

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

**CWP NO. 8457 OF 2014
DATE OF DECISION : 21.08.2019**

S. S. Gill @ Sarsewak Singh Gill

...Petitioner

versus

**The Punjab State Cooperative Milk
Producers Federation Limited and another**

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Ajay Mahajan, Advocate and
Mr. Roshan Lal, Advocate,
for the petitioner.

Mr. D. V. Sharma, Senior Advocate with
Ms. Shivani Sharma, Advocate,
for the respondents.

ARUN MONGA, J. (ORAL)

1. Petitioner herein, *inter-alia*, seeks issuance of a writ in the nature of certiorari and/or any other appropriate order or direction to quash the impugned order dated 25.04.2014 (Annexure P-6), vide which probation period of the petitioner was not cleared on the ground that his work was not found satisfactory.

2. The order assailed herein is stated to have been passed in terms of Rule 2.7 of the Punjab State Cooperative Milk Producers Federation Service (Common Cadre) Rules, 1980 (hereinafter referred to as "the Rules"). Before proceeding further, it would be apposite to reproduce the said Rules herein

below :

"2.7 PROBATION

(a) *A person appointed to a service shall remain on probation for a period of one year, if appointed by promotion or appointed through direct recruitment. Provided that an officiating appointment in a service shall be reckoned as a period spent on probation.*

(b) *On the completion of the period of probation of a person, the Appointing Authority may,*

1. *If his work and conduct have, in its opinion, been satisfactory:-*

Confirm such person from the date of his appointment if appointed against a permanent vacancy or.

Confirm such person from the date from which a permanent vacancy exists, if appointed against a temporary vacancy or

Declare that he has completed his probation satisfactorily, if there is no permanent vacancy or

2. *If his work or conduct has not been in its opinion, satisfactory:-*

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

Extend his period of probation and thereafter pass such orders as it could have passed on the expiry of the first period of probation. Provided that the total period of probation including extension, if any, shall not exceed two years, both in case of recruitment made direct or by

promotion.

3. *A person appointed by direct recruitment shall be entitled to the salary and other financial privileges attached to the post during the period of his probation.”*

3. Adverting to the facts succinctly, the petitioner being Deputy Manager (Production) was promoted to the post of Manager (Production), vide order dated 27.04.2012 (Annexure P-1). His probation period of one year came to an end on 26.04.2012. It was further extended for three months up to 29.07.2013 vide order dated 19.03.2013 (Annexure P-2). Thus, order was required to be passed either to extend the probation period on or before 28.07.2013 or to confirm the petitioner as Manager Production in terms of Rule 2.7 (B) of the Rules.

4. In return filed on behalf of respondent No.1, the entire emphasis is oriented on the fact that work and conduct of the petitioner was not satisfactory and therefore, the probation period of petitioner has rightly not been cleared. It is stated that charge-sheets have also been issued to the petitioner but no further action has been taken thereafter.

5. Having heard learned counsel for the petitioner and learned senior counsel duly assisted with Ms.Shivani Sharma, Advocate, I am of the view that the work and conduct of the petitioner prior to 29.07.2013 is of relevance and is to be seen for the purposes of considering whether or not the petitioner was entitled for clearance of probation. Manifestly, as per Rule 2.7,

ibid, a person appointed shall remain on probation for a period of one year. On completion of one year of probation, if his work and conduct is satisfactory, then either he is to be confirmed in case there is a vacancy or it is to be declared that he has completed his probation satisfactorily in case there is no vacancy. On the contrary, if his work and conduct is not satisfactory, then his services can be dispensed with or his probation can be extended provided that the total period of probation including the extension shall not exceed two years.

6. In the present case, the petitioner was initially promoted on probation on 27.04.2012 and one year of period of probation came to an end on 26.04.2013. After expiry of initial period of probation of one year, the same was extended for three months i.e. from 30.04.2013 to 29.07.2013, vide order dated 19.03.2013 (Annexure P-2). Thereafter, no order was passed in terms of Rule 2.7 (B) of the Rules, either extending probation or confirming the petitioner on the promoted post or reverting him to the post from where he was promoted on the ground that his work was unsatisfactory. Having sat over the matter for almost 11 months, his probation was extended upto 26.04.2014 vide order dated 03.02.2014 (Annexure P-5). Such a retrospective course was not permissible as the conceded position emerging from the record is that on expiry of probation on 29.07.2013, no order of any kind was passed either extending the probation or reverting him.

7. The course adopted by the respondents is not sustainable, particularly, in view of Rule 2.7 (b) of the rules, *ibid*, which envisages passing of a specific order.

8. As regards the reversion of the petitioner during so called probation period, on the ground that his work was not satisfactory, the same is also belied from the record, in view of Annexures P-3 and P-4, whereby the case of the petitioner was recommended for confirmation during his probation, in view of his work being satisfactory and good.

9. Be that as it may, the work and conduct of the petitioner after 29.07.2013 is of no significance. I am not in agreement with the argument of learned senior counsel for the respondents that the work and conduct of the petitioner was unsatisfactory, as reflected from Annexure R-1, therefore, he was rightly not confirmed on the promoted post since he was on probation. In the absence of any specific order extending the probation, the petitioner could not have been treated on probation.

10. The respondents were free to pass a specific order either extending his probation or reverting him as on 29.07.2013. Having not done it, they cannot now take advantage of their own lapse, that too after 11 months.

11. As regards entire emphasis of learned senior counsel for the respondent, both in the course of arguments and also relying on the return filed on behalf of respondent No.1 that the

work and conduct of the petitioner was not satisfactory, I am of the view that though I have not adverted in detail on the same since the manner in which probation has been retrospectively extended after a lapse of eight months militates against the letter and spirit of Rule 2.7 *ibid*. However, even if the merits of the work and conduct were to be gone into, the same pale into the total insignificance as the punishment (stoppage of two increments with cumulative effect) awarded to the petitioner pursuant to charge-sheet dated 28.02.2014 (Annexure R-3) was set-aside in the appeal preferred by the petitioner before the Board of Directors of respondent No.1. The said punishment was converted into merely in a censure as is evident from order dated 15.12.2016 (Annexure P-10).

12. Learned Senior counsel has also relied on an Apex Court judgment reported as *2011 (4) SCT 335 titled as "Mohd. Salman v. Committee of Management and others"*, wherein it has been held that where a person is appointed as a Probationer, in any post and the period of probation is specified, it does not follow that at the end of the said specified period of probation, he is confirmed automatically even if no order is passed to that effect. While there is no ambiguity on the proposition of law as argued by learned senior counsel and enunciated by Hon'ble Supreme Court of India, but the petitioner's case herein is entirely different. It is not the case where the petitioner is seeking automatic confirmation in the absence of any order of

extension of probation.

13. As I have already discussed in the preceding paras, it was open to the employer to either extend the probation period of the petitioner as per Rule 2.7 of the Rules or revert him to the original post from where he was promoted or for that matter, take any other disciplinary action at the time of expiry of his extended period of probation. Admittedly, three months of extension in probation period ended on 29.07.2013, when no order of any kind was passed. The order for the first time was passed after a lapse of 11 months and that too on the ground that his work and conduct is not satisfactory and therefore, the probation was being extended upto 26.04.2014. It is the retrospectivity of extension of probation which is not in compliance of Rule 2.7 *ibid* and in the premise, the reliance placed on the Apex Court judgment *ibid* is misplaced. In any case, after 24 months probation period could not have been extended per Rule 2.7.

11. In view of my above discussion and the reasoning contained therein, the impugned order dated 25.04.2014 (Annexure P-6) is set-aside with all consequential benefits arising therefrom. No order as to costs.

(ARUN MONGA)
JUDGE

AUGUST 21, 2019
shalini/smriti

Whether speaking/reasoned :
Whether reportable :

Yes/No
Yes/No

