

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 7213 of 2011**

Smt. Seema Mukherjee W/o Tara Mukherjee R/o House of A-33
Geetanjali City Basant Vihar Road Sarkanda Bilaspur Chhattisgarh
--- **Petitioner**

Versus

1. Registrar General High Court of Chhattisgarh, Bilaspur, Chhattisgarh.
2. Additional Registrar (Establishment), High Court of Chhattisgarh,
Bilaspur, Distt. Bilaspur, Chhattisgarh --- **Respondents**

For the Petitioner : Mr. B. P. Singh, Advocate

For the Respondents : Mr. Abhishek Sinha, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order on Board****01.03.2021**

1. The challenge made in this writ petition is to the order dated 01st August 2011 passed by Respondent No.1 whereby the petitioner was removed from service of establishment of the High Court as per Condition no.2 of the appointment order dated 27th September, 2005 (Annexure P-1).
2. Learned counsel for the petitioner would submit that the petitioner was initially appointed on 27.09.2005 to the post of Peon on probation of two years and subsequently after expiry of two years, by order dated 04th December, 2007 the probation period was further extended for one more year with effect from 29.09.2007 which automatically came to be ended on 28.08.2008. Thereafter the petitioner continued in the establishment and worked till the date of order of removal i.e., 01st August, 2011. He further submits that as per Rule 10(1) of the Chhattisgarh High Court Establishment (Appointment and Conditions of Service) Rules 2003 the period of

capping for probation is 3 years and if some one worked beyond the probation period of 3 years, then in such a case, as per the law laid down by the Supreme Court in ***the State of Punjab versus Dharam Singh AIR 1968 SC 1210***, the deeming fiction of continuing in the probation will not be applicable and the employee would be considered as a permanent one. Therefore, the termination of service of like nature without holding any enquiry or giving an opportunity of hearing to the petitioner would be bad in law and it requires to be set aside.

3. Per contra, learned counsel appearing for respondents 1 & 2 would submit that Rule 10(1)(2) of High Court Establishment Rules does contemplate that the confirmation is automatic on expiry of two/three years of probation, therefore, if the the confirmation was subject to certain norms, then even after expiry of period of probation she would continue to be a probationer and there is no deemed or automatic confirmation on expiry of period of probation and the act of confirmation was required to be certified by the department and as such the confirmation order can be passed only after following the mandatory requirements. Therefore, having not been done so as per Rule 10(1)(2), the deeming confirmation cannot be set into motion. He further placed reliance in **(1974) 2 SCC 831** and **(1998) 3 SCC 321**, and would submit the petitioner is not entitled to any relief as claimed for.
4. Heard learned counsel for the parties and also perused the records. The record would show that on 27th Sept. 2005 (Annexure P-1) the petitioner was appointed on probation and Clause (2) of the appointment letter reads as under:

“2. Their services shall liable to be terminated without any intimation during the probation period.”
5. Subsequently the petitioner's service was continued and on 04th

December 2007 (Annexure P-2) her probation period of two years was further extended for another one year which came to be ended on 28.09.2007 thereby the period of probation continued up-till 28.8.2008. Subsequently the removal order dated 01st August 2011 would show that the petitioner continued in service till the year 2011. In respect of probation, Rule 10(1) of the Chhattisgarh High Court Establishment (Appointment and Conditions of Service) Rules, 2003 would be relevant here and reads as under:

10(1) Probation -

- (a) A person appointed to a post by direct recruitment shall, from the date on which he joins his duties, be on probation for a period of two years.
- (b) A person appointed to a post by promotion shall, from the date on which he joins his duties, be appointed in officiating capacity for a period of two years.
- (c) The Chief Justice may, at any time, extend the period of probation of officiation as the case may be, but the total period of probation or officiation as the case may be, shall not ordinarily exceed three years.
- (d) The Chief Justice may, at any time, during or at the end of period of probation or officiation as the case may be, terminate the services of a direct recruit, or revert a promotee to his substantive post from which he was promoted.

(2) Confirmation. -

On successful completion of probation or officiation, as the case may be, the probationer or the promotee, if there is a permanent post available shall be confirmed in the service and if no permanent post is available, a certificate shall be issued to the effect that he would have been confirmed but for the non-availability of the permanent post, he has not been confirmed, and as soon as a permanent post becomes available, he shall be confirmed.”

6. Learned counsel for the petitioner has relied on Rule 10(1)(c) which purports that the Chief Justice may, at any time, extend the period of probation but in any case that would not ordinarily exceed three years. Rule 10(2) is also part of Rule 10(1) itself. Therefore, Rule 10(1) and Rule 10(2) has to be read together. A perusal of Rule 10(2)

Confirmation purports that on successful completion of probation or officiation, as the case may be, the probationer or the promotee, if there is a permanent post available shall be confirmed in service and if no permanent post is available, a certificate shall be issued to the effect that he would have been confirmed, but for the non-availability of the permanent post, he has not been confirmed and as soon as a permanent post becomes available, he shall be confirmed. Therefore, certain positive acts were required to be performed to make a person permanent.

7. In ***State of Punjab Versus Dharam Singh, AIR 1968 SC 1210***, the Supreme Court while dealing with a like nature of issue held that when the employee is continued after expiry period of probation without any specific order of confirmation, he would be deemed to continue in his post as probationer only, in absence of any indication to the contrary in the original order of appointment or promotion or the service rules. Therefore, if the said proposition as laid down by the Supreme Court is read with Rule 10(2) it indicates that specific activity or confirmative act is required to be done on the part of respondents to discontinue the probation and to make her permanent.
8. The Supreme Court in ***Shamsher Singh versus State of Punjab (1974) 2 SCC 831*** held that the period of probation shall be deemed to have been extended impliedly. If certain positive acts are not done as per the Service Rules, the principle which is laid down would show that when the service rules provide that there cannot be a deeming fiction, in such a case the principle of automatic confirmation cannot be applied. The relevant part of para 71 of the said decision reads thus:

In this background the explanation to Rule 7(1) shows that the period of probation shall be deemed to have been extended impliedly if a Subordinate Judge is not confirmed on the expiry of this period of probation. This implied

extension where a Subordinate Judge is not confirmed on the expiry of the period of probation is not found in Dharam Singh's case (supra). This explanation in the present case does not mean that the implied extension of the probationary period is only between two and three years. The explanation on the contrary means that the provision regarding the maximum period of probation for three years is directory and not mandatory unlike in *Dharam Singh's Case* and that a probationer is not in fact confirmed till an order of confirmation is made.

9. Like wise in **(1998) 3 SCC 321 – Wasim Beg Versus State of U.P.**

the Supreme Court has held as under:

16. However, even when the Rules prescribe a maximum period of probation, if there is a further provision in the Rules for continuation of such probation beyond the maximum period, the courts have made an exception and said that there will be no deemed confirmation in such cases and the probation period will be deemed to be extended. In this category of cases we can place *Samsher Singh v. State of Punjab* (1974) 2 SCC 832 which was the decision of a Bench of seven Judges where the principle of probation not going beyond the maximum period fixed was reiterated but on the basis of the Rules which were before the Court, this Court said that the probation was deemed to have been extended. A similar view was taken in the case of *Municipal Corpn. v. Ashok Kumar Mishra*. (1991) 3 SCC 325. In *Satya Narayan Athya v. High Court of M.P.* (1996) 1 SCC 560 although the Rules prescribed that the probationary period should not exceed two years, and an order of confirmation was also necessary, the termination order was issued within the extended period of probation. Hence the termination was upheld.

10. Applying the aforesaid principles and reading the Rule 10(2) of the Chhattisgarh High Court Establishment (Appointment and Conditions of Service) Rules, 2003, it specifically purports that certain positive acts are required to be done, therefore, the submission of petitioner

that after completion of probation period of 3 years the petitioner would be deemed to be confirmed cannot be given effect to and therefore the harmonious construction of Rule 10(C) would be directory in nature.

11. In view of the above discussion, I am of the considered view that the petitioner would be deemed to be on probation while her service was terminated in the year 2011 and as per the Condition No.2 of the appointment order dated 27.09.2005 (Annexure P-1), the termination could have been effected she being not permanent. Thus the petition has no merit and is dismissed.

Sd/-
GOUTAM BHADURI
JUDGE