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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.689 OF 2009

Shri Prashant Mandrekar,
resident of House No.39,
Tulshimala, Poryem,
Sattari-Goa

...Petitioner

Versus

State of Goa, through its Chief Secretary,
having Office at Secretariat,
Porvorim-Goa.

...Respondent

Mr J. P. Supekar *with* **Mr. R. D'Souza** *and* **Mr. S. Sayed,**
Advocates for the Petitioner.

Mr Manish Salkar, Government Advocate *for Respondent.*

**CORAM: G. S. KULKARNI &
BHARAT P. DESHPANDE, JJ**

Reserved
on: 2 December 2022
Pronounced
on: 15 December 2022

JUDGEMENT: (*Per. Bharat P. Deshpande, J*)

Petitioner is challenging termination vide order dated 29.01.2007 communicated to him on 01.02.2007 by which his services as Mamlatdar were terminated by the Government.

2. Heard Shri J.P. Supekar, learned counsel for the petitioner and Shri Manish D. Salkar, learned Government Advocate for the respondent.

3. Vide order dated 08.02.2010 Rule was issued in this matter. Record shows that no reply has been filed on behalf of respondent.

4. The petitioner is praying as follows:

(A) This Hon'ble Court be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction, calling for the records and proceedings pertaining to the Petitioner's case from the Respondent and after examining the propriety and legality thereof, to quash and set aside the Impugned Orders dated 29/1/2007; 12/6/2007; and 3/6/2008 respectively;

(B) This Hon'ble Court also be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction commanding the Respondent to reinstate the Petitioner;

5. Vide order dated 15.02.2002 (Exhibit 'B'), petitioner alongwith others was appointed to the grade of Mamlatdar/Joint Mamlatdar/Assistant Director of Civil Supplies in the Department of Personnel, Government of Goa vide Memorandum no.15/2/80-PER/Part-II dated 07.01.2002. The petitioner was on probation for a period of 2 years. Vide order dated 22.07.2004 (Annexure 'E') petitioner was informed that he has been declared as passed in the departmental examination conducted from 05.02.2004 to 10.02.2004, for the officers in the cadre of Mamlatdar/Joint Mamlatdar/Assistant Director of Civil Supplies through Goa Public Service Commission.

6. Petitioner was transferred on two to three occasions by the orders which are placed on record.

7. Vide order dated 10.05.2005 issued by the Chief Secretary of Government of Goa, the petitioner who was functioning as Mamlatdar Ponda was placed under suspension with immediate effect vide powers conferred under sub-rule (1) of Rule 10 of Central Civil Services(Classification, Control and Appeal) Rules, 1965. Such order of suspension was issued on the ground that petitioner while functioning as Mamlatdar Ponda was arrested by ACB Vigilance in crime No.1/2005/ACB/Vig for the offence punishable under Section 7 read with rule 13(1)(d) of the Prevention of Corruption Act, 1988 on 28.04.2005 at 21:10hrs. The petitioner was also remanded to police custody for one day and he was released on bail on 30.04.2005.

8. The said order of suspension dated 10.05.2005 was subsequently revoked with immediate effect vide order dated 29.01.2007 (Annexure-A), by the Chief Secretary in view of Rule 25 of Central Civil Service (Classification, Control & Appeal) Rules, 1965.

9. Vide order dated 29.01.2007, which is impugned in the present petition (Annexure A') the petitioner's services were

terminated forthwith pursuant to proviso to sub-Rule 1 of rule 5 of Central Civil Services (Temporary Services) Rules, 1965 by the Governor of Goa.

10. The petitioner filed appeal against the said order of termination, vide his Appeal dated 15.03.2007 (Annexure 'J'). Vide letter dated 12.06.2007 (Annexure JJ) the Under Secretary (Personnel-II) of Government of Goa informed the petitioner that there is no provision for filing appeal against the impugned order as per Rule 5 of Central Civil Services (Temporary Service) Rules, 1965.

11. Petitioner then addressed his revision to Governor of Goa dated 12.12.2007 challenging the impugned order. Vide letter dated 03.06.2008 (Annexure "L"), the Under Secretary (Personnel-I) informed petitioner that Governor of Goa has accepted the view of the Department communicated to the petitioner vide letter dated 12.06.2007. Hence petitioner approached this Court.

12. Learned counsel for the petitioner, Shri Supekar submitted that petitioner was a confirmed employee of Government of Goa and therefore his termination from the services without following due process of law as laid down under Article 311 of the

Constitution of India is illegal and therefore the petitioner is entitled for reinstatement. In this respect he placed reliance on the Recruitment Rules published in the Official Gazette of Government of Goa dated 31.05.1996. The Schedule attached to said notification and more specifically column 9 reads:

'Period of probation, if any-2 years. (both direct recruits and promotees will be deemed to have completed satisfactorily period of probation only after they have passed the departmental examination conducted by the Goa Public Service Commission)'.

13. Learned counsel Shri Supekar then would submit that appointment order of the petitioner at Exhibit 'B' dated 15.02.2002 shows that the period of probation shall be of 2 years. Petitioner successfully passed departmental examination conducted by Goa Public Service Commission between 05.02.2004 to 10.02.2004 vide order dated 22.07.2004 (Annexure "E"). Taking into account the Recruitment Rules, he would submit that after passing of the departmental examination and completing 2 years of service from 15.02.2002, petitioner satisfactorily completed his probationary period on 15.02.2004 and thus his probation is deemed to have been completed satisfactorily thereby confirming him as a permanent employee of Government of Goa. He would therefore submit that terminating permanent employee vide order dated 29.01.1997 by

taking recourse to sub-Rule 1 of Rule 5 of Central Civil Service (Temporary Service) Rules, 1965 by the Government of Goa is totally illegal. He placed reliance on the decision in the case of *Khazia Muha Manzil v/s. State of Karnataka (2010) 8 SCC 155*.

14. Mr. Salkar, learned Government Advocate would submit that even though petitioner completed probation period of 2 years and also passed departmental examination, no order of confirmation was issued by the Government and therefore probation of the petitioner continued. Unless order is issued by the Government accepting that petitioner had completed successfully his probation period and confirmed in the services, he cannot claim right over the said post as a confirmed employee. Mr. Salkar then would submit that though he was placed under suspension by adopting sub-Rule (1) of Rule 10 of Central Civil Services (Classification, Control & Appeal) Rules, 1965, such order was withdrawn on the premise that petitioner was not a confirmed employee and was on probation. After withdrawal of such suspension order, he was terminated and rightly so by considering sub-Rule (1) of Rule 5 of Central Civil Services (Temporary Services) Rules, 1965.

15. Mr. Salkar also places reliance on the same decision and

claim that no specific order was issued to the petitioner disclosing that he completed satisfactorily probation period and was confirmed as permanent employee. Mr. Salkar then claimed that though petitioner was eligible after passing the departmental examination to be considered for completion of his probation period, no such order was issued by the Government and therefore petitioner would continue to serve as probationer in the said post.

16. Rival contentions fall for our consideration.

17. The short question which arises in the present petition is whether the petitioner is deemed to have satisfactorily completed the period of probation on completion of 2 years and after passing the departmental examination conducted by GPSC, and thereby become permanent employee.

18. The Recruitment Rules issued by Department of Personnel on 17.04.1996 which clearly show that such rules were published in exercise of powers conferred by the proviso to Article 309 of the Constitution and are the existing Recruitment Rules for the relevant post of Group B Gazetted post of Mamlatdar, Joint Mamlatdar, Assistant Director of Civil Supplies under the State Government of Goa. Schedule attached to it reads as under:

Name/Designation of post	Number of posts	Classification	Scale of pay	Whether selection post or non-selection post	Age limit for direct recruits	Whether the benefit of added years of service is admissible under Rule 30 of CCS (Pension) Rules 1972	Educational and other qualifications required for direct recruits	Whether age & educational qualifications prescribed for the direct recruits will apply in the case of promotees	<u>Period of probation</u> , if any
1	2	3	4	5	6	6(a)	7	8	9
Mamlatdar/Joint Mamlatdar/Assistant Director of Civil Supplies	37 (1996) Subject to variation dependent on work-load	Goa General Service Group 'B' Gazetted	Rs.2000-60-2300-EB-75-3200	Selection	Not exceeding 35 years (Relaxable for Government servant upto 5 years in accordance with the instructions or orders issued by the Government)	N. A.	<i>Essential:</i> (i) Degree in Law of a recognised University. (ii) Knowledge of local revenue laws, laws governing maintenance of law and order, planning and development works and public distribution system. (iii) Knowledge of Konkani. <i>Note:</i> In case of non-availability of a suitable candidate with the knowledge of Konkani, this requirement may be relaxed. <i>Desirable:</i> Knowledge of Marathi.	Age: N. A. Educational Qualifications : As indicated in Column No. (11)	2 years (both direct recruits and promotees will be deemed to have completed satisfactorily the period of probation only after they have passed the departmental examination conducted by the Goa Public Service Commission)

(Emphasis added)

19. The schedule from column no.1 to 9 is relevant whereas column 10 to 13 are with regard to other aspects and hence not quoted.

20. The appointment order of the petitioner is dated 15.02.2002 at Annexure 'B' wherein it is specifically mentioned that the petitioner was appointed on the recommendation of GPSC to the grade of Mamlatdar/Joint Mamlatdar/Assistant Director of Civil Supplies in the pay scale of Rs.5500-175-9000 (Group B Gazetted) with effect from the date of their joining and posted them subject to verification of their character and antecedents. It is further mentioned that the said appointees shall be on probation for a period of 2 years from the date of their joining. Petitioner joined the services immediately and thereafter he was transferred on two to three occasions during the said probation period.

21. Vide order dated 22.07.2004, the petitioner was declared to have successfully passed departmental examination conducted by GPSC (Annexure-E) to the petition. This examination was conducted from 05.02.2004 to 10.02.2004. The period of probation was completed by the petitioner on 15.02.2004. Thus, it is clear that he passed the departmental examination conducted by GPSC successfully during his probation period.

22. Recruitment Rules and more specifically column no.9 in the schedule appended to the Recruitment Rules and as quoted above specifically provide for a period of probation stipulating that such period of probation shall be of 2 years and the said period will be deemed to have been completed satisfactorily only after the candidate/probationer has passed departmental examination conducted by GPSC.

23. Thus, there are two conditions for completion of probation period, i.e. completion of two years and passing departmental examination successfully. Once both these conditions are satisfied, probationer will be deemed to have completed satisfactorily the said period of probation. These words in the Recruitment Rules are very much important and it shows the intention of the Government to allow such candidate to complete his

probationary period satisfactorily after a period of two years of continuous service and passing the departmental examination. In such circumstances, and once the probationer completes two years period satisfactorily and also clears the departmental examination, a deemed effect of completion of probation satisfactorily comes into effect. In such circumstances, the contention raised by Mr Salkar, learned Government Advocate that a specific order of confirmation of probationary period is necessary, cannot be accepted. The completion of probationary period as found in column 9 is having a deeming effect and that too, satisfactorily after both conditions are fulfilled.

24. In the case of ***Khazia Muha Manzil*** (supra), the Apex Court has observed in paragraph 14 that mere continuation of service beyond the period of probation does not amount to confirmation unless it was so specifically provided. In other words, though in very few cases, but, stand taken that where there is provision in the rules for initial probation and extension thereof, a maximum period of such extension is also provided beyond which it is not permissible to extend probation.

Supreme Court in paragraph 18 has observed thus:-

'18. On a clear analysis of the above enunciated law, particularly, the seven-Judge Bench judgment of this Court in Samsher Singh [(1974) 2 SCC 831 : 1974 SCC (L&S) 550] and the three-Judge Bench judgments, which are certainly the larger Benches and are

binding on us, the courts have taken the view with reference to the facts and relevant rules involved in those cases that the principle of “automatic” or “deemed confirmation” would not be attracted. The pith and substance of the stated principles of law is that it will be the facts and the rules, which will have to be examined by the courts as a condition precedent to the application of the dictum stated in any of the line of cases aforementioned. There can be cases where the rules require a definite act on the part of the employer before an officer on probation can be confirmed. In other words, there may a rule or regulation requiring the competent authority to examine the suitability of the probationer and then upon recording its satisfaction issue an order of confirmation. Where the rules are of this nature the question of automatic confirmation would not even arise. Of course, every authority is expected to act properly and expeditiously. It cannot and ought not to keep issuance of such order in abeyance without any reason or justification. 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 it is difficult to attract the application of this doctrine.

However, there will be cases where not only such specific rules, as noticed above, are absent but the rules specifically prohibit extension of the period of probation or even specifically provide that upon expiry of that period he shall attain the status of a temporary or a confirmed employee. In such cases, again, two situations would rise: one, that he would attain the status of an employee being eligible for confirmation and second, that actually he will attain the status of a confirmed employee. The courts have repeatedly held that it may not be possible to prescribe a straitjacket formula of universal implementation for all cases involving such questions. It will always depend upon the facts of a case and the relevant rules applicable to that service.'

(Emphasis added)

25. Rules governing the field clearly show that a candidate/probationer is considered as completed the

probationary period of 2 years satisfactorily on passing the departmental examination successfully with a deemed effect. Thus, in our view, there is no need for passing any specific order regarding completion of probation period by the petitioner on completion of 2 years of satisfactory service and also passing of the departmental examination. Thus, it is clear from the record that on 15.02.2004, the petitioner successfully completed the probation period and also passed departmental examination conducted by GPSC and, therefore, he was required to be considered as regular employee of the Government.

26. Initially, Government also was under the impression and rightly so, that the petitioner is a regular employee and that is why order dated 10.05.2005 was issued thereby suspending the services of the petitioner on the ground that he was arrested in Crime No.1/2005/ACB/Vig for the offence punishable under Section 7 read with Section 13(1)(d) of Prevention of Corruption Act, on 28.04.2005. This order was issued by taking recourse of Rule 10 of Central Civil Services (CCA) Rules, 1965 which are applicable to a permanent employee. It was only on 23.01.2007, i.e. nearly after about 2 years, such order of suspension was revoked by taking recourse to Rule 25 of Central Civil Services (Classification, Control and Appeal) Rules, 1965. Thereafter, on

29.01.2007 impugned order was passed by taking recourse to Rule 5(1) of Central Civil Services (Temporary Service) Rules, 1965, thereby terminating the services of the petitioner considering him as temporary/probationer in the services.

27. Thus, it is clear from the record that after completion of 2 years of probation and successfully passing the departmental examination, the petitioner became permanent employee of the Government in view of Recruitment Rules, 1996 and therefore, termination of services of the petitioner by taking recourse to Rule 5(1) of Central Civil Services (Temporary Services) Rules, 1965 and considering him as a probationer, was incorrect. The rules in question cannot mean anything otherwise.

28. Having discussed the factual matrix, proviso which is relied in the present matter is in relation to “deemed confirmation”. It is settled that the term “deemed confirmation” is well known to the service jurisprudence. There can be deemed confirmation after the employee has completed period of probation provided under the rules and his entitlement and conditions of service are placed at parity with the confirmed employee. Similarly, there is also another aspect that there would not be any “deemed confirmation”. At the best, after completion of maximum period

of probation provided under the Rules governing such employee, he becomes eligible for being confirmed in the said post. In such situation, period of probation of such employee remains in force till written document of successful completion of probation is issued by the competent authority. However, it depends upon facts of a given case and the relevant rules which are in force.

29. Article 309 of the Constitution of India which is in paragraph XIV dealing with services under the Union and the State provide that subject to the provisions of the Constitution, Acts of the appropriate Legislature may regulate recruitments and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or any State. The proviso to Article 309 of the Constitution empowers the President or the Governor, as the case may be or such person as the President or the Governor may direct to make rules regulating recruitment, and conditions of service of persons appointed to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature and any rules so made shall have effect subject to the provisions of the said Act.

30. Rules governing the present matter are Government of Goa, Mamlatdar, Joint Mamlatdar, Assistant Director of Civil

Supplies, Group 'B' Gazetted Post Recruitment Rules, 1996 were framed by taking proviso to Article 309 of the Constitution and which were governing the field at the time of appointment as well as the termination of the services of the petitioner. Thus, Recruitment Rules, 1996 clearly provide that the probation period of two years will be deemed to have been completed satisfactorily only after the probationer has completed two years and passed departmental examination conducted by GPSC. The petitioner complied with both the conditions and therefore the deeming effect and that too completing the probation specifically come to an effect thereby considering that the petitioner completed such probationary period satisfactorily and thereby became a permanent employee of the State Government. Only because no separate order confirming his services in the said post were issued, the deeming effect of clause 9 of the Recruitment Rules cannot be overlooked.

31. Article 311 of the Constitution of India provide a procedure of dismissal, removal and reduction in rank of persons employed in civil capacity under the Union or the State. It is a mandate that no person who is a member of a civil service of the Union or an all India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or

removed by a authority subordinate to that by which he was appointed.

32. Article 311 (2) further provide that no such person shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. It further provides that where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge. The matter in hand although show that petitioner was arrested for the offence punishable under Section 7 read with Section 13(1) (d) of Prevention of Corruption Act, 1988, his termination is not at all based on the ground that petitioner was convicted by a Court of law for such charges. Admittedly, no departmental inquiry was conducted against the petitioner. Therefore, it is clear that there is clearcut violation of the provisions of Article 311(2) of the Constitution of India.

33. Having said so, termination of services of the petitioner by taking recourse of Rule 5(1) of Central Civil Services (Temporary Service) Rules, 1965 is clearly in violation of settled proposition of law that a permanent employee cannot be dismissed or terminated without conducting any departmental inquiry by the appointing

authority. Thus, the impugned order is bad in law and needs to be quashed and set aside alongwith subsequent orders.

34. Admittedly, petitioner's services were terminated vide order dated 29.01.2007 and till date he is not in service. Similarly, there is no prayer for grant of wages/salary for the period from the date of his termination till date. The only prayer is to quash and set aside the impugned termination and to reinstate him on the same post.

35. Even though we have considered that the termination order is bad in law, we have not discussed anything about the allegations levelled against the petitioner in the case/crime registered against him on 28.04.2005.

36. The petition, therefore, needs to be allowed as per prayer clause (A) and (B).

37. Rule is made absolute in terms of prayer clause (A) and (B).

38. Parties shall bear their own costs.

BHARAT P. DESHPANDE, J

G. S. KULKARNI, J.