Objection Certificates’ have not been issued to some of the petitioners on the ground that their probation period has not been regularized and their services have not been confirmed. Some of the medical officers, under similar circumstances, filed ***CWP No.7288 of 2005*** as their annual increment was not released despite the fact that their work

and conduct was found satisfactory. The said petition was allowed by the Division Bench of this Court vide judgment dated 11.05.2006. The relevant portion of the said judgment is reproduced as under :-

“ Having examined the reply submitted on behalf of the respondents, as also the contentions advanced at the hands of the learned counsel for the respondents, we are satisfied that there is no embargo or impediment in the release of annual increments either in the averments made in paragraph 12 of the written statement, extracted above or in the communication dated 27.01.2003 (Annexure R-II). Thus we are of the view that the petitioners ought to have been granted annual increments, for their induction into the service of the respondents, as Medical Officers. The respondents are, accordingly, directed to release all such increments to the petitioners within a period of two months from today, in the light of the observations recorded hereinabove. The respondents are directed to reconsider the claim of the petitioners for grant of master scale after the completion of four year service. Necessary orders in this behalf may be passed by the respondents within two months from today and in case, the petitioners are found entitled to the aforesaid scale, the same shall be calculated and released to them within a further period of one month.”

In ***Dharam Singh's*** case (supra), the work and conduct of the petitioners was not found satisfactory and hence their services were terminated. Prior to that, the period of probation was extended. Those petitioners were allowed to continue even after extended period of probation and to draw annual increments of salary. It was held by Hon'ble the Apex Court that they were deemed to be confirmed. After such confirmation, the authority had no power to dispense with their services on the ground that their work and conduct during the period of probation was unsatisfactory. It

was also held that removal from service could not be made without following the procedure laid down in the Punjab Civil Services (Punishment and Appeal) Rules, 1952 and without confirming to the constitutional requirements of Article 311 of the Constitution of India. It was further held that as the procedure laid down in the Rules, 1952 was not followed and as the constitutional protection of Article 311 was violated, the impugned orders were rightly set aside by the High Court and as such, the appeals filed by State of Punjab were dismissed.

In case ***M.K. Agarwal vs Gurgaon Gramin Bank and others*** **1988(1) SLR 790**, the judgment of ***Dharam Singh's*** case (supra) has been relied upon. It was held therein that the services of the probationer should either be confirmed or discharged at the end of period of probation and in case, the probationer was not discharged at or before the expiry of the maximum period of probation, then there would be an implied confirmation as there was no statutory indication as to what should follow in the absence of express confirmation at the end of maximum permissible period of probation.

The judgement of ***Dharam Singh's*** case (supra) was also relied upon in judgment of Hon'ble the Apex Court in case ***Om Prakash Maurya vs U.P. Cooperative Sugar Factories Federation, Lucknow*** **1986 AIR (SC) 1844**. It was held therein that probation period could not be extended beyond the maximum period of probation and employee stands confirmed on expiry of maximum period of probation.

In judgment of Delhi High Court in case ***Ganesh Chander Joshi vs Union of India*** **1993(4) SLR 759**, it was held that on the expiry of the maximum period of probation, an employee would be deemed to have

been confirmed on the post and he could not be discharged simpliciter by passing of an adverse order. The petitioner, in that case, was held entitled to all consequential reliefs as earlier he was discharged after maximum period of probation.

In the present case, neither any complaint has been made against the petitioners nor anything has been brought to the notice of this Court to show that their work has not been found satisfactory. They have not been granted the benefits of annual increment and they have not been confirmed in spite of expiry of maximum period of three years of probation because of pendency of cases challenging their appointment.

Accordingly, in view of the facts and law position as discussed above, the present petition deserves to be allowed and the respondents are directed to take necessary action to regularize the petitioners and to release them the consequential benefits with regard to the extended probation period.

However, it is made clear that the order passed by the respondents would be subject to decision of the pending writ petitions whereby the selection/appointment of the petitioners has been challenged.

(DAYA CHAUDHARY)
JUDGE

02.08.2016
gurpreet

Whether speaking/reasoned

Yes

Whether Reportable

Yes