

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

201

CWP No.7508 of 2020 (O&M)
DATE OF DECISION : 2nd APRIL, 2022

Ramesh Chand Meena

.... Petitioner

Versus

**Dr. B. R. Ambedkar National Institute of Technology through its
Registrar, Jalandhar, Punjab & others**

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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Present : Mr. Tribhuvan Dahia, Senior Advocate with
Mr. Sudarshan Kumar, Advocate for the petitioner.

Mr. Vivek Singla, Advocate
for respondents No.1, 3 & 4.

Mr. Anil Chawla, Sr. Panel Counsel
for respondent No.2-UOI.

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RAJBIR SEHRAWAT, J. (Oral)

1. The petitioner has filed this petition under Article 226 of the Constitution of India, praying for issuance of a writ in the nature of certiorari for quashing the impugned order dated 20.03.2020 (Annexure P-11) passed by the respondent No.1-Dr. B. R. Ambedkar National Institute of Technology, Jalandhar (in short, the Institute); along with certain other prayers

2. The brief facts, as involved in the present petition are that the respondent-Institute advertised the A Grade post of Security Officer meant for Scheduled Tribe category. The petitioner having qualification of M. Sc. in Chemistry and having long experience of service as Sub-Inspector in CISF; and having worked with NDRF in various disaster

management operations, as well as, in security of Airport as Team Commander, had applied for the said post. After participating in the due competitive process, the petitioner was selected and appointed by the respondent-Institute for the said post. As required under the Rules, the appointment of the petitioner was made subject to the period of probation of one year, which was extendable upto two years. On completion of one year of the probation period the Committee reviewed the work and conduct of the petitioner and recommended the extension of his period of probation for one more year. Accordingly, vide order dated 08.03.2019 (Annexure P-9) the probation period of petitioner was extended for another year; which ended on 22.01.2020. However, the confirmation order of the petitioner was still not passed by the respondents. On the contrary, the respondents had taken up the matter of the petitioner and declined confirmation vide order dated 20.03.2020 (Annexure P-11). It is against that order of declining confirmation and with a prayer that the respondents be directed to confirm the petitioner, the present petition has been filed.

3. While arguing the case it is submitted by counsel for the petitioner that the petitioner had performed his duties with due diligence and without any apparent cause of complaint. Although, the respondent-Institute has extended the period of probation of the petitioner for one year, though without any reason, however, he completed the same successfully as well. Therefore, the petitioner became entitled to confirmation, as such, unless the respondents had passed a specific order giving reason as to why the petitioner could not have been confirmed.

The counsel has relied upon the instructions dated 11.03.2019 (Annexure

P-12) to contend that if at all the respondents intended to pass an order declining confirmation to the petitioner then the same was required to be passed within six to eight weeks from the date of expiry of the maximum period of probation as extended by them. However, within that period the respondents had not passed any order declining confirmation to the petitioner. Therefore the petitioner shall be deemed to have been confirmed on the post against which he was appointed. The counsel has further submitted that although the petitioner may not have any claim to get an automatic order of confirmation despite completion of maximum period, however, in this particular case; since the respondents have been given no power to deny any confirmation after the prescribed period, therefore, the petitioner has to be taken as having been confirmed on completion of maximum period of probation.

4. On the other hand, the counsel for the respondents have submitted that the petitioner does not have any right to automatic confirmation merely because he has completed the maximum period of probation. Referring to the appointment letter issued to the petitioner, the counsel for the respondents have submitted that the appointment letter issued to the petitioner specified initial period of probation for one year, however, there is no maximum time limit mentioned in the appointment letter, for extending the probation. The counsel has also referred to the same appointment letter for another purpose; to argue that the service of the petitioner could have been dispensed with at any time with one month's notice or salary of one month in lieu thereof. The counsel has further submitted that even the rules, though prescribed the extendable period of probation for another year, however, even the said Rule does

not prescribe automatic confirmation. Rather, language of the relevant Rule uses contingent phrase, 'if confirmed', therefore, the confirmation of the petitioner is totally at the discretion of the respondent-Institute. To support this argument the counsel has relied upon the judgment rendered by Hon'ble the Supreme Court in the case of ***Head Master, Lawrence School Lovedale Vs. Jayanthi Raghu & another, 2012(2) SCT 526***. Accordingly, it is argued that the petitioner cannot raise argument that he deserves to be confirmed merely because he had completed maximum period of probation. Moreover, the petitioner was issued advisories during the initial period of probation, as well as, during he extended period of probation. This itself shows that the work and conduct of the petitioner was not satisfactory.

5. Having heard the counsel for the parties and having gone through the record, this court finds sufficient merit in the arguments raised by counsel for the petitioner. It is not even in dispute that the petitioner was appointed on the post after having duly participated in the competitive process of selection. The post, which the petitioner occupied, is governed by the Act and the Statute applicable to the Institute; as supplemented by the Instructions issued by the Ministry of Personnel, Government of India. Therefore, once appointed, the petitioner had a legitimate expectation and statutory right to continue on the post, unless his continuation could be; and was; ordered to be terminated by the respondent-Institute, in accordance with the provisions governing the service conditions of the petitioner. Still further, it is not disputed that the service of the petitioner is governed by the Statutes of the National Institutes of the Technology, issued in exercise of powers

conferred under Section 26 of the National Institute of Technology, Science Education and Research Act, 2007. The said first Statute stands amended by the amendment notified on 21.07.2017. The Statute relating to confirmation of the employees of the Institute was also amended. The relevant Statute, as amended, reads as under :

“13. In Statute 24 of the Principal Statutes, for clause (i), the following clause shall be substituted, namely:-

(i) Subject to the provisions of the Act and the Statutes, all appointments to posts under the Institute shall be made on probation for a period of one year after which period the appointee, if confirmed, shall continue to hold his office subject to the provisions of the Act and the Statutes, till the end of the month in which he attains the specified maximum age for teaching posts, for technical non-teaching and ministerial and administrative posts as the case may be:

Provided that the appointing authority shall have the power to extend the period of probation of any employee of the Institute for a period not exceeding one year.”

6. Not only that, by Statute 26, the Central Civil Service (Classification, Control and Appeal) Rules, 1965 has been made applicable to all the employees of the Institute. The Statute 26 reads as under:

“26. SUSPENSION, PENALTIES, DISCIPLINARY PROCEEDINGS

The Central Civil Services (Classification, Control and Appeal) Rules, 1965 shall apply to all the employees.”.

7. Therefore, there cannot be any dispute relating to legal proposition that the statutory period prescribed for the post of petitioner

is one year. However, the same can be extended for another period, not exceeding one year. Hence, the maximum period of probation, to which the respondents could have put the petitioner; is two years. The petitioner has, undoubtedly, undergone the maximum statutory period as prescribed under the Statutes. Despite that, although, the petitioner might have got reasonable expectation of getting confirmation, however, he did not have any right, per se, to get confirmed automatically, as such. If the respondent-Institute had anything against the work and conduct of the petitioner, they could have pass an order declining the confirmation, as well. Such an order, obviously, could have been passed even after the maximum period of probation undergone by the petitioner. However, the matter does not rest here. The Government of India, in its attempt to obviate the arbitrariness on the part of the appointing authority, have issued a master circular qua all the employees working in or under the control of the Government of India wherein the appointing authority has been given a limited time window for passing an order to deny the confirmation to an employee after expiry of the maximum period of probation. The said provision is reproduced hereinbelow:

“27. The date from which confirmation should be given effect is the date following the date of satisfactory completion of the prescribed period of probation or the extended period of probation, as the case may be. The decision to confirm the probationer or to extend the period of probation as the case may be should be communicated to the probationer normally within 6 to 8 weeks. Probation should not be extended for more than a year and, in no

circumstance, an employee should be kept on probation for more than double the normal prescribed period of probation. The officer will be deemed to have successfully completed the probation period if no order confirming, discharging or reverting the officer is issued within eight weeks after expiry of double the normal period of prescribed probation.”

8. A bare perusal of the above Clause makes it clear that the appointing authority has been given 8 weeks’ time to act upon the aspect of the confirmation of the employee after completion of initial or extended maximum period of probation. This limitation is intended to make the authorities to act promptly and to restrain the authority to sit on the file for an indefinite period. Therefore, this clause contains both the stipulations, whereas this clause gives power to the appointing authority to take a time of 6 to 8 weeks even after the expiry of the maximum period of probation or extended maximum period of probation, however, this also declares that if no order confirming, discharging or reverting the officer, is issued within the 8 weeks after expiry of the double of the normal period prescribed for probation, then such officer shall be deemed to have completed the period of probation. Hence, it is obvious that after a period of 8 weeks, the authority have been denuded of any power to reject confirmation of the officer or to deny the same. Rather, the employee has been conferred the benefit of earning a deemed confirmation on the post, irrespective of the satisfaction or dissatisfaction of the authority concerned. What the authorities are required to do after this maximum period of 8 weeks; is only to issue a formal order of

confirmation pursuant to the mandate of the statutory instructions conferring *ipso facto* benefit upon the employee. Needless to say that it is well settled law that once the Rules/Statutory instructions prescribed a particular method of acting for an authority, then that authority has to act in the manner prescribed only. Acting in any other manner would be negation of fundamental right guaranteed by Article 14 of the Constitution of India.

9. Although, the counsel for the respondents have submitted that the letter of appointment did not talk about either the maximum period of probation or for automatic confirmation, therefore, the period of probation of the petitioner could have been extended to any time period, however, this argument is totally non-sustainable and is against the provisions of the statutory rule, as well as, the statutory instructions issued by the Government of India. First of all, the terms contained in the appointment letter did not specifically deny the factum of deemed confirmation nor retain any specific authority with the appointing authority to extend the probation period to any indefinite period. Secondly, even if any such term is included in the appointment letter *de horse* the provisions contained in the statutory rules, such stipulation, even if any contained in appointment letter, has to be treated as nugatory and non-existent in view of the provisions contained in the Statutes and the statutory instructions. Once a particular condition of service of an employee is governed by statutory Rules, to that extent the discretion of the appointing authority to include anything contrary in the terms of appointment stands excluded. In case of conflict between the terms of appointment and the statutory provisions, it is the statutory provisions

which shall prevail. However, if there is no direct conflict between the two and the terms included in the appointment letter are silent on any aspect, that aspect, obviously, has to be governed by the statutory provisions. Hence, the argument of the counsel for the respondents on this aspect is liable to be noted only to be rejected.

10. Although the counsel for the respondents have relied upon the judgment of the Hon'ble Supreme Court rendered in ***Head Master, Lawrence School Lovedale (supra)*** to submit that words 'if confirmed', as used in Statute 24 excludes the automatic confirmation, however, even this argument is not sustainable. Firstly, the language used in the Statute does not deal with the issue of automatic confirmation or declining of the confirmation as such. Hence, the words 'if confirmed' does not have anything to do with the process of confirmation. These words have been used in the statute for a different purpose. The words 'if confirmed' as used in the Statute 24, obviously means and have been used with reference to continuation of an employee in service upto the date of his superannuation, in ordinary course, if not removed earlier from his post in accordance with the Rules. Although, the counsel has read paragraph Nos.20 & 23 of the judgment to stress that the words 'if confirmed' would have reference to the discretion of the appointing authority to confirm or not to confirm, however, giving this meaning to the phrase 'if confirmed', as used in the present statute would be doing violence to the very language of the Statute. The words 'if confirmed' are two words of English language, one is 'if', which obviously is referring to a contingency; and the second is 'confirmed', which is a past participle of verb 'confirm', representing an already accomplished fact. Therefore,

the words 'if confirmed' have to be read as referring to the contingency of fact of confirmation having happened, which is to be used for the purpose which follows these words; as used in the Statute. Hence, the words 'if confirmed' as used in the statute pre-suppose the factum of an employee having been confirmed and then continuing in service as per the law unless terminated otherwise, in accordance with law. Therefore, the words 'if confirmed' do not have any relation with the power of the appointing authority not to confirm even if the maximum period of probation is completed by an employee. On the contrary, as mentioned above, the aspect of deeming confirmation of an employee, is separately dealt with, in the instructions issued by the competent authority. Those instructions have not even been referred to in the judgment of Hon'ble the Supreme Court rendered in the case of ***Head Master, Lawrence School Lovedale (supra)***. Hence, the said judgment is totally distinguishable; with reference to the facts and the law, as involved in the present case. In the present case, the positive assertion of the petitioner, which has not even been denied by the respondents, is that there are the statutory instructions which are being followed in the institute and which confer deeming confirmation upon the petitioner if the appointing authority has been loath enough not to act within a specified time to exercise its power. Beyond that time, the appointing authority, being *persona designata*, under the statutory provisions, did not have any power to issue any order denying confirmation to the petitioner. Undisputedly, the confirmation has not been denied to the petitioner within the maximum period of 8 weeks from the date of completion of the double of the normal probation period prescribed for the post. Any

action taken thereafter by the appointing authority is beyond the scope of its statutory powers and hence is liable to be set aside.

11. In view of the above, it is obvious that the petitioner has earned the confirmation after expiry of period of 8 weeks, as mentioned above. The counsel for the respondents have also pointed out that the post of Security Officer, upon which the petitioner was recruited, stands abolished vide instructions dated 04.04.2019. However, even this fact is not borne out from the record. The factum of the post having been abolished is referable qua those Institutes where any incumbent was not holding the post as on the date of those instructions dated 04.04.2019. It is not even disputed that the petitioner was, in fact, holding that post on the said date. Therefore, the said instructions cannot be taken to mean that post occupied by the petitioner was also abolished. Needless to say that if post is not abolished then other consequences qua existence of the post and the power of the authority to deal with it, as per the instructions issued by the competent authority from time to time, shall remain intact. The petitioner, though may be liable to be shifted or adjusted to some other post, however, that would be only subsequent to the fact of the petitioner getting his rightful due in accordance with the applicable Statutes of the Institute.

12. In view of the above, the impugned order 20.03.2020 (Annexure P-11) passed by the respondents is set aside. Accordingly, the respondents are directed to reinstate the petitioner into service with a confirmation order. The petitioner is held entitled to all the consequential benefits appurtenant to the reinstatement, except the back wages for the period from the date of termination of his service till 30 days from today.

By way of abundant caution, it is also clarified that all other consequential benefits would mean all the benefits attached to the post under the Rules, including notional pay fixation by granting benefits of previous service, in the institute, restoration of seniority, if any, and for the purpose and counting of the service for the purpose of retrial benefits, if any. The respondents are directed to do the needful within a period of thirty days from today.

13. All the pending applications, if any, stand disposed of accordingly.

2ND APRIL, 2022
‘raj’

(RAJBIR SEHRAWAT)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>