

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10046 of 2011

=====

Pankaj Kumar, son of Late Vijay Kumar Jha, R/O Goshala Road, South P & T Colony, Mithanpura, P.S- Mithanpura, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The LIC Of India through the Chairman, L.I.C. Of India, Mumbai.
2. The Zonal Manager, LIC Of India, Patna.
3. The Sr. Divisional Manager LIC Of India, Muzaffarpur.
4. The Branch Manager, Branch -3 LIC Of India, Muzaffarpur.

... .. Respondent/s

=====

with
Civil Writ Jurisdiction Case No. 11757 of 2011

=====

Ranjan Kumar, S/O Sri Gajendra Narai Sahahi, At And P.O.- Vill.- Sahatha, P.S.- Bhagwanpur, Distt.- Vaishali

... .. Petitioner/s

Versus

1. The LIC Of India, through the Chairman, LIC of India, Mumbai.
2. The Zonal Manager, LIC of India, Patna
3. The Sr, Divisional Manager, LIC of India, Muzaffarpur
4. The Branch Manager, Chapra Branch, LIC of India, Muzaffarpur

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr.Awadh Bihari Ojha, Senior Advocate Mr. S.N. Jha, Advocate
For the Respondent/s	:	Mr. Abhimanyu Vatsa, Advocate Mr. Rajni Kant Singh, Advocate Ms. Priti Jaiswal, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 02-04-2019

Heard parties.

Since in both the cases the identical issue has been raised, as such, with the consent of the parties, both the applications are being disposed of by this common order.



For the sake of convenience, the fact of CWJC No.10046 of 2011 (Pankaj Kumar Vs LIC of India) is being considered, as and when required, the Court will take the fact mentioned in CWJC No.11757 of 2011 (Ranjan Kumar Vs. LIC of India).

As in both the cases, the issue has been raised about the confirmation of the employee, who was taken in service on apprentice basis, and after the maximum period of extension, the person continued more than the maximum of the probation period, will be deemed to have been confirmed in the service, is the issue to be dealt with.

In the present case, Pankaj Kumar is challenging the order of his termination vide letter dated 06.04.2011 and the order of appeal dated 13.05.2011 in CWJC No.10046 of 2011 by which it has been communicated that the appeal does not lie to a person who has been terminated from the post of Probationary Development Officer and in CWJC No.11757 of 2011, Ranjan Kumar has challenged the order of termination, has been effected by order dated 06.04.2011

The fact of the case of petitioner Pankaj Kumar, is that he had appeared against the advertisement published by the Life Insurance Corporation of India (hereinafter referred to as L.I.C. of



India) for appointment to the post of Development Officer, cleared the written examination, was called for the personality test where also he was declared successful and finally, he was appointed as Apprentice Development Officer vide letter dated 22.10.2008 (Annexure-3), after successful completion of the apprentice training, the petitioner was appointed as Probationary Development Officer in LIC of India vide letter dated 28.01.2009 (Annexure-4). The terms and the conditions of the said appointment postulates, the period of probation at first stint was of 12 months, on non-completion of satisfactory service, discretion has been provided to the Management to extend the period of probation for further 12 months, in totality, the maximum period of probation was 24 months and in no case, it would go beyond 24 months. The petitioner's twelve months came to an end on 27.01.2010 as he was not found fit for confirmation, vide letter dated 27.01.2010, the period of probation was further extended for 12 months and that came to an end on 27.01.2011, but he continued to work in service up to 5th of April, 2011, was terminated from service vide order dated 6.04.2011 (Annexure-1).

Submission has been made by the counsel for the petitioners that 24 months is the maximum extended period of probation as per the terms and conditions of the appointment letter



it cannot be extended beyond 24 months in that event the employee continued to discharge the duty after 24 months will be treated to have been automatically confirmed in the service and for all purposes, he will be treated to a permanent employee of the LIC of India and there was/is no need to issue any letter of confirmation after the lapse of 24 months as it will be automatic confirmation in the service. In support of his submission, he has placed reliance on the following judgments reported in *AIR 1968 SC 1210 (State of Punjab Vs. Dharam Singh)*, *AIR 1988 SC 286 (M.K. Agarwal Vs. Gurgaon Gramin Bank and Ors.)*, *AIR 1986 SC 1844 (Om Prakash Maurya Vs. U.P. Co-Operative Sugar Factories Federation, Lucknow and Ors.)* and *AIR 1992 SC 947 (P.C. Bumotra Vs. Chairman-cum-Managing Director, New India Assurance Co.Ltd. And another)*, second point has been raised that the order of termination has been effected from retrospective date, is *per se* illegal, there cannot be any termination with the retrospective effect inasmuch as the tenor of the letter of termination reflects the stigma. If the stigma has been attached, it requires show cause, inquiry and only then, the order of termination with stigma can be effected, whereas the counsel for the LIC of India has submitted that there cannot be any automatic confirmation. It depends on the performance of probationer during



the period of probation and if it is found that he has successfully completed the probation period and by a specific order, the confirmation is to be given. Mere lapse of 24 months will not *ipso facto* treated to have been confirmed. The order of confirmation can be effected on consideration of different facets. As per the terms and conditions of the appointment letter, he was to secure the quantity of business as mentioned in the appointment letter, in the event of failure, his service would not be confirmed, the Management after examination of performance would take decision in the matter of confirmation of service. It has further been submitted that as there is no specific provision or the condition in the appointment letter of an automatic confirmation, hence, mere lapse of 24 months will not be treated to have been confirmed automatically. Further submission is that after the probation of 24 months, his performance was assessed, only thereafter a decision was taken with respect to the confirmation, in the case of the petitioner, the performance of the work was not up-to mark it has been found that he failed to secure business mentioned in the letter of appointment even though period has spilled over of 24 months will not be treated the petitioner has been confirmed. He has placed reliance on the different clauses mentioned in the appointment letter, as such, clause 2, clause 11



where the confirmation and increment has been dealt with and also the clause 13 and in support of his submission, he has placed reliance on the judgment reported in **(2001) 7 SCC 161 (High Court of Madhya Pradesh Vs. Satya Narayan Jhavar)**. He has further submitted that the letter which has been served dealing with the disengagement of the petitioner, cannot be said, in any manner, to be stigmatic order as the order itself shows that the petitioner has failed to fulfill the criteria laid down in the appointment letter will not be treated to be a blemished order of termination or to be treated as a stigmatic. The points which have been taken by the petitioner, is not sustainable as the Authority has found that the petitioner has failed to secure the minimum quantify of business which was required to be achieved by him.

Further grievance has been made by the petitioner that though he was allowed to work even after 24 months up to 6.04.2011 but he has not been paid salary for the period from 27.01.2011 to 6.04.2011, whereas, learned counsel for the LIC of India submits that though the payment has been made but the order has been passed for recovery of the same. Learned counsel for the LIC of India submits that if the petitioner has not been paid salary, LIC of India will make the payment and if any recovery has been made that will be returned with interest.



Having heard the rival contention, the first issue is to be decided that if the petitioner has worked beyond the second stint of the probation period, i.e. beyond 24 months, will be treated to have been confirmed in service or whether it requires a letter of confirmation from the LIC of India. If the Court arrives to a finding that if the person is allowed to work beyond 24 months would lead to automatic confirmation, in such circumstance, the termination may be held to be illegal, but if the Court arrives to conclusion that even after completion of 24 months, if the probationer somehow and other continued to work beyond that maximum period, later on terminated from service as it requires that there should be specific order of confirmation, in that circumstances, the Court will have to examine as to whether order of termination is stigmatic as well as the Authority has jurisdiction to pass an order giving retrospective effect.

Before deciding this case, it has to be examined the contention of the petitioners about deemed confirmation of the probationer, which issue has been considered and decided in long line judgments of the Hon'ble Supreme Court. On this point, first will be *AIR 1968 SC 1210 (State of Punjab Vs. Dharam Singh)*. In this case, the Court has held when in a letter of appointment or promotion stipulates probation for a specific period and the



employee is allowed to continue to discharge the duty even after the expiry of the period, without any specific order of confirmation, in the absence of any indication to the contrary in the original order of appointment or promotion or the service rules, he will be deemed to continue as a probationer only. In such a case, an express order of confirmation is necessary to give the probationer a substantive right to the post, mere fact that he was allowed to continue to the post, after expiry of the specified period of probation, it is not possible to hold that he would be deemed to have been confirmed in the service. In that case (Dharam Singh), the Rule forbids extension of the period of probation beyond three years. The Hon'ble Supreme Court has held that as in that case, the service rules fix a certain period of time beyond which the probationary period cannot be extended and a government employee appointed or promoted on probation is allowed to continue on that post, after completion of the maximum period of probation, without an express order of confirmation, he cannot be deemed to continue on that post as a probationer, he has been deemed to have been confirmed. The reason is that in the event of negative stipulation, the service rule forbids extension of the probationary period beyond the maximum fixed period will lead



to presumption of confirmation. It will be relevant to quote paragraphs 3 & 4 of the aforesaid judgment :

“3. This Court has consistently held that when a first appointment or promotion is made on probation for a specific period and the employee is allowed to continue in the post after the expiry of the period without any specific order of confirmation, he should be deemed to continue in his post as a probationer only, in the absence of any indication to the contrary in the original order of appointment or promotion or the service rules. In such a case, an express order of confirmation is necessary to give the employee a substantive right to the post, and from the mere fact that he is allowed to continue in the post after the expiry of the specified, period of probation it is not possible to hold that he should deemed to have been confirmed. This view was taken in Sukhbans Singh v. State of Punjab [1963 (1) SCR 416, 424-426] , G.S. Ramaswamy v. Inspector-General of Police, Mysore State, Bangalore [1964 (6) SCR 278, 288-289] , Accountant General, Madhya Pradesh, Gwalior v. Beni Prasad Bhatnagar [CA No 548 of 1962 decided on January 23, 1964] , D.A. Lyall v. Chief Conservator of Forests, U.P. [CA No 259 of 1963 decided on February 24, 1965] , and State of U.P. v. Akbar Ali [1963 (3) SCR 821, 825-826] . The reason for this conclusion is that where on the completion of the specified period of probation the employee is allowed to continue in the post without an order of confirmation, the only possible view to take in the absence of anything to the contrary in the original order of appointment or promotion or



the service rules, is that the initial period of probation has been extended by necessary implication. In all these cases, the conditions of service of the employee permitted extension of the probationary period for an indefinite time and there was no service rule forbidding its extension beyond a certain maximum period.

5. In the present case, Rule 6(3) forbids extension of the period of probation beyond three years. Where, as in the present case, the service rules fix a certain period of time beyond which the probationary period cannot be extended, and an employee appointed or promoted to a post on probation is allowed to continue in that post after completion of the maximum period of probation without an express order of confirmation, he cannot be deemed to continue in that post as a probationer by implication. The reason is that such an implication is negated by the service rule forbidding extension of the probationary period beyond the maximum period fixed by it. In such a case, it is permissible to draw the inference that the employee allowed to continue in the post on completion of the maximum period of probation has been confirmed in the post by implication”.

Again the matter came for consideration in ***AIR 1986 SC 1844 (Om Prakash Maurya Vs. U.P. Co-Operative Sugar Factories Federation, Lucknow and Ors)***. In that case matter was related to the promotion on the post of Commercial Officer prescribing the period of probation is for one year and that period could have been extended for a further period of one year more.



The proviso to Regulation 17 restricts the power of the appointing authority in extending period of probation beyond the period of one year. The Court has held that the employee appointed against a regular vacancy cannot be placed on probation for a period more than two years and if during the period of probation, the appointing authority is of the opinion that the employee has not made use of opportunity afforded to him he may discharge him from service or revert him to his substantive post but he has no power to extend the period of probation beyond the period of two years. It will be relevant to quote paragraph 3 of the said judgment.

“3. The U.P. Cooperative Institutional Service Board constituted by the State of Uttar Pradesh in accordance with sub-section (2) of Section 122 of the U.P. Cooperative Societies Act, 1975 has framed the U.P. Cooperative Societies Employees Service Regulations, 1975 which regulate the condition of service of employees of all the cooperative societies placed under the purview of the Institutional Service Board by the Government Notification No. 366-C/XII-C-3-36-71 dated March 4, 1972. These regulations contain provisions for recruitment, probation, confirmation, seniority and disciplinary control. Regulation 17 provides for probation: it lays down that all persons on appointment against regular vacancies shall be placed on probation for a period of one year. Proviso to the regulation lays down that the appointing authority may, in individual cases, extend the period



of probation in writing for further period not exceeding one year, as it may deem fit. Clause (ii) of the regulation provides that if, at any time, during or at the end of the period of probation or the extended period of probation, it appears to the appointing authority that the employee placed on probation, has not made sufficient use of the opportunity offered to him, or has otherwise failed to give satisfaction, he may be discharged from service, or reverted to the post held by him substantively, if any, immediately before such appointment. Regulation 18 provides for confirmation of an employee on the satisfactory completion of the probationary period. Regulations 17 and 18 read together, provide that appointment against a regular vacancy is to be made on probation for a period of one year, this probationary period can be extended for a period of one year more. The proviso to Regulation 17 restricts the power of the appointing authority in extending period of probation beyond the period of one year. An employee appointed against a regular vacancy cannot be placed on probation for a period more than two years and if during the period of probation the appointing authority is of the opinion that the employee has not made use of opportunity afforded to him he may discharge him from service or revert him to his substantive post but he has no power to extend the period of probation beyond the period of two years. Regulation 18 stipulates confirmation of an employee by an express order on the completion of the probationary period. The regulations do not expressly lay down as to what would be the status of



an employee on the expiry of maximum period of probation where no order of confirmation is issued and the employee is allowed to continue in service. Since Regulation 17 does not permit continuation of an employee on probation for a period more than two years the necessary result would follow that after the expiry of two years' probationary period, the employee stands confirmed by implication. This is implicit in the scheme of Regulations 17 and 18. In State of Punjab v. Dharam Singh [AIR 1968 SC 1210 : (1968) 3 SCR 1, 5-6 : 1968 Lab IC 1409] a Constitution Bench of this Court held:

“Where, as in the present case, the service rules fix a certain period of time beyond which the probationary period cannot be extended, and an employee appointed or promoted to a post on probation is allowed to continue in that post after completion of the maximum period of probation without an express order of confirmation, he cannot be deemed to continue in that post as a probationer by implication. The reason is that such an implication is negated by the service rule forbidding extension of the probationary period beyond the maximum period fixed by it. In such a case, it is permissible to draw the inference that the employee allowed to continue in the post on completion of the maximum period of probation has been confirmed in the post by implication.”

In the case reported in *AIR 1988 SC 286 (M.K. Agarwal*

Vs. Gurgaon Gramin Bank and Ors., the Hon'ble Supreme Court has held that if 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 the maximum period of probation. It will be relevant to quote paragraph 4 of the said judgment.

“4. The first point need not detain us. The period of the probation was one year, in the first instance. The employer could extend it only for a further period of six more months. The limitation on the power of the employer to extend the probation beyond 18 months coupled with the further requirement that at the end of it the services of the probationer should either be confirmed or discharged render the inference inescapable that if 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 even the maximum permissible period of probation. In cases where, as here, these conditions coalesce, it has been held, there would be confirmation by implication. (See: State of Punjab v. Dharam Singh [AIR 1968 SC 1210 : 1968 Lab IC 1409] ; Om Prakash Maurya v. U.P. Cooperative Sugar Factories Federation, Lucknow [1986 Supp SCC 95 : 1986 SCC (L & S) 421 : AIR 1986 SC 1844])”

The case reported in *AIR 1992 SC 947 (P.C. Bumotra Vs. Chairman-cum-Managing Director, New India Assurance*



Co.Ltd. And another) relied on by the counsel for the petitioner is not very much relevant to the present case.

The issue again came for consideration in the case reported in *(2001) 7 SCC 161 (High Court of Madhya Pradesh Vs. Satya Narayan Jhavar)*. In paragraph 11, the Court has considered the issue of deemed confirmation having recorded that 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. The other line of the cases is that where 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 been passed. The last line of the 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. It is relevant to quote the paragraphs 11 and 37 of the said judgment :-

“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 inference 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.

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 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]”.

Again the matter came for consideration in the case of

Commissioner of Police, Hubli and another Vs. R.S. More



[(2003) 2 SCC 408]. In that case paragraph 3 itself shows that whether the continuance of probationer on the post beyond the probation period or extended period, as the case may be, entitled him to claim deemed confirmation, in absence of a specific order passed by the competent authority to that effect and the Court in paragraph 8 has replied that a probationer shall not be considered to have satisfactorily completed the probation unless a specific order to that effect is passed. No specific order having been passed by any authority, certifying the satisfactory completion of probation period of the respondent has been brought to our notice. The Court has held that the respondent would not be entitled to claim deemed confirmation in absence of the specific order to that effect. Confirmation of service on a particular post is preceded by satisfactory service by probationer unless service rules otherwise prescribe. It will be relevant to quote paragraphs 6 and 8 of the said judgment :

“6. It is contended by Mr Sanjay R. Hegde, learned counsel for the appellants, that the continuance of the respondent on the post beyond the prescribed probation period or extended period of probation, as the case may be, would not entitle the respondent to claim deemed confirmation, in view of the bar imposed by sub-rule (2) of Rule 5 of the Rules, unless a specific order is passed to that effect. The High Court has proceeded on the assumption



that the period of probation of two years and six months has expired on 2-12-1994 and thereafter no order has been passed extending the period of probation as provided under Rule 4 and there was also no consideration in terms of Rule 5 of the Rules, at the end of the prescribed period in 1994, but the respondent was allowed to continue as a probationer till he was discharged from service by the impugned order and, therefore, it cannot be said that the respondent continued to be on probation. This finding of the High Court, in our view, is clearly erroneous. In the instant case, the undisputed facts are that the respondent was appointed on probation for a period of two years and six months. The period of two years and six months expired on 2-12-1994. Thereafter, by the order dated 14-3-1996, it was further extended for a period of one year and three months in exercise of powers under Rule 4 of the Rules. It is true that the order of discharge dated 12-11-1997, in exercise of powers under Rule 6 of the Rules, has been passed after the extended period was over. That itself would not entitle the respondent to have claimed deemed confirmation, in view of the bar imposed by sub-rule (2) of Rule 5 of the Rules as noticed above.

8. In our view, the case at hand falls under Category 3. As noticed, sub-rule (2) of Rule 5 requires that a probationer shall not be considered to have satisfactorily completed the probation unless a specific order to that effect is passed. No specific order having been passed by any authority, certifying the satisfactory completion of probation period of the



respondent, has been brought to our notice. Mr Hegde, learned counsel, submitted that no order as contemplated under sub-rule (2) of Rule 5 has been passed by the competent authority. Admittedly, the order discharging the respondent, in exercise of powers under Rule 6, has been passed after the extended period of probation was over. In our view, however, that itself would not entitle the respondent to have claimed deemed confirmation in absence of the specific order to that effect. In service jurisprudence, confirmation of service on a particular post is preceded by satisfactory performance of the incumbent unless service rules otherwise prescribe. In the instant case, sub-rule (2) of Rule 5 of the Rules provides that unless there is a specific order that the probationer has satisfactorily completed the period of probation, he shall not be entitled to be deemed to have satisfactorily completed the probation by reason of his being continued in service beyond the extended period of probation. The High Court has failed to consider this important aspect of the matter, resulting in miscarriage of justice. In our view, the High Court fell into error resulting in miscarriage of justice”.

Again the matter came for consideration in the case of **Mohd. Salman Vs. Committee of Management and Ors.** [(2011) 12 SCC 308]. In paragraph 11, the fact has been recorded that the appointment letter also specifically conveys the position and the stipulation that services would be regularized only if his performance during probation period was found to be



good/satisfactory. It has been held in paragraph 17 that unless the terms of appointment clearly indicate that confirmation would automatically follow at the end of the specified period or that there is a specific service rule to that effect, the expiration of the probationary period does not necessarily lead to confirmation. It will be relevant to quote paragraphs 11 & 17 of the judgment :

“11. There is no dispute with regard to the fact that the appointment of the appellant as the Assistant Teacher in the primary section of the aforesaid School was on probation initially for a period of one year. The appointment letter also specifically conveys the position and the stipulation that his services could be regularised only if his performance during probation period was found to be good/satisfactory.

17. In Kedar Nath Bahl v. State of Punjab [(1974) 3 SCC 21] , this Court clearly laid down the proposition of law that where a person is appointed as a probationer in any post and a period of probation is specified, it does not follow that at the end of the said specified period of probation he obtains confirmation automatically even if no order is passed on that behalf. It was also held in that decision that unless the terms of appointment clearly indicate that confirmation would automatically follow at the end of the specified period or that there is a specific service rule to that effect, the expiration of the probationary period does not necessarily lead to confirmation. This Court went on to hold that at



the end of the period of probation an order confirming the officer is required to be passed and if no such order is passed and if he is not reverted to his substantive post, the result merely is that he continues in his post as a probationer”.

And whereafter again the issue came for consideration in the case of **Head Master, Lawrence School, Lovedale Vs. Jayanthi Raghu and Anr. [(2012) 4 SCC 793]**. In that case, the Hon’ble Supreme Court has considered all the previous judgments and after analyzing the previous judgments, in paragraph 38, it has been held that there is no provision of automatic confirmation in the rules, the wider interpretation cannot be placed on the Rule to infer that the probationer gets the status of a deemed confirmed employee after expiry of three years of probationary period as that would defeat the basic purpose and intent of the Rule which clearly postulates “if confirmed”. A confirmation, as is demonstrable from the language employed in the Rule, does not occur with efflux of time as is hedged by a condition, an affirmative or positive act is required by the employer. It will be relevant to quote paragraphs 38 & 39 of the said judgment :

“38. Had the rule-making authority intended that there would be automatic confirmation, Rule 4.9 would have been couched in a different language. That being not so, the wider interpretation cannot be placed on the Rule to infer



that the probationer gets the status of a deemed confirmed employee after expiry of three years of probationary period as that would defeat the basic purpose and intent of the Rule which clearly postulates “if confirmed”. A confirmation, as is demonstrable from the language employed in the Rule, does not occur with efflux of time. As it is hedged by a condition, an affirmative or positive act is the requisite by the employer. In our considered opinion, an order of confirmation is required to be passed.

39. The Division Bench has clearly flawed by associating the words “if confirmed” with the entitlement of the age of superannuation without appreciating that the use of the said words as a fundamental qualifier negatives deemed confirmation. Thus, the irresistible conclusion is that the present case would squarely fall in the last line of cases as has been enumerated in para 11 of Satya Narayan Jhavar [(2001) 7 SCC 161 : 2001 SCC (L&S) 1087 : AIR 2001 SC 3234] and, therefore, the principle of deemed confirmation is not attracted”.

In view of the principles laid down, it can safely be said that a person cannot be deemed to have been confirmed on account of efflux of time of the period of probation, unless there is specific provision for deemed confirmation or it prohibits that there cannot be any extension of probation beyond that period, only in such circumstances it will be deemed that appointment has been



confirmed, but when it is hedged by specific stipulation of satisfaction of particular condition, unless that condition is satisfied, it will not be treated, the probationer govt. servant is deemed to have been confirmed.

In the present case, it will be relevant to examine the appointment letter, which has been issued to the petitioner, which has provided that the initial period of probation will be 12 months from the date of joining and that cannot be extended beyond 24 months. It will be relevant to quote Clause 2 of the appointment letter.

“2. Probation Period : You shall be on probation initially for a period of twelve months from the date of your joining duties as a probationer, but the Corporation may, in its sole discretion, extend your probationary period, provided that the total probationary period including the extended probationary period shall not exceed 24 months counted from the commencement of probationary appointment. During the probationary period (which includes extended probationary period, if applicable) you shall be liable to be discharged”.

In Clause 10 of the said appointment letter, it has been provided the condition of minimum business, is as follows :

“i) During the probationary period you shall secure through the agents recruited at your instance minimum completed life business of Rs.300 crore yielding a Scheduled First Year Premium Income



of not less than Rs.10 lakhs provided, however, that in case the pay and/or allowance admissible to you, under Clause I are increased during the period, the minimum business and the premium income which you should secure shall be increased proportionately.

ii) The minimum business set out in (i) shall be spread over not less than 500 lives and shall be secured regularly through a network of dependable agencies.

iii) You will be required to recruit minimum of 30 agents out of which 27 agents should have become active, 22 agents should individually have put in during that period the minimum business required of them in an agency year according to Rule (9) of the LIC of India (Agents) Rules, 1972 and 15 agents should become productive agents i.e. one who has completed either at least 20 lives or 12 lives with Scheduled First Year Premium Income of Rs. 1,00,000 in the agency year.

iv) If your probationary period is extended, you shall secure during the extended period such business as may be intimated to you”.

Clause 11 of the said appointment letter stipulates condition of grant of status of confirmation and increments, which is as follows :

“i) On your satisfactorily completing the period of probation and your observance and compliance with all conditions set out in this letter of appointment. You will be confirmed in the services of the Corporation in Class II. Your



confirmation will depend, inter alia upon the fulfillment, of the minimum business requirements set out in para 10 above and upon your record of post-sales services to the Corporation's policyholders and other functions performed by you in the area allotted to you to the satisfaction of the Competent Authority.

ii) The grant of increments to you shall be governed by the targets assigned to you as per this appointment letter read with regulation 56 of LIC of India (Staff) Regulations, 1960 and such other rules as amended from time to time."

So, in Clause 2, the period of probation has been prescribed as maximum period of 24 months, but Clause 10 itself provides the minimum business the petitioners have to secure and Clause 11 itself shows that only after successful completion, the order of confirmation has to be issued. So the Clause 2 cannot be read in isolation, it has to be read along with Clauses 10 and 11. Mere a person completed a period of 24 months will not *ipso facto* treated to have been confirmed on the post applying the principle of deemed confirmation, but it requires that the employer must be satisfied with the work, in the term that during the period of probation, he has secured the business stipulated in the appointment letter and only, thereafter, he would be served the letter of confirmation.



So, in that view of the matter, this Court is of the view that mere crossing the 24 months, the petitioner cannot be deemed to have been confirmed. As the petitioner failed to secure the business in terms, mentioned in the appointment letter, in such circumstances, he cannot be treated to have been confirmed automatically. Hence, the order of termination is not bad in law.

Further, the point raised by the petitioner that this termination letter is visited with stigma. The letter which has been served about the disengagement of the petitioner cannot be said in any manner to be stigmatic order as the order itself shows that the petitioner has failed to fulfill the criteria laid down in the appointment letter will not be treated to be a blemished order of termination or to be treated as a stigmatic. The points which have been taken by the petitioners, is not sustainable as the Authority has found that the petitioners have failed to secure the minimum business which was required to be achieved by them. So the point that has been raised by the petitioner that it is stigmatic has no substance to be taken into consideration and that plea is rejected.

So far as the payment of salary which has not been paid to the petitioners is concerned, one thing is very much clear that the termination letter cannot be given a retrospectivity, will be treated that the order to that extent is wrong and that portion of



order is set aside and the petitioners will be treated that they are entitled to the salary up to the date the issuance of the letter of termination. If the payment is not made by the Corporation, they should be paid salary upto the date for issuance of termination letter. If any payment made earlier, has been withdrawn, is directed to be returned forthwith along with interest, if any.

Accordingly, both the petitions are dismissed with the aforesaid limited relief to the petitioners.

(Shivaji Pandey, J)

V.K.Pandey/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	04.04.2019
Transmission Date	N.A.

