

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on : 06.10.2022
Judgment delivered on : 23.11.2022

+ W.P.(C) 6792/2016

NARESH KUMAR Petitioners

versus

GOVT. OF NCT OF DELHI & ORS. Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Nilansh Gaur and Mr. Shanker Raju,
Advocates.

For the Respondents : Ms. Vibha Mahajan Seth and Ms. Divyanshi
Anand, Advocates for R-1.
Mrs. Avnish Ahlawat, Standing Counsel
with Ms. Palak Rohmetra, Ms. Laavanya
Kaushik, Ms. Aliza Alam and Mr. Siddharth
Tyagi, Advocate for DTC.

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J.

1. The petitioner challenges the order dated 29.01.2016 in O.A. No. 2548/2013 titled "Naresh Kumar vs. Government of NCT of Delhi and Ors." passed by the Central Administrative Tribunal,

Principal Bench, New Delhi (hereinafter referred to as 'Tribunal') whereby the said OA was dismissed.

2. The brief facts of the case of the petitioner are that consequent upon his selection by the DSSSB, he was appointed by the respondent-Delhi Transport Corporation, as a Driver on probation for a period of two years with effect from 09.07.2009. There was no criminal case registered/pending against him at the time of appointment.

3. As per the petitioner, a false criminal case, vide FIR No.140/2009 dated 06.08.2009 under Section 307 IPC, P.S. Kanjhawala, Delhi was registered against him. The Additional Sessions Judge, Outer (II) Rohini Court, Delhi, granted him anticipatory bail. The intimation regarding the said FIR and anticipatory bail was given by him to the respondent-Delhi Transport Corporation.

4. The police, after completion of investigation, submitted the final report under Section 173 Cr.P.C., 1973 stating that no evidence was found against the petitioner. Though he was discharging his duties satisfactorily, the respondent-Delhi Transport Corporation extended his probation period by one more year, *i.e.*, up to 08.07.2012. The respondent-Delhi Transport Corporation again extended his probation period on second occasion for six months up to 08.01.2013, and on third occasion for six months up to 08.07.2013.

5. Thereafter, the respondent-Delhi Transport Corporation, vide impugned order dated 05.07.2013, terminated his services under

Clause 9 (a) (i) of the Delhi Road Transport Authority (Conditions of Appointment & Service) Regulations, 1952 (hereinafter, in short referred to as 'the Regulations') with immediate effect. It is contended by the petitioner that the respondent-Delhi Transport Corporation terminated his services without issuing any notice to him.

6. According to the petitioner, there was no criminal case pending against him. Though during the period of probation, he was discharging his duties satisfactorily, the respondent-Delhi Transport Corporation, instead of confirming him in the service, illegally and arbitrarily terminated his services.

7. The respondent-Delhi Transport Corporation had filed a counter reply opposing the O.A. It is stated by the respondent-Delhi Transport Corporation that in the attestation form, the petitioner specifically mentioned that no criminal case was pending against him, and that he was not involved in any criminal case. During verification of his character and antecedent, it was revealed that the petitioner was involved in criminal case, FIR No. 140/09 dated 06.08.2009, P.S. Kanjhawala, Delhi under Section 307 read with Section 34 of the Indian Penal Code.

8. Further, during the period of probation, the petitioner was awarded punishment of 'Censure' for his unauthorized absence from duty with effect from 01.01.2010 to 24.01.2010. The appointment order stipulated that the petitioner would be on probation for a period of two years. His performance for two years during the period of probation was taken into consideration.

9. In paragraph 8 of the counter reply, the respondent-Delhi Transport Corporation has stated thus:

“The guidelines for Drivers, who are on probation, are as follows:

Drivers on probation (during the first year):

(i) For Termination

(a) If a driver is involved in a major accident case and is not acquitted by the Court or is considered at fault by the accident Committee.

(b) If a driver is involved in more than three minor accidents or four damage cases.

(c) If the number of punishments on counts other than accidents exceeds eighty.

(d) If the number of leave without pay exceeds 45 days on grounds other than illness or exceeds 60 days in all.

Drivers on probation (during the second year):

During the extended period of probation, the same is formula as indicated above during the first year will be observed.

As the period of probation of the Drivers cannot be extended beyond two years, their services will be terminated, if they do not come up to the standard indicated above.”

It is also stated that there being no provision under the Regulations for extension of the period of probation beyond two years, the services of the petitioner have been terminated.

10. It is further contended that during verification, it was found that there was another criminal case bearing FIR No.21 of 2005 registered under Section 307/323/34 IPC in the year 2005, and that the petitioner had not mentioned this fact in his application form.

11. The petitioner filed a rejoinder reply controverting the stand taken by the respondent-Delhi Transport Corporation. Along with his rejoinder reply, petitioner has filed copies of salary slips for the period from October 2009 to January 2010, and from October 2010 to January 2011, and has contended that during the said period he was paid full salary and allowances, and, therefore, the statement made by the respondent-Delhi Transport Corporation that he was awarded the punishment of 'Censure' for his unauthorized absence from 01.01.2010 to 24.01.2010 is unfounded. Petitioner has also filed copies of the order and judgment dated 07.08.2014 passed by the Additional Sessions Judge, NW-03, Rohini, Delhi, in Sessions Case No.80 of 2013 (FIR No.140/09), whereby he and other accused persons have been acquitted.

12. Mr. Nilansh Gaur, learned counsel appearing for the petitioner submits that the challenge made to the impugned order by the petitioner is four-fold, namely,

- (i) That the order dated 05.07.2013 passed by the respondent is stigmatic and punitive and not a simpliciter termination order thereby warranting issuance of a Show Cause Notice before Disciplinary proceedings could be initiated against the petitioner. Such non issuance of Show Cause Notice followed

by Disciplinary Proceedings is violative of the fundamental principles of service jurisprudence hence termination order ought to be set aside ;

(ii) That as per D.R.T.A. Regulations, 1952, the maximum statutory period of probation prescribed as per Regulation 7 (1) is of two years and as per Regulation 9, the services of an employee may be terminated without any notice or pay in lieu thereof during the period of probation. Since the period of probation was extended beyond the period as prescribed under regulation 7 without recording any reasons thereof, the invocation of termination under Regulation 9 (a) (i) of the Regulations could not have been done by the respondent;

(iii) That the allegation of non-disclosure of the criminal case bearing FIR No.140/2009 which was registered on 06.08.2009 has also been made the basis of termination despite the fact that the concerned FIR was registered subsequent to the appointment and therefore, could not have been made the basis of the termination; and,

(iv) That the extension of probation of the petitioner beyond the maximum statutory period of two years would entail automatic confirmation on the post by the deeming legal fiction inbuilt in regulation 7 of the Regulations.

13. Learned counsel for the petitioner refers to the order dated 05.07.2013 and draws attention to para 1 and 2 thereof to contend that the termination order clearly refers to the FIR No.140/09 dated 06.08.2009 registered under Sections 279/337 IPC and Section 307 IPC, PS- Kanjhawala, Delhi and also makes reference to the extension of probation thrice, once for one year and twice for six months each beyond the period stipulated in regulation 7 of the Regulations. Thus, he contends that the termination based on such material cannot be deemed to be a simpliciter termination and is clearly a stigmatic one and cannot withstand the scrutiny of law.

14. Learned counsel next contends that the non-disclosure of the criminal case in the original application form, referred to in the termination order dated 05.07.2013, is of no consequence and is irrelevant for the reason that the said FIR No.140/09 was registered on 06.08.2009, whereas, the petitioner was appointed on 16.06.2009. He contends that the registration of a criminal case post appointment could not have been used as a ground to terminate his services, for non-disclosure of a material fact in the application form.

15. Learned counsel, while addressing the contentions contained in (ii) and (iv) of para 12 above, refers to Regulation 7 of the Regulations which is extracted hereunder :

“7 (1) Probation- All appointments shall be made on probation for a period of one year. The period of probation may be extended by the Appointing Authority in the case of a particular individual if the Appointing

Authority considers it necessary for reasons which should be recorded provided that in no case shall the period of probation exceed two years.”

Referring to the aforesaid, learned counsel submits that the maximum period up to which a probationer can be kept on probation is couched in a negative language, indicating thereby that the probation cannot be extended beyond a period of two years and his continuance thereafter would tantamount to deemed confirmation. He alternatively further submits that, in case, there is any extension granted by the Appointing Authority, the same would be illegal resulting in an automatic deemed confirmation.

16. In support of his aforesaid contention, learned counsel refers to the judgment dated 01.04.2011 rendered by learned Single Judge of this Court in ***Delhi Transport Corporation vs. Sh. Ram Phal*** reported in **2011 SCC OnLine Del 1649**. He also relies upon the judgment rendered by the Supreme Court in ***Karnataka State Road Transport Corporation and Anr. vs. S. Manjunath, (2000) 5 SCC 250***.

17. Thus, on the basis of the above, learned counsel submits that if the termination order dated 05.07.2013 is examined on the touchstone of, either the order not being simpliciter termination, or on the basis of violation of Regulation 7, the same is liable to be quashed and set aside. Thus, he prays that resultantly the petitioner may be reinstated in service as a confirmed employee with full back wages and all consequential benefits including seniority, promotions and any other statutory benefits which would have otherwise accrued to him.

18. Opposing the arguments urged by the counsel for the petitioner, learned counsel for the respondent supported the reasons contained in the impugned order. Learned counsel for the respondent submitted that the order dated 05.07.2013 terminating the services of the petitioner was not stigmatic and the respondent was well within its authority and jurisdiction as conferred by Regulation 9 (a) (i) of the Regulations to terminate the services of a probationer.

19. So far as the contention based on Regulation 7 is concerned, he submits that there is no reason to conclude that the negative language employed therein would confer the status of deemed confirmation since as per the provision contained in Clause (2) of Regulation 7, confirmation of a probationer is subject to fitness. He thus, submits that, it is prerogative of the respondent whether to confirm or not any employee subject to its satisfaction. He submits that the instant petition may be dismissed.

20. The Petitioner, however, failed to place on record, either before the Tribunal or this Court, the appointment letter issued by the Respondent which would have shown the other conditions governing the conditions of service of the Petitioner

21. We have heard learned counsel for the parties and are of the opinion that the contentions put forth by the petitioner do not merit interference in the impugned order passed by the learned Tribunal.

22. We propose to take up the arguments raised in sub para (i) and (iv) of para 12 above at the initial stage. Learned counsel for the petitioner argued that the impugned termination order issued to the petitioner, who was a probationer, was a stigmatic one and therefore, could not have been issued without a show cause notice to be followed by a proper Inquiry. The other contention being that the continuation of the petitioner beyond 2 years of probation as stipulated in DRTA Regulation 7 would entail deemed automatic confirmation, and consequently, the termination order without considering this vital aspect, is vitiated in law.

23. We have carefully perused the impugned order dated 05.07.2013 challenged by the petitioner before the Tribunal and now before us and find that the said termination order refers to the fact of registration of FIR No.140/09 dated 06.08.2009 under sections 279/337 IPC and section 307 IPC at PS Kanjhawala, Delhi as well as the extension of period of probation for various periods going beyond 2 years period.

24. The termination order records the aforementioned facts which are not disputed by the petitioner either. However, the substratum of the termination order is not based on such events and simply proceeds on the basis that the period of probation of the petitioner cannot be extended beyond 2 years and as a result, the services of the petitioner were terminated under Regulation 9 of the D.R.T.A. Regulations, 1952, which is as follows :

“9. Termination of service:- (a) Excepts as otherwise specified in the appointment orders, the services of an employee of the Authority may be terminated without any notice or pay in lieu of notice:-

(i) During the period of probation and without assigning any reason thereof.

(ii) For misconduct,

(iii) On the completion of specific period of appointment.

(iv) In the case of employees engaged on contract for a specific period, on the expiration of such period in accordance with the terms of appointment.

(b) Where the termination is made due to reduction of establishment or in circumstances other than those mentioned at (a) above, one month notice or pay in lieu thereof will be given to all categories of employees.

(c) Where a regular/ temporary employee wishes to resign from his post under the Authority he shall give three/ one month's notice in writing or pay in lieu thereof to the Authority provided that in special cases, the General Manager may relax, at his discretion, the condition regarding the period of notice of resignation or pay in lieu thereof.”

25. A mere mentioning of such admitted facts, without making the same as the basis for termination, cannot make the order of termination a stigmatic one. Learned counsel for the petitioner is not correct when he contends that since the termination order mentions the registration of FIR, it has to be considered as if the termination itself is based thereon. We do not find anything in the said termination

order that can give rise to the presumption that the same was based on the criminal complaint and was not a simpliciter termination.

26. So far as the next contention that the extension of period of probation beyond 2 years would entail in automatic deemed confirmation is concerned, there is no such deeming fiction which can be assumed or ascertained from the language of the said Regulation.

27. Learned counsel for the petitioner, while arguing this aspect, overlooked clause (2) of Regulation 7 which stipulates as to how and in what condition a probationer is to be confirmed. For convenience, clause (2) of Regulation 7 is extracted hereunder:

“Regulation 7 (2) Confirmation- *After the satisfactory completion of the period of probation in a post, an employee who is found fit for confirmation may be confirmed in that post.*

Provided that post is included in the sanctioned permanent establishment of the Delhi Road Transport Authority.

All confirmations will be made by the Appointing Authority.”

28. A plain reading of clause 2 makes it evident that the words “an employee who is found fit for confirmation” have been employed for a specific purpose, which is, that it is subject to the employee being found fit for confirmation alone that the probationer may be confirmed in the post in which he is rendering probationary services. If one were to adopt the contention of deeming fiction of automatic confirmation upon extension of probation period beyond 2 years, then

clause (2) of Regulation 7 of the Regulations would be rendered otiose and a surplussage inasmuch as there would be no requirement for the probationer to be tested or evaluated before confirmation.

29. In other words, in all cases the employer has necessarily to employ the probationer irrespective of his fitness or suitability. That could not be and indeed is not the purport of clauses (1) or (2) of Regulation 7. It is trite that covenants have to be read harmoniously so as to achieve the objective for which they are drafted. No violence can be inflicted upon the language of clause (2) and it is manifest that only on being found fit, the probationer can be confirmed by the Appointing Authority. Thus, there is no deemed automatic confirmation even if the period of probation is extended beyond 2 years as per the language employed in Regulation 7 of the Regulations.

30. Learned counsel for the petitioner relied upon the judgment rendered by a Coordinate Bench of this Court in ***Delhi Transport Corporation vs. Mahavir Singh***, WP (C) No. 936/2017 rendered on 22.03.2017 which was filed along with the written arguments, to submit that a stigmatic termination order ought to be quashed and set aside. Though, there is no quarrel with the proposition, however, the termination order in that case was predicated upon the accident caused by Mahavir Singh and there was no reference to the probationary period at all. Thus the Court was justified in reaching the conclusion that the termination order was stigmatic. In the present case, the

termination order is not predicated upon any such incident, except for reference of facts.

31. Yet another case relied upon by the learned counsel for the petitioner is the judgment dated 01.04.2011 rendered by learned Single Judge of this Court in ***Delhi Transport Corporation vs. Sh. Ram Phal*** (supra) in support of his argument. The said case proceeded on the basis that no reasons were furnished as to why the period of probation was extended beyond the original 1 year probation period and reached a conclusion that the terms of Regulation 7 have been violated and consequently the concept of deemed confirmation would become applicable.

32. In the present case, neither the facts are similar nor any arguments of such nature were addressed by the learned counsel for the petitioner. It furthermore appears that neither the judgments of the Supreme Court, which we shall be referring to shortly, nor the provisions of clause (2) of Regulation 7 were brought to the notice of the Single Judge and therefore, the same was rendered in the facts as obtaining in that case.

33. Learned Counsel for the petitioner relied upon the judgement of the Supreme Court in ***Karnataka State Road Transport Corporation & Anr vs. S. Manjunath, 2000 (5) SCC 250*** to submit that where the rules provide that the period of probation cannot be extended beyond the specified maximum period, there shall be a deemed confirmation

at the end of the maximum probationary period unless there is anything to the contrary in the Rules.

34. In the facts of the present case, the conditions of confirmation as stipulated in clause (2) of Regulation 7 make it mandatory for the probationer to be confirmed subject to being found fit and as such are, what the Supreme Court holds in Manjunath's case is, "*unless there is anything to the contrary in the rules*".

35. In fact, the Supreme Court in S Manjunath's case had observed three distinct lines of judgments rendered by the Constitution Bench in such cases, first, where the period of probation is specified and power to extend is also conferred upon the Authority without prescribing maximum period of probation, secondly, where the maximum period of probation is specified without any discretion available with the employer and thirdly, where there are other provisions in the rules which indicate that the employer has such discretion coupled with other restrictions. In our view, the present case falls within the domain of the third line of judgments. Thus the petitioner cannot derive any benefit therefrom.

36. The relevant judgments of the Supreme Court applicable to the facts of the present case are set out as under:

- a. The Supreme Court in ***High Court of Madhya Pradesh Vs Satya Narayan Jhavar*** reported in (2001) 7 SCC 161, while considering and following the law laid down by a Constitution Bench judgement rendered by seven learned judges in the case of ***State of Punjab Vs Shamsher Singh***, reported in (1974) 2

SCC 831 held that:

“37. Ordinarily a deemed confirmation of a probationer arises when the letter of appointment so stipulates or the Rules governing service conditions so indicate. In the absence of such term in the letter of appointment or in the relevant Rules, it can be inferred on the basis of the relevant Rules by implication, as was the case in Dharam Singh [AIR 1968 SC 1210 : (1968) 3 SCR 1] . But it cannot be said that merely because a maximum period of probation has been provided in the Service Rules, continuance of the probationer thereafter would ipso facto must be held to be a deemed confirmation which would certainly run contrary to the seven-Judge Bench judgment of this Court in the case of Samsher Singh [(1974) 2 SCC 831 : 1974 SCC (L&S) 550] and the Constitution Bench decisions in the cases of Sukhbans Singh [AIR 1962 SC 1711 : (1963) 1 SCR 416], G.S. Ramaswamy [AIR 1966 SC 175 : (1964) 6 SCR 279] and Akbar Ali Khan [AIR 1966 SC 1842 : (1966) 3 SCR 821] .”

b. The Supreme Court, in ***Head Master, Lawrence School, Lovedale Vs Jayanthi Raghu*** reported in (2012) 4 SCC 793, placed reliance on ***Satya Narayan Jhavar*** (supra) and held as under in Para 23 of its judgement:

“23. ...The status of confirmation has to be earned and conferred. Had the rule making authority intended that there would be automatic confirmation, Rule 4.9 would have been couched in a different language. That being not so, the wider interpretation cannot be placed on the Rule to infer that the probationer

*gets the status of a deemed confirmed employee after expiry of three years of probationary period as that would defeat the basic purpose and intent of the Rule which clearly postulates "if confirmed". A confirmation, as is demonstrable from the language employed in the Rule, does not occur with efflux of time. As it is hedged by a condition, an affirmative or positive act is the requisite by the employer. In our considered opinion, an order of confirmation is required to be passed. The Division Bench has clearly flawed by associating the words 'if confirmed' with the entitlement of the age of superannuation without appreciating that the use of the said words as a fundamental qualifier negatives deemed confirmation. Thus, the irresistible conclusion is that the present case would squarely fall in the last line of cases as has been enumerated in paragraph 11 of **Satya Narayan Jhaver** (supra) and, therefore, the principle of deemed confirmation is not attracted. "*

c. The Supreme Court in **Durgabai Deshmukh Memorial Sr. Sec. School and Anr. vs. J.A.J. Vasu Sena and Anr.**, while dealing with an issue arising out of Rule 105 of the Delhi School Education Rules 1973 and reported in **2019 (17) SCC 157**, in para 49 of its judgement held as under:

"49. We hold and declare that:

(i) The words "by another year" in Rule 105(1) of the 1973 Rules stipulate that the maximum period of probation permissible is two years. The limit equally applies to minority institutions covered by the first proviso to Rule 105; and

(ii) Rule 105(2) stipulates a condition precedent to the issuance of an order of confirmation. The continuation of the services of a probationer beyond the period of probation does not amount to a deemed confirmation of service. It is only upon the issuance of an order of confirmation by the appointing authority that a probationer is confirmed in service.”

37. Upon a consideration of the law as laid down by the Constitution Bench of the Supreme Court which is followed by other judgments and applying the same to the facts of the present case, the irrefutable conclusion we reach is that there is no deemed or automatic confirmation of the petitioner due to expiry of the maximum period of probation or its extension beyond the maximum period, unless confirmed under clause (2) of Regulation 7 of the Regulations. It is beyond cavil that no such confirmation ever took place and therefore termination vide letter dated 05.07.2013 was in terms of Regulation 9 of the Regulations and cannot be quashed as prayed for.

38. Consequently, the arguments of the petitioner as noted in sub para (i) and (iv) of para 12 above hold no water and are rejected as such.

39. That so far as the contentions raised by learned counsel for the petitioner in sub para (ii) and (iii) of para 12 above are concerned, from the facts as obtaining in the present case and the law as settled

by the Supreme Court, arguments contained in sub para (ii) are dehors any merit and are rejected.

40. So far as arguments noted in sub para (iii) of para 12 above are concerned, it proceeds on the assumption that the termination of services of petitioner is predicated upon FIR no.140/09 which was registered on 06.08.2009 whereas the petitioner was appointed on 16.06.2009 and probation commenced from 09.07.2009 and therefore could not have been taken into consideration at all, and if it did, then notice prior to termination ought to have been issued.

41. The aforesaid argument is noted only to be rejected since it proceeds on a fallacious ground. We have already held that the termination order is not predicated upon the criminal case and only records it as a fact, therefore, reference to the registration of FIR subsequent to the date of appointment does not further the case of the petitioner. Thus, we reject this contention too.

42. Since we have concluded that the termination order dated 05.07.2013 is not stigmatic, as a corollary, we hold that the reference in para 1 to FIR No.140/09 which was registered on 06.08.2009 against the petitioner as well as the reference in para 2 to the unauthorized absence from duty during probation period, in the said order as surplusage and expunge the same. We direct the respondent to issue a fresh termination order effective 05.07.2013, without any reference to FIR No.140/09 dated 06.08.2009 or the unauthorized

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absence from duty during probation period. Said order be issued within 4 weeks from today.

43. The present writ petition is disposed of in above terms with no order as to costs.

TUSHAR RAO GEDELA, J

SANJEEV SACHDEVA, J

NOVEMBER 23, 2022

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