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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 26th July, 2021

+ **W.P. (C) 6772/2021 & CM APPL No. 21317/2021**

ARUSHI SUNEJA Petitioner
Through Mr.M.K.Bhardwaj, Adv.

versus

HIGH COURT OF DELHI Respondent
Through Ms.Vibha Mahajan Seth, Adv.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. The hearing has been conducted through video conferencing.
2. This petition has been filed by the petitioner challenging the Order dated 26.11.2020 and the Memorandum dated 18.06.2021 passed by the respondent and further praying for a direction to the respondent to give to the petitioner two years lien against the post of Personal Assistant by treating her as a confirmed employee.
3. It is the case of the petitioner that the petitioner was appointed to the post of Personal Assistant vide Office Memorandum dated 07.06.2017 by the respondent. The Office Memorandum stated that the petitioner shall be placed on probation initially for a period of two years with a stipulation that expiry of the period of probation shall not result in the automatic confirmation of the petitioner to the said post.

The petitioner later applied for appointment to the post of Senior Personal Assistant with the Supreme Court and was selected to the said post. For appointment she needed to tender the technical resignation with the respondent, however, as she wished to retain the lien to the post of Personal Assistant with the respondent and as she had already successfully completed the probation period, vide letter dated 12.11.2020, the petitioner requested the respondent to issue confirmation letter in her favour to the post of Personal Assistant and grant her lien to the said post. The respondent, however, by the Impugned Order dated 26.11.2020 accepted the technical resignation of the petitioner and relieved her from the service with immediate effect. It is only later that by an office order dated 22.12.2020 it was declared that the petitioner had successfully completed her probation period as on 20.06.2019. The petitioner, therefore, made a representation dated 13.04.2021 to allow her to retain lien to the post of Personal Assistant for a period of two years. The said representation was, however, rejected by the respondent vide Impugned Memorandum dated 18.06.2021, forcing the petitioner to file the present writ petition.

4. The learned counsel for the petitioner submits that in view of the judgment of the Supreme Court in ***Kazia Mohammed Muzzammil vs. State of Karnataka and Anr.***, (2010) 8 SCC 155, on successful completion of the probation period the petitioner was entitled to be confirmed to the post of Personal Assistant and in fact there was a case of 'deemed confirmation'. He further submits that the petitioner

cannot be prejudiced by delay in issuance of a formal confirmation order by the respondent. Once treated as a confirmed employee, the petitioner was entitled to retain lien to the post of Personal Assistant for a period of two years.

5. Issue notice. Notice is accepted by Ms.Vibha Mahajan Seth, Advocate on behalf of the respondent.

6. The learned counsel for the respondent submits that the issue raised by the petitioner is no longer *res integra*. Placing reliance on the judgments of this Court in ***V.K. Mittal and Ors. vs. Registrar General, High Court of Delhi and Ors.*** [Judgment dated 21.01.2016 in W.P.(C) 2836/2010] and ***Ms. Shayda Abbasi v. The Registrar General, Hon'ble High Court of Delhi*** [Judgment dated 05.02.2020 in W.P.(C) 1332/2020], she submits that this Court on examining Rule 8 (a) of the Delhi High Court Establishment (Appointment and Conditions of Service) Rules, 1972 (hereinafter referred to as '1972 Rules') as also the Office Order dated 29.01.1996 issued by this Court on its administrative side laying down the guidelines that would apply for the confirmation of an employee on a given post till the level of Assistant and equal status post, has held that under the 1972 Rules even on the successful completion of the probation period there is no deemed confirmation of the employee and there has to be a separate decision taken and a separate order of confirmation issued by the Competent Authority, that is, the Chief Justice. For such confirmation a reference has to be made to the Annual Confidential Report of the employee for the last five years. In the present case no order of

confirmation has been passed by the respondent in favour of the petitioner and in fact, could not have been passed as the petitioner had not completed five years of service before tendering her technical resignation from the post of Personal Assistant.

7. We have considered the submissions made by the learned counsels for the parties. The position with respect to successful completion of probation period and consequent confirmation of the employee to the post has been considered in detail by this Court in its judgment in **V.K. Mittal and Ors.** (supra). This Court after considering various judgments, including one of the Supreme Court in **Kazia Mohammed Muzzammil** (supra), held as under:

“Deemed confirmation

51. The first issue that arises is whether it could be said that there was a deemed confirmation of the Petitioners with effect from 17th February 2007, the date on which they 'successfully' completed their probation or 25th July 2007 on which date, according to them, the temporary posts of PSs stood converted into permanent ones.

52. Rule 8 of the 1972 Rules deals with 'Nature of Appointment'. Rule 8 (a) reads thus:

"Appointment to post specified in Schedule II other than the post of Registrar-cum-Secretary to Hon'ble the Chief Justice may be substantive or on probation or on officiating, temporary or adhoc basis. Any appointment other than substantive appointment may be terminated at any time without assigning reasons. Probation shall ordinarily be of one year's duration. Expiry of the period of probation shall not result in automatic confirmation."

53. In addition Rule 11 of the 1972 Rules provides as under:

"Application of Central Government Servants Service Rules:

In respect of all such matters regarding the conditions of service of Court servants for which no provision or insufficient provision has been made in these rules, the rules and orders for the time being in force and applicable to Central Governments Servants shall regulate the conditions of service of the Court servants subject to such modifications, variations or exception, if any, in the said rules, as the Chief Justice may, from time to time, specify."

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55. What emerges from a reading of the 1972 Rules is that

(a) although the period of probation is normally one year there is no maximum period of probation provided; and

(b) the mere completion of a period of probation does not result in an automatic confirmation.

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59. It is necessary in first instance to examine the legal position concerning 'deemed confirmation'. There have been a long line of cases cleaving along two broad lines: (a) if an employee completes the maximum period of probation in terms of the applicable rules, he is 'deemed' to be confirmed and treated on par with other confirmed employees (b) there has to be specific order of confirmation since the rules may require an authority to form an opinion about satisfactory completion of probation. In such cases there can be no 'deemed confirmation'. The question has

always to be answered in the context of the relevant rules.

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64. The legal position on 'deemed confirmation' can be summarised as under:

(a) If in the rule or order of appointment, a period of probation is specified and a power to extend probation is also conferred and the officer is allowed to continue beyond the prescribed period of probation, he cannot be deemed to be confirmed. At the end of such probation he becomes merely qualified or eligible for substantive permanent appointment.

(b) There is the other line of cases where even though 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 presumption about continuation, beyond the period of probation, as a probationer stands negated by the fixation of a maximum time-limit for the extension of probation. In such cases the officer concerned must be deemed to have been confirmed.

(c) A third line of cases is where though under the rules maximum period of probation is prescribed, it 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.

(d) While there could be some other cases where the rules do not contemplate issuance of such a specific order in writing but merely

require that there will not be any automatic confirmation or some acts, other than issuance of specific orders, are required to be performed by the parties. Even in those cases, there would be no 'deemed confirmation'.

65. In the present case Rule 8 (a) of the 1972 Rules makes it evident that confirmation is not automatic. Also, there being no maximum period of probation, the mere completion of the initial period of probation would not automatically lead to a confirmation. However, since the Petitioners have placed considerable reliance on the minutes of the Selection Committee and the letters written to them by the Deputy Registrar (Estt) about their successful completion of probation, it requires examination whether those documents do bear out a 'deemed confirmation' of the Petitioners.

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Summary of conclusions

87. To summarise the conclusions:

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(b) Under the 1972 Rules, there had to be a separate decision taken and a separate order of confirmation issued by the competent authority i.e. the Chief Justice. This has been the practice in the High Court and there is no reason to view it differently as far as the PSs are concerned. This order of confirmation i.e. appointing the Petitioners and the Respondents 2 to 14 'substantively' as PSs took place only by the order dated 28th March 2009 effective 20th March 2009.

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(d) Under the 1972 Rules there is no scope for a 'deemed confirmation' of the Petitioners as PSs. Their contention that they should be held to have been deemed to

be confirmed as PSs on 17th February 2007 or at the latest 25th July 2007 is rejected.”

8. In **Ms. Shayda Abbasi** (supra) this Court further took note of the Office Order dated 29.01.1996 of the respondent and observed as under:

“10. Learned counsel for the Respondent has placed before this Court a copy of the office order dated 29th January, 1996 issued by this Court on its administrative side laying down the guidelines that would apply for the confirmation of an employee on a given post till the level of Assistant and equal status posts. A perusal of the said office order reveals that in order to consider the case for confirmation, a reference has to be made to the Annual Confidential Reports of the last five years.

11. With the Petitioner having worked for approximately three years, the question of considering her case for confirmation in this Court would not even otherwise have arisen prior to her tendering her resignation in order to join the post of Junior Hindi Translator in the MoD. Viewed from any angle, therefore, the case of the Petitioner that that she should be deemed to have been confirmed during her service in this Court cannot be accepted.”

9. In the present case, the Office Memorandum dated 07.06.2017, offering appointment to the post of Personal Assistant to the petitioner, itself recorded as under:

“ Your appointment would be governed by Delhi High Court Establishment (Appointment & Conditions of Service) Rules, 1972 and by such other conditions as may be imposed by

*Hon'ble the Chief Justice from time to time.
You will be placed on probation initially for a
period of two years with a stipulation that
expiry of the period of probation shall not
result in your automatic confirmation.”*

10. Therefore, it was clearly stipulated that mere expiry of period of probation would not result in automatic confirmation of the petitioner to the post of Personal Assistant.

11. The Office Order dated 22.12.2020 by which it was recorded that the petitioner has successfully completed the probation period on 20.06.2019 also expressly records that, *‘The completion of probation period shall not result in their automatic confirmation’*.

12. In any case, by the time of the order dated 22.12.2020 recording the successful completion of probation by the petitioner was passed, the petitioner had already tendered her technical resignation and the same had in fact been accepted by the respondent on 26.11.2020. Therefore, there was no occasion for the respondent to have thereafter issued any confirmation letter/order in favour of the petitioner. As stated by the learned counsel for the respondent, in fact, a confirmation letter cannot be issued in favour of the petitioner because of lack of adequate number of years of service.

13. In view of the above, we find no merit in the present petition.
The same is dismissed. There shall be no order as to costs.

NAVIN CHAWLA, J

MANMOHAN, J

JULY 26, 2021/Arya/U.

