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REPORTABLE

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 15 OF 2008

DR. SUBHAS C. MARIHAL,
c/o Sachin Borkar, 408, 4th floor, City Centre,
Patto Plaza, Panaji, Goa.

...Petitioner

~ VERSUS ~

- 1. STATE OF GOA**
through the Chief Secretary, Government
Secretariat, Alto Porvorim, Goa
- 2. GOA PUBLIC SERVICE COMMISSION**
through the Secretary, EDC House, Block C,
1st floor, Dada Vaidya Road, Panaji, Goa
403001
- 3. THE DIRECTOR OF TECHNICAL
EDUCATION,**
Alto Porvorim, Goa

...Respondents

APPEARANCES

FOR THE PETITIONER **Mr SG Desai, Senior Counsel, *with Ms. S Shelke.***

FOR RESPONDENTS **Mr P Dangui, *Government Advocate.***

**CORAM : G.S.Patel & Nutan D.
Sardesai, J.J.**

JUDGMENT RESERVED ON : 18th September 2017

JUDGMENT PRONOUNCED ON : 9th October 2017

JUDGMENT (per G.S. Patel J):

1. This Writ Petition No. 15 of 2008 under Article 226 of the Constitution of India challenges two orders issued by Respondent No. 1. The first is dated 14th August 2006,¹ and it purports to extend the Petitioner's probation. The second is an order dated 2nd January 2008,² terminating the Petitioner's services as the Principal of the Goa College of Pharmacy, Panaji. The challenge to the first order is on the ground that it is in violation of Column 9 of the Government of Goa, Goa College of Pharmacy, Group A, Gazetted Posts, Recruitment Rules, 1997 ("**the Recruitment Rules**").³ For convenience, a complete copy of the Recruitment Rules in the relevant Gazette Notification is appended to this judgment. The challenge to the second order, i.e., the order of termination, is on two grounds. First, that the order proceeds on the incorrect basis that the Petitioner was a probationer at the time that the order was made, and, second, that the order is in violation of Article 311(2) of the Constitution of India.

2. Both impugned orders were made by Respondent No. 1, on the recommendation of Respondent No.2. Respondent No. 3 was

1 Petition, Exhibit "P-21", *p.* 58.

2 Petition, Exhibit "P-1", *p.* 18.

3 Petition, Exhibit "P-3", *pp.* 20-23.

the Petitioner's immediate superior during his tenure as Principal. Rule was issued on 29th January 2008.

3. On 29th December 2001, Respondent No. 2 issued an advertisement in the Times of India,⁴ inviting applications, *inter alia*, for the post of Principal of the Goa College of Pharmacy at Panaji. All Applicants were required to satisfy the qualifications laid down by the Recruitment Rules and the All India Council for Technical Education Guidelines (“**the AICTE Guidelines**”).⁵ Under these Guidelines, a candidate, *inter alia*, required a PhD degree, 15 years’ teaching experience, and to have achieved some eminence in the field. The Petitioner satisfied these requirements; he had about 18 years’ teaching experience and had worked in the pharmacy industry for roughly two years.⁶ The Petitioner was selected for the post on merit, and was appointed by open direct recruitment *vide* an order dated 11th November 2002 issued by Respondent No. 1.⁷ The order of appointment specified that the Petitioner would be on probation for a period of one year, but did not prescribe any procedure or prerequisites for confirmation. The Petitioner took charge as Principal on 22nd November 2002.⁸ In 2002, the Petitioner’s appointment was challenged by way of a writ petition in this Court. This petition was dismissed on the ground that there was no cause for interference. The Petitioner completed the stipulated one-year probation on 22nd November 2003. During

4 Petition, Exhibit “P-6”, p. 28.

5 Petition, Exhibit “P-5”, p. 26.

6 Petition, Exhibit “P-2”, p. 19.

7 Petition, Exhibit “P-8”, p. 37.

8 Petition, Exhibit “P-9”, p. 38.

this period, he received no feedback or communication from the Respondents regarding his performance, or the lack of it.

4. It was only on 31st May 2006, a full two and a half years after the Petitioner had completed his probation, that he received any communication. On that day, he received a memorandum containing extracts of certain entries recorded in his Annual Confidential Report (“ACR”). These entries were for the period dating 22nd November 2002 to 31st March 2003 and from 2004 to 2005.⁹ The ACR for 2003 to 2004 was missing from this memorandum. The entries stated that the Petitioner’s overall performance was average and he had only barely managed his duties.

5. Thereafter, Respondent No. 2 convened a Departmental Promotion Committee (“DPC”), on whose recommendation Respondent No. 1 extended the Petitioner’s probation until 31st May 2007 *vide* order dated 14th August 2006.¹⁰ The Petitioner continued in office even after 31st May 2007. On 2nd January 2008, Respondent No. 1, again on the recommendation of the DPC, terminated the services of Petitioner on the ground that his performance during his probation period was found to be unsatisfactory.

6. On 4th February 2008, the Petitioner made two representations: one to Respondent No. 1 against his adverse ACR

9 Petition, Exhibit “P-20”, *p.* 57.

10 Petition, Exhibit “P-21”, *p.* 58.

report,¹¹ and the second to Respondent No. 2 against its recommendation to extend the Petitioner's probation.¹² Respondent No. 1 rejected the Petitioner's representation¹³ without providing any reasons. Respondent No. 2 did not reply to the Petitioner's representation.

7. The challenges in this petition are closely linked. The challenge to the order of termination follows the challenge to the order extending the probation of the Petitioner. The long and the short of the Petitioner's case is this. On completion of his stipulated one-year period of probation he must be deemed to be confirmed. The probation could not be interpreted as continuing in view of Column 9 of the Recruitment Rules, which clearly stipulate that the period of probation, if any, would be one year. Neither the Recruitment Rules nor the order of appointment granted the Respondents any power to extend probation. Since he was deemed to be confirmed, the order terminating his services on the ground that his performance during his probation period was unsatisfactory is unsustainable. Further, the order of termination is in violation of Article 311(2) because he was not informed of the charges against him, and was not allowed an opportunity to make a representation against them. Therefore, Mr Desai for the Petitioner says, both orders are void.

8. Mr Dangui for the Respondents responds thus. The Petitioner's continuation in his post as Principal of the Goa College

11 Petition, Exhibit "P-24 (*colly.*)", pp. 60A-60H.

12 Petition, Exhibit "P-26 (*colly.*)", pp. 60V-60ZD.

13 Petition, Exhibit "P-24 (*colly.*)", p. 60I.

of Pharmacy beyond the probationary period of one year should not and cannot be construed as a 'deemed confirmation' to the post; rather, it should be considered as a continuation of the probation period. The reasons are:

- (a) the Petitioner's appointment was on a temporary basis, and could be terminated at any time;
- (b) confirmation to the post required a formal order of confirmation;
- (c) the Recruitment Rules do not stipulate a maximum probation period;
- (d) the Recruitment Rules do not prohibit extension of the probation period.

9. The Recruitment Rules, which the Petitioner contends govern him absolutely, stipulate the following. Column 9 of the Recruitment Rules, Mr Desai says, is clear. It provides that the period of probation, if any, is one year. The Recruitment Rules do not confer upon the Respondents any power to extend the probation beyond the stipulated one-year period. In light of this, Mr Desai argues that one year was the maximum period for which the Petitioner could be placed on probation. The Petitioner's order of appointment also specified that the period of probation would be for a year. It did not grant the Respondents any power to extend such probation either. More so, Mr Desai says, the Recruitment Rules did not provide any conditions that were required to be satisfied for the Petitioner to be confirmed. They did not prescribe any standard of

performance nor did they require him to pass a departmental examination. Similarly, the order of appointment, he submits, makes no mention of any procedure or requirements to be satisfied for confirmation either. Therefore, according to Mr Desai, the stipulated period one-year period in Column 9 of the Recruitment Rules is the maximum permissible probation period. By allowing the Petitioner to hold his post even after the expiry of this probation period, the Respondents confirmed him in that post by necessary implication. The Petitioner's probation, therefore, could not be interpreted as continuing. It ended on 22nd November 2003. From this date, he urges, he was deemed to be confirmed. Otherwise, Mr Desai submits, the Respondents' interpretation results in an absurdity: the Petitioner could, conceivably, on that interpretation be continued on probation indefinitely right until the mandatory retirement age.

10. In support of his arguments, Mr Desai relies on the Supreme Court decision in *State of Punjab v Dharam Singh*.¹⁴ In *Dharam Singh*, the Supreme Court held that where the service rules fixed a certain period of time beyond which probation could not be extended, and an employee was allowed to continue in the post even after completion of this maximum period of probation, he could not be deemed to continue as a probationer. This would be impermissible in light of the service rule forbidding extension of probation. He would, the Court held, be confirmed by implication. Even without any formal order of confirmation made by the

14 AIR 1968 SC 1210.

appointing authority, such order would be presumed to have been passed by allowing an employee to continue in their post.

11. Mr Desai also relies on the decision of the Supreme Court in *Om Prakash Maurya v Uttar Pradesh Cooperative Sugar Factories Federation, Lucknow & Ors.*¹⁵ The *Om Prakash Maurya* Court followed *Dharam Singh*, and held that on the expiry of the maximum period of probation, the Appellant was deemed to be confirmed.

12. Mr Desai draws further support from the decision of the Supreme Court in *High Court of Madhya Pradesh Through Registrar & Ors v Satya Narayan Jhavar.*¹⁶ In *Jhavar*, the Court examined the concept of 'deemed confirmation' in light of three distinct lines of cases. In the first of these, the relevant service rules or the letter of appointment specified a period of probation and expressly conferred a power on the appointing authority to extend the period of probation. In such cases, the mere fact that the appointee continued to serve beyond the specified period of probation did not result in a deemed confirmation. The second line of cases covered situations where the service rules specified an initial period of probation and conferred upon the appointing authority a power to extend the period, but stipulated a maximum limit beyond which that probation could not be extended. In these cases, the appointee was deemed to have been confirmed at the end of the maximum period of probation if no order of termination before the expiry of such period. This was the view taken in the *Dharam Singh* and in *Om Prakash Maurya*.

15 1986 (Supp) SCC 95.

16 (2001) 7 SCC 161.

Finally, in the third line of cases, the service rules prescribed a maximum period of probation but also provided that confirmation of the probation required a specific act to be done or condition to be fulfilled by either the appointing authority — for instance, by issuing an order of confirmation — or by the probationer — for example, by passing a prescribed test. In such cases, even on the expiry of the maximum period of probation, the probationer could not be deemed to have been confirmed in the absence of an order of confirmation or his successfully passing the prescribed test or meeting the necessary requirement.

13. Mr Desai submits that his case falls squarely within the second line of cases discussed in *Jhavar*, and is covered by the decisions in *Dharam Singh* and *Om Prakash Maurya*.

14. These arguments for the Petitioner are canvassed in relation to the order extending his probation. The challenge to the order extending his probation forms the bedrock of the second challenge, viz., to the order dated 2nd August 2008 terminating the Petitioner's services. This is for the following reasons. The order terminating the services of the Petitioner was issued by Respondent No. 1 on the ground that the Petitioner's performance was unsatisfactory *during his probation period*. The Petitioner contends that this is not tenable in law because at the time at which the termination order was made he was not on probation at all. When his services were terminated, he had by then been in service for about five years already. He had served out his probation period. His probation was never extended. He was not required to pass any test or meet any other requirement. He must be deemed to have been

confirmed in his post. The termination order was solely on this ground and, therefore, Mr Desai contends that the order of termination is void.

15. Mr Desai also contends that his order of termination was in violation of Article 311(2) of the Constitution of India. Article 311(2) mandates that no person can be dismissed or removed without an enquiry in which he has been informed of the charges of his removal and has been given a reasonable opportunity of making representation against such charges. The Petitioner contends that he was neither informed of his charges nor given the opportunity to make a representation. Therefore, the Petitioner argues that the order of termination was entirely illegal, arbitrary, and void.

16. Mr Desai's alternative argument is that should his challenge to the order extending his probation fail, and his probation be found to be continuing, even so, and even as a probationer, the Petitioner is entitled to the protection guaranteed under Article 311(2) if he has been removed on grounds that are stigmatic in nature. The Respondents have accused the Petitioner of being guilty of several such shortcomings: being academically weak, for instance, of having no stature or standing, and of not being motivating enough as a manager. The Respondents have alleged there have been several complaints, both oral and written, against the Petitioner's abusive behaviour, and there have been instances of students going on strike to seek his removal. The Respondents have also alleged that there have been major irregularities in cash transactions and stock handling of the college by Petitioner, and that he is guilty of making 'avoidable' payments. This, the Petitioner argues, is stigmatic, and,

therefore, he should have been afforded the protection of Article 311(2). We will sift through these, and discard out of hand those we find untenable. To pillory a long-standing employee at so late a stage for making 'avoidable' payments borders on the ludicrous. Many of us are guilty of this in our daily lives. What of it? This is not a charge of underhand dealings, corruption, kickbacks, or nepotism. Those all stand on a different footing and are indeed serious. This is merely saying that in some third person's latter-day envisioning of it, a person in the Petitioner's position might have done things differently. That is not in itself a ground for termination. It can never be.

17. Mr Desai relies on the decision of the Supreme Court in *Registrar General High Court of Gujarat & Anr v Jayshree Chamanlal Buddhbhatti*¹⁷ to support this argument. There, the Supreme Court held that if the case is of deciding the suitability of a probationer, and for that limited purpose an inquiry is conducted, this cannot be faulted. However, if during the course of such inquiry, any allegations are made against the person concerned, and these result in a stigma, he ought to be afforded the minimum protection contemplated under Article 311(2) of the Constitution of India even though he may be only a probationer.

18. Mr Desai therefore submits that the Respondents were obligated, in either view of the matter, under Article 311(2) to intimate the Petitioner of the charges brought against him justifying his termination, and to allow him to make a representation against

17 (2013) 16 SCC 859.

them. A failure to do so, as in this case, he urges, renders the termination order void.

19. Mr Dangui for the Respondents would have it, on the other hand, that the Petitioner's appointment was always only on a temporary basis. The offer of appointment was made to the Petitioner by way of a Memorandum dated 31st July 2002.¹⁸ The terms of the offer, *inter alia*, according to the Respondents, were that the Petitioner's appointment would be temporary and would not confer any permanent title to the position. The offer specifically said the Petitioner's appointment was liable to be terminated at any time, without assigning reasons. The offer letter also specified that the Petitioner would be on probation for two years. By a letter dated 6th August 2002, the Petitioner accepted the appointment as per the offer letter.¹⁹ It is in pursuance to this correspondence, the Respondents submit, that the order appointing the Petitioner was issued. Therefore, the terms stated in the offer letter, Mr Dangui urges, must be deemed to have been incorporated in the order of appointment.

20. According to him, Column 9 of the Recruitment Rules does not prescribe a maximum period of probation, nor does it forbid an extension of the probation period. The language in Column 9, he says, is permissive: it only specifies a period, i.e., one year, for which a prospective appointee may be placed on probation. Absent any express prohibition contained in the Recruitment Rules, this

18 Affidavit in Reply, Exhibit "R-2", p. 73.

19 Affidavit in Reply, Exhibit "R-3", p. 76.

probation period, Mr Dangui says, can therefore be extended. This, he submits, is starkly different from the rules in *Dharam Singh*, which provided for a maximum period of probation, viz., a non-extensible probation period. Therefore, he submits, that the Petitioner's reliance on *Dharam Singh* is misplaced.

21. Mr Dangui further submits that the Petitioner's confirmation to the post at end of the probationary period cannot be assumed. It required (i) satisfactory completion of the probation period, and (ii) a formal order of confirmation. In support, he relies on an Office Memorandum dated 12th April 2005 issued by Respondent No. 1. This Memorandum incorporated an earlier Office Memorandum, dated 19th May 1983, issued by the Government of India containing various guidelines relating to probation in central services.

22. These conditions, Mr Dangui says, were not satisfied. No order of confirmation had been issued, and the Petitioner's performance, in fact, had been found to be unsatisfactory. In the Assessment Report of the Petitioner for the period November 2003 to February 2005, Respondent No. 3 found the Petitioner's performance to be below par and reported him as being academically weak with no stature or standing as a researcher or consultant. He was assessed as lacking the vision, maturity, and skill required to be an effective leader. In a second Assessment Report, for the period September 2005 to May 2007, Respondent No. 3 reported the Petitioner's performance as being unsatisfactory. Additionally, the Respondents say, there were numerous problems with the Petitioner's tenure as Principal: written complaints by students on account the Petitioner's abusive behaviour; strikes by students

demanding the Petitioner's removal; unsanctioned leaves as recorded in a letter dated 31st January 2007; and (again) 'avoidable' expenditures to the tune of Rs 6 lakhs.

23. Since these conditions were not satisfied, Mr Dangui submits, the Petitioner could not be deemed to be confirmed on the expiry of the one-year probation period. He must be deemed to have been continued on probation. This, he submits, is the force of the decisions in *Jhavar*;²⁰ *Head Master, Lawrence School, Lovedale v Jayanthi Raghu and Another*;²¹ *Binoy Kumar Mukherjee v State of Bihar and Others*;²² *Mohammad Salman v Committee of Management and Others*;²³ and *Bhimashankar Sidram Katke v Registrar General, High Court of Judicature at Bombay*.²⁴ We will turn to these judgments shortly.

24. To continue: Mr Dangui says that once it is established that the Petitioner, at the end of the stipulated one-year probation period, continued to hold his post in the capacity of a probationer, it necessarily follows that his probation could be extended and, on unsatisfactory performance during such probation, his service was liable to be terminated.

25. Having considered the rival arguments, we are inclined to find in favour of the Petitioner. Mr Desai's interpretation of the

20 (2001) 7 SCC 161.

21 (2012) 4 SCC 793.

22 (1972) 4 SCC 209.

23 (2011) 12 SCC 308.

24 2005 (1) Mh LJ 406.

Recruitment Rules is not only, in our view, correct; in fact, we believe it is the only tenable interpretation in these facts. Column 9 of the Recruitment Rules permits Respondent No. 1 to place an appointee on probation, if at all, for a period of one year, no more. Column 9 says nothing further. Conspicuous by its absence is the power to extend the period of probation. In absence of an express conferment of a power to extend the probation in either the Recruitment Rules or the order of appointment, such a power cannot be assumed. Therefore, it must necessarily follow that the one-year probation stipulated under Column 9 is the maximum possible period of probation permissible under the Recruitment Rules. We cannot accept Mr Dangui's submission that the Recruitment Rules must be read to contain, implicitly, a power to extend probation, and that it is irrelevant that there is no explicit bar or prohibition against extending probation. The Respondents' interpretation amounts to reading into the Recruitment Rules a power to extend probation, viz., a power they do not contain, and bestowing on the Respondents an unintended power. This can be viewed from another perspective. If what Mr Dangui says is correct, and such a power can be imputed with any legitimacy, then it would *never* be necessary to provide for the probation-extending power — it could always be 'implied'. Yet, as we have seen, rules in different places have in fact specifically conferred that power. This approach, of imputing an unstated power of this kind, is also rife with potential for mischief, and brings us close to the mischief rule of interpretation: in the hands of an errant administration, such an unstated power of extension could be invoked to do very great harm and persons might be continued on 'probation' indefinitely.

26. With this, let us take the present case. Neither the Recruitment Rules nor the order of appointment required the Petitioner to satisfy any condition before he could be confirmed to the post. There was no standard of performance or assessment that the Petitioner was required to meet. None is set out in either the appointment order or the Recruitment Rules. There was no departmental examination that he had to complete either. Absent any condition for confirmation, and absent too a power to extend probation, the Petitioner's probation could not have been merely interpreted or construed as continuing, and that too indefinitely. It follows, therefore, that even without a formal order to the effect, allowing the Petitioner to continue in his post amounted to a deemed confirmation of his services.

27. The Respondents' reliance on the Office Memorandum dated 12th April 2005 to supply certain pre-conditions for confirmation, viz., successful completion of the probation period and an order of confirmation is misplaced. This Office Memorandum was issued almost a year and a half after the Petitioner's stipulated period of probation *ended*. There is no provision in Office Memorandum that makes it applicable retrospectively. It does not and cannot cover the Petitioner's case, but only future cases. There is also the question of whether the Office Memorandum, being legislation subordinate to the Recruitment Rules, can be used to add such conditions when the Recruitment Rules do not provide for them. There is no argument before us that the Recruitment Rules provide only a minimum standard and not a limit, or that an office memorandum under those Rules can travel beyond the limits imposed by those Rules.

28. We do not find merit in the Respondents' submission that the Petitioner's appointment was purely temporary, and this temporariness must be separated from probation; or, alternatively, that 'probation' is to be equated to 'temporary'. Temporary means 'for the present', 'transitory', 'transient', 'for a limited period'. A probationer is on trial, whether to a temporary or permanent/regular post, and serves out a trial period. It is to him that one of the three lines of authority apply, depending on the relevant rules and the applicable order. A temporary appointment may or may not result in a permanent one. A temporary post must itself be extended. The question of 'temporary' or 'regular/permanent' speaks not to the appointment on probation (for probation is possible in both kinds of posts), but to the post itself. Neither the order of appointment nor the Recruitment Rules contemplated the *post* to be temporary.

29. The Respondents are incorrect in contending that the terms of the offer letter should be 'deemed' to have been incorporated in the appointment order. There is nothing in the order of appointment to suggest this. In fact, even the provision on probation in the order of appointment and the offer letter are different. The order of appointment, in fact, had the effect of appointing the Petitioner in a regular post. What the Respondents would have us do is to supply something that has been left out in the order of appointment. This we cannot and will not do.

30. We believe Mr Desai is correct in his contention that the Petitioner's case falls in the second line of cases discussed in *Jhavar*, those covered by *Dharam Singh* and *Om Prakash Maurya*. In

both *Dharam Singh* and *Om Prakash Maurya*, the relevant rules prescribed a period of probation, permitted the extension of such probation, and then provided a maximum period beyond which probation could *not* be extended. The rules in neither of the cases required any condition to be fulfilled or departmental examination to be passed. The only difference in the present case is that the Recruitment Rules do not expressly provide a maximum period of probation. But there is no power to extend that probation period either, and that power must be specifically conferred. Therefore, it is only logical that where there is no power to extend probation, there is no question of laying down a maximum period for such extension.

31. Mr Dangui is incorrect in saying that a deemed confirmation can never be inferred. This is settled by *Jhavar*, where the Supreme Court said:

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 a 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*** [AIR 1968 SC 1210 : (1968) 3 SCR 1]. 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 *Samsher Singh* [(1974) 2 SCC 831 : 1974 SCC (L&S) 550] and the Constitution Bench decisions in the cases of *Sukhbans*

Singh [AIR 1962 SC 1711 : (1963) 1 SCR 416], G.S.
Ramaswamy [AIR 1966 SC 175 : (1964) 6 SCR 279] and
Akbar Ali Khan [AIR 1966 SC 1842 : (1966) 3 SCR 821].

(Emphasis added)

32. This is not a case of a merely or only providing a maximum period of probation and that then automatically resulting in a deemed confirmation. This is a case where there was not only no provision for extension of the probation period, but the probation period was never extended before it ended; was purportedly extended only several years later; and was then purported to be extended only for non-fulfilment of conditions that were never specified in the initial letter of appointment. This is a case that falls under the *Dharam Singh* line, as explained in *Jhavar, supra*: the deemed confirmation can be legitimately inferred from the Rules by implication.

33. We turn now to the cases relied upon by Mr Dangui. His compilation contains additional cases, not relied upon at the time of hearing and, therefore, not been discussed. In *Jhavar*, the Respondents were appointed to post of Civil Judge (Trainee), Class II on an officiating basis. according to the relevant rules, the Respondents underwent training for a period of six months after which they were appointed on probation. The rules stipulated that the probation would initially be for a period of two years, and that such probation could be extended by another two years. Four years was, therefore, the maximum probation period under the rules. The orders of termination were passed at different points in time after the Respondents had already completed four years of probation.

The Respondents challenged these orders of termination of the ground that on completion of the maximum period of probation, they were deemed to be confirmed to their posts. They relied on *Dharam Singh*. The Court rejected their arguments. What weighed with the Court was the fact that the rules required *certain preconditions to be satisfied before the Respondents could be confirmed*. The Respondents were required to pass a departmental examination and specific orders of confirmation were required to be issued. In light of these prerequisites, the Court held that the Respondents could not have been deemed to be confirmed merely on the expiry of the probation period. Having found no such prerequisites for confirmation in the present case, we find that this decision does not assist the Respondents.

34. All the remaining cases relied upon by the Respondents parallel the third line of cases referred to in *Jhavar*: a specific act was required under the relevant service rules or the appointment order as a prerequisite for confirmation and, therefore, the appointee was not deemed to have been confirmed on the expiry of the probation period in absence of such act. Having found no such prerequisite for confirmation in the Recruitment Rules or the appointment order, these cases, we believe, do not sufficiently support the Respondents' case.

35. In *Binoy Kumar Mukherjee*,²⁵ the Appellant was appointed to the post of an Enforcement Officer by the Government of Bihar on 22nd April 1949. The post of the Enforcement Officer was

25 *Supra*; (1972) 4 SCC 209.

temporary, created only for a period of five years with effect from 1st March 1948. Before the expiry of the five-year period, on 2nd November 1952, the Appellant was transferred to the office of the Regional Transport Officer and Secretary on a temporary basis. This post was also created for a temporary period but was subsequently made permanent by an order of the State Government dated 2nd December 1954. This order provided that temporary appointees like the Appellant were to continue as such until specific orders were issued either confirming them or otherwise, or until 31st May 1955, whichever was earlier. It was only on 18th June 1955 that a similar order was issued extending the Appellant's appointment until further specific orders were issued confirming them or otherwise, or until 21st October 1955. Such orders were routinely issued until the order terminating the Appellant's appointment was passed on 24th January 1963. The Appellant's case was that since no order was passed before 31st May 1955, he must be deemed to have been confirmed from the end of this date, i.e., from 1st June 1955. The Court rejected this argument and held that he was deemed to have continued in a temporary capacity. The Court found that the order dated 2nd December 1954 specifically required an order to be passed for confirmation to the post. In the absence of any such order, the Court concluded that the Appellant was continued in a temporary capacity. Hence, this decision too is of no assistance to Mr Dangui.

36. In *Mohammad Salman*,²⁶ the Appellant was appointed as an assistant teacher in a Madrasa by an order dated 22nd February

26 *Supra*; (2011) 12 SCC 308.

1989. His appointment began on 1st March 1989. The order specified the Appellant's appointment as being probationary for an initial period of one year and stipulated a specific precondition for confirmation, viz., satisfactory performance during the probation period. The order expressly empowered the Respondent to terminate the Appellant's appointment for unsatisfactory performance during the probation period stipulated by the rules, viz., one year, extensible by one more. The Appellant's probation was accordingly extended by one year. Therefore, the Appellant's two-year probation period ended on 1st March 1991. The Appellant received a communication from the Respondent on 10th April 1992, informing him of his unsatisfactory performance and extending his probation period as a chance to improve his performance. On 13th February 1993, the Appellant received another letter from the Respondent that highlighted his unsatisfactory performance and directed him to show cause as to why he should not be terminated. Having received no representation, the Respondent terminated his appointment on 3rd April 1993. The Appellant challenged this order of termination on the ground that after expiry of the two-year probation period, his appointment must be deemed to have been confirmed following *Dharam Singh*. The Court, in paragraph 18, held that for want of fulfilment of the pre-condition for confirmation stipulated in the order of appointment, viz., satisfactory performance during the probation period, the Appellant could not have been deemed to have been confirmed. His confirmation would require a specific order certifying his satisfactory performance while on probation. The court relied on the decisions in *State of Uttar*

*Pradesh v Akbar Ali Khan*²⁷ and *Kedar Nath Bahl (I)*.²⁸ These cases are identified in *Jhavar* as part of the first line of cases where the rules specify a period of probation, which may be extended without any limitation. As we have said earlier, the present case falls in the second line of cases identified in *Jhavar*. These cases (*Mohammed Salman, Akbar Ali Khan* and *Kedar Nath Bahl (I)*), therefore also do not aid Mr Dangui.

37. In *Bhimashankar Sidram Katke*,²⁹ the Petitioner was appointed as a marriage counsellor under the Maharashtra Family Courts Rules, 1987. He was to serve on probation for a period of two years. This he did. By an order dated 13th January 1998, the Petitioner was continued on an officiating basis. There was no order of confirmation. Subsequently, by order dated 23rd March 2004, his appointment was terminated. The Petitioner challenged this order of termination on the ground that on expiry of the probation period, his appointment was confirmed to the post. He, therefore, could not have been removed from service by recourse to the rules for termination applicable to a probationer and without being given prior notice. The rules in this case specified a period of probation for two years, but expressly conferred on the High Court (the appointing authority) the power to extend this period without

27 AIR 1966 SC 1842.

28 (1974) 3 SCC 21. This is the first *Kedar Nath Bahl* case. The appeal was by leave, a certificate for leave to appeal having been granted by the High Court. The appeal was dismissed; a review petition was dismissed; a second review petition was dismissed, restored, the appeal heard again (principally on *mala fides* alleged), and finally dismissed in *Kedar Nath Bahl v State of Punjab & Ors*, 1978 4 SCC 336: *Kedar Nath Bahl (II)*.

29 *Supra*; 2005 (1) Mh LJ 406.

prescribing a maximum limit. The rules, further, stipulated three preconditions for confirmation: existence of a permanent vacancy; satisfactory performance; and a written order expressly confirming the appointee. On account of the preconditions for confirmation, and in the absence of a prohibition on extension of the probation period, the Court concluded that the Petitioner could not be deemed to have been confirmed. This case is unique since it has attributes of both the first and third lines of cases set out in *Jhavar* — a specified period of probation which could be extended without limit, and preconditions for confirmation. In the present case, neither the Recruitment Rules nor the order of appointment grant any such power to extend probation beyond a period of one year. They do not stipulate any preconditions for confirmation either. We, therefore, find that this judgment does not support the Respondents' case.

38. In *Head Master, Lawrence School, Lovedale*,³⁰ the 1st Respondent was appointed to the post of a mistress of a school with effect from 1st September 1993. The letter of appointment placed her on probation for a period of two years, which could be extended by another year. It was. On 18th June 1997, the 1st Respondent's appointment was terminated on account alleged misconduct. The 1st Respondent challenged her termination. She contended that on completion of her prescribed three-year probation period which, according to her, was the maximum period of probation permissible under the applicable rules, she was deemed to have been confirmed. Therefore, her appointment could not have been terminated without

30 *Supra*; (2012) 4 SCC 793.

an enquiry. The rules provided for a period of probation of ordinarily one year, which could be extended for a further period of two years. They stipulated that the appointee, if confirmed, would hold office till the age of 55. The interpretation of the phrase 'if confirmed' was the crux of the dispute. The question that arose before that Court was whether the use of this phrase meant that a positive act for the purpose of confirmation was required or whether it merely fixed an upper-age limit. The Court, in paragraph 38, adopted the former interpretation; the positive act being the issuance of an order of confirmation. In paragraph 39, the Court held that the case fell squarely in the third line of cases mentioned in *Jhavar*. As such, we find this judgment of no relevance to the case at hand.

39. In light of this discussion, in our judgment, the order purporting to extend the probation of the Petitioner cannot be sustained. It must be quashed.

40. Having decided the challenge to the order extending the probation of the Petitioner, we now turn to the challenge to the order terminating the Petitioner's service. The Petitioner's services were terminated on the ground that his performance during his probation period was unsatisfactory. We find that the Petitioner is correct when he says that the grounds for termination were not tenable, and, therefore, the order of termination was void. This termination order came to be issued more than five years after the Petitioner's appointment, and more than four years after he completed his period of probation. We have already held that the Petitioner could not be deemed to be continuing on probation, but

was deemed confirmed at the expiry of his probation period. He, therefore, could not possibly be removed on the ground that his performance during probation was unsatisfactory. The order terminating him, being founded on such ground, as a result, cannot be sustained.

41. The argument of the Respondents that there were a multitude of reasons for terminating the Petitioner's services, and that unsatisfactory performance during probation was only one of them, is of no help to their case. None of these grounds argued find place in the order of termination. Therefore, they do not fall for our consideration. The Respondents also pressed into service the Annual Confidential Reports they had issued to the Petitioner to indicate their dissatisfaction in his services. However, these were issued belatedly, a full two and a half years after his probation was complete. These too, therefore, are of no significance.

42. The order is also in violation of Article 311(2) of the Constitution of India. Article 311(2) mandates that the employee being removed must be informed of the charge on which he is being removed and must be given an opportunity to make a representation against such charge. Having found that the Petitioner was confirmed at the end of his probation period, the Respondents were required to follow the mandate of Article 311(2). They did not. The order of termination is, therefore, liable to be quashed.

43. The Petitioner made an argument in the alternative that even if he is considered a probationer, his challenge to his order extending

his probation failing, he would be still entitled to the protection of Article 311(2) because the allegations made against him were stigmatic in nature. Since we have already held for the Petitioner on both his challenges, we do not find it necessary to discuss his argument in the alternative.

44. For these reasons, Rule is made partly absolute in terms of prayer clauses (A), and (C). These are as follows:

"(A) For a writ of certiorari or any other appropriate writ order or direction in the nature of certiorari, for quashing and setting aside the impugned order no. 7/5/92-PER (Vol-1) dated 02.01.2008 terminating the Petitioner's services with immediate effect, after calling for record of the case from the Respondents 1, 2 and 3 and considering the same.

(C) For a writ of certiorari or any other appropriate writ order or direction in the nature of certiorari, for quashing and setting aside the impugned order no. 7/5/92-PER (Vol-1) dated 14.08.2006 made by Respondent no. 1, ordering the extension of the probation period of the Petitioner after calling for record of the case from the Respondents 1, 2 and 3 and considering the same."

45. The Petitioner is held to have completed his probation on the 22nd November 2003.

46. Ordinarily, we would have directed the Respondents to reinstate the Petitioner. However, in August 2016 he reached the age of retirement. Therefore, we cannot grant prayer (B), which seeks reinstatement. What we do instead is to direct Respondent No.1 to provide the Petitioner with all service benefits to which he is

entitled in law on the basis that he was confirmed to the post on 22nd November 2003.

47. We further direct the Respondents to pay the Petitioner his back wages for the period commencing on the date of his termination and ending on the date he would have ordinarily retired. All remuneration must be calculated and paid to the Petitioner on the basis that his service was continuing. Interest, if any, of the amount due will be computed according to the rules or at 6% per annum, whichever is less.

48. The petition is disposed of in these terms, with no order as to costs.

49. Mr Dangui seeks a stay of the operation of this order. Having regard to the fact that we could not order reinstatement, and have only directed payment of past benefits, the request is declined.

(G.S. PATEL, J.)

(N. D. SARDESSAI, J.)

OFFICIAL GAZETTE



GOVERNMENT OF GOA

NOTE: There are five Extraordinary issues to the Official Gazette, Series I No. 41 dated 9-1-97 as follows:

- 1) Extraordinary dated 9-1-1997 from pages 583 to 584 regarding Notification from Department of Personnel.
- 2) Extraordinary No. 2 dated 9-1-1997 from pages 585 to 588 regarding Notification from Department of Panchayat Raj and Community Development (Directorate of Panchayats).
- 3) Extraordinary No. 3 dated 9-1-1997 from pages 589 to 594 regarding Notifications from Departments of Finance and Department of Panchayat Raj and Community Development (Directorate of Panchayats).
- 4) Extraordinary No. 4 dated 10-1-1997 from pages 595 to 598 regarding Notification from Department of Panchayat Raj and Community Development (Directorate of Panchayats).
- 5) Extraordinary No. 5 dated 13-1-1997 from pages 599 to 602 regarding Notification from Department of Finance (Budget Division).

GOVERNMENT OF GOA

Department of Personnel

Notification

1/17/14/PER (Vol. III)

In exercise of the powers conferred by the proviso to Article 309 of the Constitution, and in supersession of the existing recruitment rules for the relevant posts, the Governor of Goa hereby makes the following rules to regulate the recruitment to the Goa General Services, Group 'A' Gazetted posts in the Goa College of Pharmacy, Government of Goa, namely:—

1. Short title, application and commencement.—

(1) These rules may be called the Government of Goa, Goa College of Pharmacy, Group 'A' Gazetted posts, Recruitment Rules, 1997.

(2) They shall apply to the posts specified in column 1 of the Schedule to these rules (hereinafter called as the "said Schedule").

(3) They shall come into force from the date of their publication in the Official Gazette.

2. Number, classification and scales of pay.— The number of posts, classification of the said posts and the scales of pay attached thereto shall be as specified in columns 2 to 4 of the said Schedule.

Provided that the Government may vary the number of posts in column 2 of the said Schedule from time to time subject to exigencies of work.

3. Method of recruitment, age limit and other qualifications.— The method of recruitment to the said posts, age limit, qualifications and other matters connected therewith shall be as specified in columns 5 to 13 of the said Schedule.

4. Disqualification.— No person who has entered into or contracted a marriage with a person having a spouse living or who, having a spouse living, has entered into or contracted a marriage with any person, shall be eligible for appointment to the service.

Provided that the Government may, if satisfied that such marriage is permissible under the personal law applicable to such person and the other party to the marriage and that there are other grounds for so doing, exempt any person from the operation of this rule.

5. Power to relax.— Where the Government is of the opinion that it is necessary or expedient so to do, it may, by order, for reasons to be recorded in writing and in consultation with the Goa Public Service Commission, relax any of the provision of these rules with respect to any class or category of persons.

6. Saving.— Nothing in these rules shall affect reservation, relaxation of age limit and other concessions required to be provided for Scheduled Castes and other special categories of persons in accordance with the orders issued by the Government from time to time in that regard.

7. These rules are issued in consultation with the Goa Public Service Commission vide their letter No. COM/II/13/33 (1)/96 dated 20-12-1996.

By order and in the name of the Governor of Goa.

S. S. Keshkamat, Joint Secretary (Personnel).

Panaji, 6th January, 1996.

SCHEDULE

1	2	3	4	5	6	6(a)	7	8	9	10	11	12	13
Name of Designated post	Number of posts	Classification	Scale of pay	Whether selection post or non-selection post	Age limit for direct recruits	Whether the benefit of added years of service is admissible under Rule 30 of CCS (Pension) Rules, 1972	Educational and other qualifications required for direct recruits	Whether age & educational qualifications prescribed for the direct recruits will apply in the case of promotion	Period of probation, if any	Method of recruitment, direct or by promotion or by deputation/transfer/promotion, and percentage of the vacancies to be filled by various methods	In case of recruitment by promotion/transfer/promotion, grades from which promotion/transfer is to be made	If a D. P. C. exists, what is its composition	Circumstances in which Goa Public Service Commission is to be consulted in making recruitment
Principal (one) only.	1	Goa General Service Group 'A' Caste, 2nd.	Rs. 6300-2200-7500.	N. A.	Not exceeding 50 years (Retirable for Government servants upto 5 years in accordance with the instructions or orders issued by the Government)	No	Essential: (i) Master's degree in appropriate branch of Pharmacy after obtaining a basic degree in Pharmacy with 10 years teaching experience out of which 5 years must be as Professor at degree level. OR Master's degree in Pharmacy after obtaining 1st class basic degree in Pharmacy followed by a Doctorate degree or equivalent published work of high standard in appropriate branch of Pharmacy with 8 years experience in teaching of degree level/industry/research out of which at least 5 years must be as Professor or equivalent.	N. A.	One year.	By direct recruitment.	N. A.	Group 'A' DPC consisting of: 1) Chairman/Member, GPSC — Chairman. 2) Chief Secretary or his nominee — Member. 3) Administrative Secretary/Head of Department — Member. (For confirmation only)	As required under the GPSC (Exemption from Consultation) Regulation, 1988. Consultation with the GPSC is necessary for making direct recruitment, promotion, deputation, selection of an Officer for appointment on deputation and for amending/relaxing any of the provisions of these rules.

16TH JANUARY 1997

(ii) Knowledge of Konkani.

Note: In case of non-availability of suitable candidate with the knowledge of Konkani, this requirement can be relaxed.

Desirable:

- i) Knowledge of Marathi.
- ii) Administrative experience in a responsible position.

Professors (Pharmacetical Chemistry/Pharmacology/Pharmacology)	4 (1997) subject to variation depend on workload.	Coa General Service Group 'A' Grade -7300.	Rs. 4500-150-5700-200-7300.	N. A.	Not exceeding 50 years (relaxable for Government servants upto 5 years in accordance with instructions or orders issued by the Government)	No.	Essential:	N. A.	One year.	By direct recruitment.	N. A.	Group 'A' DPC consisting of—	As required under the GPSC (Exemption from Consolidation) Regulations, 1988. Consultation with the GPSC is necessary for making direct recruitment, promotion, confirmation and selection of an officer for appointment on deputation and for amending/relaxing any of the provisions of these rules.
i) Master's degree in appropriate branch of Pharmacy after obtaining a basic degree in Pharmacy with 10 years teaching experience out of which 5 years must be as Assistant Professor at degree level.												1) Chairman / Member, GPSC—Chairman.	
												2) Chief Secretary or his nominee — Member,	
												3) Administrative Secretary/Head of Department —Member.	
												(For confirmation only).	

1	2	3	4	5	6	6(a)	7	8	9	10	11	12	13
							out of which at least 5 years must be as Assistant Professor or equivalent.						
							ii) Knowledge of Konkani.						
							Note: In case of non-availability of suitable candidate with the knowledge of Konkani, this requirement can be relaxed.						
							Desirable:						
							i) Knowledge of Marathi.						
							Essential:						
							(i) Master's degree in appropriate branch of Pharmacy after obtaining a 1st class basic degree in Pharmacy with 8 years experience as Lecturer at degree level.						
							OR						
							Master's degree in Pharmacy after obtaining 1st class basic degree in Pharmacy followed by a Doctorate degree or equivalent published work of high standard in appropriate branch of Pharmacy with 5 years experience in teaching at degree level/industry/research.						
							ii) Knowledge of Konkani.						
							Note: In case of non-availability of suitable candidate with the knowledge of Konkani, this requirement can be relaxed.						
							Desirable:--						
							Knowledge of Marathi.						
Asst- tant profes- sor.	6 (1997) Subject to variation depend- ent on work- load.	Goa General Service Group 'A' Gazet- ted.	Rs. 3700- 125- 4950- 250- 5700.	N. A.	Not exceeding 45 years (relax- able for Gov- ernment ser- vants upto 5 years in accor- dance with the instructions or orders issued by Govern- ment).	No		N. A.	One year.	By direct recruit- ment.	N. A.	Group 'A' DPC con- sisting of:-- 1) Chairman/ Member GPSC—Chair- man. 2) Chief Secretary or his nominee — Member. 3) Administrative Secretary/ Head of Department — Member. (for confirmation only).	As required under the Goa Public Service Commission (Exemption from Consulta- tion) Regula- tions, 1988. Consultation with the Goa Public Service Commission is necessary for making direct recruitment, promotion, confirmation and selection of an officer for appointment in deputation and for amending/ relaxing any of the provisions of these rules.

10 (1997) Subject to variation depend- ent on work- load).	Goa General Service Group 'A' Gazet- ted.	Rs. 2200- 75- 2600- 100- 4000.	Selec- tion.	Not exceeding 35 years (Re- laxable for Government servants upto 5 years in accor- dance with the instructions or orders issued by the Govern- ment).	No Essential:	No	One year By direct recruit- ment.	N. A.	Group 'A' D. P. C. con- sisting of — (1) Chairman/Mem- ber, G. P. S. C. — Chairman. (2) Chief Secretary or his nominee — Member. (3) Administrative Secretary/Head of Department — Member. (For confirmation only).	As required under the GPSC (Exemption from Consula- tion) Regula- tions, 1988. Consultation with the G. P. S. C. is neces- sary for making direct recruit- ment, promo- tion, confirma- tion and selec- tion of an offi- cer for appoint- ment on depo- sition and amending/re- laxing any of the provisions of these rules.
					i) 1st Class Master's Degree in appropriate Branch of Pharmacy after obtaining a basic degree in Phar- macy. ii) Knowledge of Konkani.					
					Note: In case of non- availability of suitable candidate with the know- ledge of Konkani, this requirement can be relaxed.					
					Desirable:					
					Knowledge of Mazathi.					

Loc- turer in (1997)	2 Micro- biol- ogy/ Bio- chemis- try.	Goa General Service Group 'A' Gazet- ted.	Rs. 2200- 75- 2600- 100- 4000.	Selec- tion.	Not exceeding 35 years (Re- laxable for Government servants upto 5 years in accor- dance with the instructions orders issued by the Govern- ment).	No Essential:	No	One year.	N. A.	Group 'A' D. P. C. con- sisting of :— (1) Chairman/Mem- ber, G. P. S. C. — Chairman. (2) Chief Secretary or his nominee — Member. (3) Administrative Secretary/Head of Department — Member. (For confirmation only).	As required under the GPSC (Exemption from Consula- tion) Regula- tions, 1988. Consultation with the G. P. S. C. is neces- sary for making direct recruit- ment, promo- tion, confirma- tion and selec- tion of an offi- cer for appoint- ment on depo- sition and amending/rela-
						i) Master's degree in the relevant subject with at least 55% marks or equivalent grade and good academic record. ii) Candidates besides fulfilling the above qualification should have cleared the eligibility test for Secretaries conducted by U. G. C./CSIR or State Eligibility test. OR Should have submitted file Ph. D. thesis or					

1	2	3	4	5	6	6(s)	7	8	9	10	11	12	13
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king any of the provisions of these rules.

completed their M. Phil. degree by 31st December 1993.

iii) Knowledge of Konkani.

Note: In case of non-availability of suitable candidate with the knowledge of Konkani, this requirement can be relaxed.

Desirable:

- i) Ph. D. or M. Phil. in the relevant subject.
- ii) Knowledge of Marathi.

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