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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 07.05.2018

LPA 17/2018

J A J VASU SENA

..... Appellant

versus

DURGABAI DESHMUKH MEMORIAL SR. SEC. SCHOOL & ORS.

..... Respondents

Advocates who appeared in this case:

For the Appellant	: Mr. D. Rama Krishna Reddy and Ms. Vidyottma, Advocates.
For the Respondents	: Mr. Hanu Bhaskar, Advocate for respondent Nos. 1 and 2. Mr. N.K. Singh, Advocate for Mrs. Avnish Ahlawat, Advocate for respondent No. 3/DOE with Mr. Raj Kumar, DEO (Zone-27) and Mr. Pradeep Kaushik, Zone -27, DDEC/N.D, Jhandewalan, New Delhi.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MS. JUSTICE DEEPA SHARMA

J U D G M E N T

SIDDHARTH MRIDUL, J (ORAL)

1. The present appeal under Clause 10 of the Letters Patent Act assails the judgment and order dated 25th October, 2017, passed by a learned Single

Judge of this Court in Writ Petition (Civil) No. 10310/2015, titled as “*Andhra Education Society & Anr. vs. Directorate of Education & Anr.*”, whereby, the petition instituted on behalf of the Andhra Education Society /respondent No. 2 herein (hereinafter referred to as ‘the Society’), impugning an order dated 23rd July, 2015, passed by the Delhi School Tribunal (hereinafter referred to as ‘the Tribunal’) was allowed, whilst setting aside the order of the Tribunal.

2. The appellant was appointed to the post of PGT English (General) in the said Society vide a Memorandum dated 18th June, 2008, and joined the respondent School on 2nd July, 2008, on the following terms and conditions:-

- “1. She will be allowed initial pay of Rs.6500/- in the pay scale of Rs.6500-200-10500, plus all allowances as admissible under the rules.*
- 2. She will be on probation for a period of one year from the date of joining.*
- 3. During the period of probation her services are liable for termination with one’s notice on either side.*
- 4. She is required to produce a medical certificate from a Delhi Administration Dispensary/Hospital certifying her fitness for the job.*
- 5. She has also to produce character certificate from two different Gazetted Officers.*

6. *The appointment is subject to the approval of the Director of Education, Delhi Administration, Govt. of NCT Delhi.*
7. *If the offer or appointment is acceptable she must report to duty on 1st July, 2008.*
8. *All certificates relating to academic qualifications and experience should be produced in original along with two sets of photocopies duly attested by a Gazetted Officer the time of joining duty.*
9. *The acceptance of the offer of appointment may be indicated by returning the duplicate copy duly signed by the candidate immediately.”*

3. A perusal of the above letter of appointment reflects that the appellant was required to be on probation for a period of one year from the date of joining and that, her services would be terminated by one month's notice on either side during that period. In terms thereof, admittedly, the appellant's period of probation was extended belatedly in the first instance on 11th February, 2010, for a period of one year on the ground that her performance was unsatisfactory. Subsequent thereto, the appellant's period of probation came to an end on 2nd July, 2010. Thereafter, the Society, once again, belatedly, extended the probation for a further period of one year on 30th November, 2011. Eventually vide order dated 22nd May, 2013, the Managing Committee of the Society discharged the appellant from the service.

4. Aggrieved by her discharge, the appellant instituted an appeal bearing Appeal No. 54/2013, before the Tribunal. Before the said Tribunal, relying upon the provision of Rule 105 of the Delhi School Education Act and Rules, 1973 (hereinafter referred to as 'the said Rules') and the decision of this Court in the writ petition being W.P. (C) No. 8652/2011 titled as "**Hamdard Public School vs. Directorate of Education and Ors.**", decided on 25th July, 2013, it was urged on behalf of the said Society that the period of probation of the appellant could be extended upto five years, in order to provide an opportunity to the appellant to improve herself and that on account of her inability so to do, she had been discharged. It was further urged on behalf of the said Society that the provision of Rule 105 did not provide for deemed confirmation and that a positive act on behalf of the employer is required for the confirmation of an employee who is on probation.

5. *Per contra*, on behalf of the appellant, it was argued that the question of deemed confirmation in service jurisprudence is dependent on the language of the contract, as has been held by the Hon'ble Supreme Court in the decision of **High Court of M.P. through Registrar & Ors. vs. Satya**

Narayan Jhavar reported as **(2001) 7 SCC 161** and in particular paragraph 11 thereof, which reads as follows:-

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

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

(emphasis supplied)

6. It is urged on behalf of the appellant that the decision in Satya Narayan Jhavar (*supra*) clearly lays down that where a maximum period for extension of probation period is provided, either in the service rules or in the letter of appointment, any further extension of the same is not permissible. The inference is that the employees are deemed to have been confirmed upon expiry of the maximum period of probation, without any specific act on the part of the employer.

7. The Tribunal having considered the material on record, as well as, the decision relied upon by the parties, came to a conclusion that the case of the appellant falls in the second category extracted hereinbefore, inasmuch as, there was no provision in the appointment letter for further extension of the period of probation, nor was there any mention in the appointment letter that there would be no confirmation of appointment unless a specific order of confirmation is passed in that behalf. The Tribunal further returned a finding that, even otherwise, according to Rule 105 of the said Rules, the period of probation of an employee can be extended at the maximum, upto two years.

It was, consequently, directed by the Tribunal that the appellant was illegally and contrary to the mandate of law, discharged from services; and the order of discharge dated 22nd May, 2013, was accordingly set aside, reinstating the appellant with immediate effect and with all consequential benefits.

8. The Society being aggrieved by the order dated 23rd July, 2015, passed by the Delhi School Tribunal carried the same further by way of the said writ petition before this Court.

9. By way of the order impugned in the present appeal, the learned Single Judge, whilst allowing the writ petition observed as follows:-

“10. Upon considering the submission advanced by both the sides and on perusal of impugned order, material on record and the decisions cited, I find that the first category, as spelt out in Satya Narayan Jhavar (Supra) is of cases where period of probation is specified and power to extend the same is conferred upon the authority without prescribing any maximum period of probation and if an employee has continued beyond the prescribed or extended period, he/ she cannot be deemed to be confirmed. The second category, as spelt out in Satya Narayan Jhavar (Supra) is of cases where there is a provision in rules for extension of period of probation and maximum period of probation is also provided and in such case, it is impermissible to extend the probation and the inference in such cases is that the employee is deemed to be confirmed.

11. Upon careful perusal of impugned order, I find it strange as to how the Tribunal has come to a conclusion that the instant case comes in the second category, as spelt out in *Satya Narayan Jhavar (Supra)*. It is quite clear that the instant case falls in the first category, as maximum period of probation has not been spelt out in the appointment letter and so, it is not the case of deemed confirmation. The issue in hand stands clinched by a Division Bench decision of this Court in *Veena Sharma (Supra)* wherein while interpreting Rule 105 of Delhi School Education Act & Rules, 1973 in question, it has been categorically held that under this Rule, there is no concept of deemed confirmation and the confirmation is subject to work and conduct of an employee being satisfactory. Meaning thereby, if the work and conduct of an employee is not found to be satisfactory, the employer can discharge such an employee. What is the reasonable period within which an employee ought to be discharged, has been considered by a Coordinate Bench of this Court in *Hamdard Public School (Supra)*. This Court is of the opinion that the learned Tribunal in paragraph No.21 has correctly noted the ratio of *Hamdard Public School (Supra)* but has erred in concluding that the second respondent had put in more than five years of service. In fact, second respondent had rendered service of four years and ten months. Since an employee can be discharged within the bracket of service period of five years, therefore, I find that petitioner had rightly discharged second respondent in the face of Memo of 11th November, 2010 and her leave record etc.

12. In the light of aforesaid conclusion, I find that the impugned order cannot be sustained and is accordingly set aside and petitioner's order of 22nd May, 2013 discharging second respondent is restored."

10. A plain reading of the above-extracted paragraphs reflects that the learned Single Judge was of the view that the appellant's case falls in the first category of cases where, in the letter of appointment, a period of probation is specified and the power to extend the same is also conferred upon the authority, without prescribing any maximum period of probation. If the probation period of the employee is continued beyond the prescribed or extended period, she cannot be deemed to be confirmed.

11. On behalf of the appellant, it has been urged that the conclusion arrived at, by the learned Single Judge is erroneous, inasmuch as, although the appellant's probation was extended, in terms of the stipulation contained in Rule 105 of the said Rules, the same were subject to a maximum period of two years' probation. The Society having extended the period of probation of the appellant upto almost five years, belatedly, on two occasions, would resultantly lead to an inescapable conclusion that the appellant would have been deemed to be confirmed.

12. On the other hand, Mr. Hanu Bhaskar, learned counsel appearing on behalf of the Society, would invite our attention to the decision of a Division Bench of this Court in *Deputy Director of Education & Anr. vs. Veena Sharma* reported as **2010 VII AD (Delhi) 655** and in particular paragraph 22

thereof, to urge that the concept of deemed confirmation does not arise from a plain reading of the language of Rule 105 (2) of the said Rules.

13. We find ourselves unable to agree with the contention raised on behalf of the Society. A perusal of the record would clearly and unequivocally reveal that, the letter of appointment dated 18th June, 2008, provided for a period of one year of probation from the date of joining. The appellant admittedly joined the service on 2nd July, 2008 and in the ordinary course, her period of probation would lapse on 2nd July, 2009. Without making any assertion of her conduct or performance being unsatisfactory, the Society belatedly extended her probation till 2nd July, 2010, vide order dated 11th February, 2010. The appellant thereafter continued in service till a further extension was granted by the Society vide letter dated 30th November, 2011, for the period 21st October, 2011 to 21st October, 2012. Even after the expiry of the said period of extended probation, the Society without cavil, permitted the appellant to continue in service till the passing of the discharge order dated 22nd May, 2013, i.e. for a period of seven months beyond the lapse of the last period of extended probation. From the conduct of the Society, it is evident that the services of the appellant were satisfactory and without blemish.

14. We are also unable to agree with the impugned order, insofar as, it holds that the appellant's case belongs to the first category, where the letter of appointment provides for a specified period of probation with power vested with the employer to extend the same, without prescribing any maximum period and that, in view thereof, the continuation of the employee beyond that period cannot be said to result in automatic confirmation. We say so for the reason that, in the instant case, the letter of appointment categorically stipulates that the appellant would be on probation for a period of one year from the date of joining. We are further of the view that the provisions of Rule 105 of the said Rules insofar as, they relate to a minority institution, permit the latter to extend the period of probation of an employee for a period of one year only, without prior approval of the Director.

15. For the sake of reference to Rule 105 of the said Rules, the same is extracted hereinbelow:

105. Probation (1) *Every employee shall, on initial appointment, be on probation for a period of one year which may be extended by the appointing authority 1 [with the prior approval of the Director] and the services of an employee may be terminated without notice during the period of probation if the work and conduct of the employee, during the said period, is not, in the opinion of the appointing authority, satisfactory:*

[Provided that the provisions of this sub-rule relating to the prior approval of the Director in regard to the extension of the period of probation by another year, shall not apply in the case of an employee of a minority school:

Provided further that no termination from the service of an employee on probation shall be made by a school, other than a minority school, except with the previous approval of the Director.]

(2) If the work and conduct of an employee during the period of probation is found to be satisfactory, he shall be on the expiry of the period of probation or the extended period of probation, as the case may be, confirmed with effect from the date of expiry of the said period.

(3) Nothing in this rule shall apply to an employee who has been appointed to fill a temporary vacancy or any vacancy for a limited period.

(emphasis supplied)

16. A plain reading of the proviso to the said Rules leaves no manner of doubt that, if the minority institution intends to extend the period of probation beyond the period of one year, in addition to the original period of probation, it cannot do so without the prior permission of the Director. We are, therefore, of the view that where the letter of appointment, read in conjunction with the above Rule, fixes a maximum period of two years of probation and where the appellant was permitted to continue in the same post, beyond that maximum period, the same would amount to a deemed confirmation by implication, without the requirement of an express order of

confirmation on behalf of the Society. [Ref: *State of Punjab vs. Dharam Singh* reported as **AIR 1968 SC1210**]

17. In this view of the matter, we are of the considered opinion that, the appellant's case belongs to that category of cases where the letter of appointment, read together with the extant rules, provides for a maximum period of probation beyond which, the same cannot be extended. The inference in such cases, axiomatically is that, the appellant concerned is deemed to have been confirmed upon the expiry of the maximum period of probation unless, before its expiry, an order of termination has been passed. In this category of cases, there is no warrant for the Society to issue a letter of confirmation since the same is not warranted by the terms of appointment.

18. Consequently, we are in agreement with the findings arrived at by the Tribunal when it held as follows:-

“25. From the above discussion it is clear that the case of the Appellant falls in the second category referred as above. According to the condition No.2 of the appointment letter dated:18.6.2008 the Appellant was put on probation for a period of one year from the date of her joining. There is no provision in the appointment letter for further extension of the period of probation. There is no mention in the appointment letter that there would be no confirmation unless a specific order of confirmation is passed. R1 & R2

have relied upon the Rule 105 of Delhi School Education Act & Rules – 1973 while extending the period of probation of the Appellant. Even according to the rule 105 of Delhi School Education Act & Rules–1973 the period of probation on an employee can be extended at the most up to two years. In any case, in view of the interpretation of Rule 105 of Delhi School Education Act & Rules-1973, given by Hon’ble High Court of Delhi in the case of Hamdard Public School (Supra) period of probation in normal circumstances can be extended upto 3 years, it can be extended upto 5/6 years in rarest of rare cases. The case in hand does not fall in the category of rarest of rare cases. The Appellant had worked for more than 5 years when her services were terminated vide order dated 22.05.2013. In these circumstances her case is well covered under the Second category of the above quoted authority of Hon’ble Supreme Court titled High Court of Madhya Pradesh through Registrar and Others vs. Satya Narayan Jhavar, AIR (2001) SC 3234.”

19. Coming to the reliance placed by the learned counsel appearing on behalf of the Society on the decision in **Deputy Director of Education & Anr. vs. Veena Sharma (supra)**, it would be relevant to observe that the finding arrived at therein does not come to the aid of the Society, inasmuch as, in that case, by a specific term in the letter of appointment, a letter of confirmation was necessary. The letter of confirmation was further required to be issued, subject to the suitability and satisfactory service to be rendered by the employee to his express knowledge. It is in those circumstances that

the Division Bench held that the confirmation is not automatic, but subject to the suitability and satisfactory service rendered by the employee. We may also respectfully observe that it is a well settled law as held in ***Quinn vs. Leathem*** reported as **(1901) A.C. 495**, that a case is only an authority for what it actually decides and not what flows from it.

20. In view of the foregoing discussion, we are of the view that the present appeal deserves to be allowed. The order of the Delhi School Tribunal dated 22nd May, 2013 is accordingly upheld, while setting aside the decision of the learned Single Judge dated 25th October, 2017 in Writ Petition (Civil) No. 10310/2015.

21. This court in arriving at this conclusion is also persuaded by the circumstance that though the appellant, albeit working for a fairly long spell, cannot claim regularization as a matter of right in lieu thereof.

22. With the above directions, the appeal is allowed and disposed of accordingly.

23. No order as to costs.

SIDDHARTH MRIDUL
(JUDGE)

DEEPA SHARMA, J
(JUDGE)

MAY 07, 2018

RS