



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION (WP) NO.7858 OF 2018

- 1) Kishor s/o Bandu Thakre,
Aged 35 years, Occu. Nill R/o, C/o,
Manaksingh Roy, Moharili (Tadoba),
Tah. Bhadrawati, Distt. Chandrapur.

.... Petitioner(s)

// VERSUS //

- 1) Maharashtra Tourism Development Corporation Ltd., through its Managing Director, C.D.O., Hotments, I/F, Yogkshem (LIC) Building, Madam Cama Road, Mumbai-400 020.
- 2) Maharashtra Tourism Development Corporation Ltd., through its Joint Director, C.D.O., Hotments, I/F, Yogkshem (LIC) Building, Madam Cama Road, Mumbai-400 020.
- 3) Maharashtra Tourism Development Corporation Ltd., through its Regional Manager, Regional Office, Near Rural Tahsil Office, Civil Lines, Nagpur.
- 4) Maharashtra Tourism development Corporation Ltd., ParyatakNiwas, Mohoril (Tadoba), tahsil – Bhadravati, Dist. Chandrapur, Through its Manager.

... Respondent(s)

Shri Aadil J. Mirza, Advocate for the Petitioner/s
Shri R.V. Bhanarkar, Advocate for the respondent Nos.1 to 3

CORAM : ANIL S. KILOR, J.
DATED : 06.10.2023

ORAL JUDGMENT :

1. Heard.
2. **Rule.** Rule made returnable forthwith. Heard finally by consent by the parties.
3. The petitioner was appointed on 01.08.2011 on the post of 'Account Clerk' on probation for the period of one year. During the probation period on 02.05.2012 he was served with the first show cause notice, alleging that he illegally permitted certain persons to stay in the guest house by charging money from them.
4. On submission of his reply and on finding that the reply is not satisfactory, another show cause notice was given on 12.07.2012, calling explanation as to why the disciplinary proceedings shall not be initiated against the petitioner.
5. Thereafter, the Enquiry Officer was appointed on 08.11.2012 for conducting departmental enquiry against the petitioner and

even before completion of the enquiry, the petitioner was terminated vide order dated 31.01.2013 which was the subject matter of challenge before the Labour Court in Complaint ULP No.43 of 2013. The learned Labour Court vide judgment and order dated 30.06.2015 dismissed the Complaint.

6. Thereupon the petitioner carried a Revision before the Industrial Court vide Revision ULP No.28 of 2015 which came to be dismissed vide judgment and order dated 12.02.2018. The same is under challenge in this writ petition.

7. I have heard the learned counsel for the respective parties.

8. The learned counsel for the petitioner submits that both the Courts below have committed error in not considering the fact that as per the Employees' Service Regulations of Maharashtra Tourism Development Corporation Ltd., the probation period is of six months, whereas, the appointment order of the petitioner shows that he was appointed on probation for one year. He therefore, submits that after completion of six months or even after the period mentioned in the appointment order i.e. one year, the petitioner

was continued in service and he has deemed to have confirmed and unless a departmental enquiry is held against the petitioner, he cannot be terminated.

9. He further submits that when the enquiry was going on, he was terminated on the ground that the services of the petitioner, were found to be unsatisfactory. He therefore, submits that the termination of the petitioner, is contrary to law.

10. The learned counsel for the petitioner further submits that both the Courts below have failed to appreciate the right of the petitioner as a 'Probationer', particularly on completion of the probation period. He therefore, submits that the complaint filed by the petitioner needs to be allowed. The learned counsel for the petitioner has placed reliance upon the judgments of the Hon'ble Supreme Court of India, in the cases of *State of Punjab Vs. Dharam Singh*¹, *Anoop Jaiswal Vs. Government of India and another*² and *Rajinder Singh Chauhan and others Vs. State of Haryana and others*³ as well as the judgment of the Full Bench of this Court in

1 AIR 1968 SC 1210

2 (1984) 2 SCC 369

3 (2005) 13 SCC 179

Writ Petition No.5998 of 2019 (Gramin Yuvak Vikas Shikshan Mandal and anr. Vs. Shivnarayan Datta Raut and anr.).

11. On the other hand, the learned counsel for the respondent Nos.1 to 3 supports the judgments passed by the learned Labour Court as well as the learned Industrial Court.

12. It is submitted that there are concurrent findings recorded by both the Courts below and as no perversity has been committed by both the Courts below, this Court may not interfere with the judgments and orders of both the Courts below.

13. In light of the rival contention of the parties, I have perused the record and the impugned judgments and orders of both the Courts below.

14. The whole controversy revolves around a question, whether the petitioner can be considered as deemed confirmed on completion of probation period, in view of the Employees' Service Regulation ?

15. In the present matter, admittedly, the petitioner was appointed on 01.08.2011 for the period of one year on probation and he was terminated on 31.01.2013 i.e. after the period of probation of one year.

16. In the case of *Rajender Singh Chauhan and others* (supra), the Hon'ble Supreme Court of India, has held thus:

"12. In High Court of M.P. v. Satya Narayan Jhavar (2001 (7) SCC 161), this Court categorised the provisions for probation as follows:

"11. The question of deemed confirmation in service jurisprudence, which is dependent upon the language of the relevant service rules, has been the subject-matter of consideration before this Court, times without number in various decisions and there are three lines of cases on this point. One line of cases is where in the service rules or in the letter of appointment a period of probation is specified and power to extend the same is also conferred upon the authority without prescribing any maximum period of probation and if the officer is continued beyond the prescribed or extended period, he cannot be deemed to be confirmed. In such cases there is no bar against termination at any point of time after expiry of the period of probation. The other line of cases is that where while 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 inference in such cases is that the officer concerned is deemed to have been confirmed upon expiry of the maximum period of probation in case before its expiry the order of termination has not been passed. The last line of cases is where, though under the

rules maximum period of probation is prescribed, but the same 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."

..."

17. From the above referred observations, it is evident that there are three categories of probationers. In the first category, services of those employees where in the service rules or in the letter of appointment a period of probation is specified and power to extend the same is also conferred upon the authority without prescribing any maximum period of probation and if the officer is continued beyond the prescribed or extended period, he cannot be deemed to be confirmed. In such cases there is no bar against termination at any point of time after expiry of the period of probation.

18. The second category is that, where 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 inference in such cases is that the officer concerned is deemed to have been confirmed upon expiry of the maximum period of probation in case before its expiry the order of termination has not been passed.

19. The last line of cases is where, though under the rules maximum period of probation is prescribed, but the same 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.

20. In the light of the above referred observations of the Hon'ble Supreme Court of India, it is beneficial to refer to the Employees' Service Regulations of Maharashtra Tourism Development

Corporation Ltd in this case. The Employees' Service Regulation No.9 relates to probation, which reads thus:

“9) Probation :

- i) Every person appointed in or promoted to a permanent vacancy shall, before his confirmation in the post, be required to undergo probation for six months provided that the stipulated period of probation may be reduced in the case of promotees by the Managing Director, at his discretion or, for reasons to be communicated, in writing, or extended by him for such further period not exceeding six months, again for reasons to be communicated, in writing.*
- ii) ...”*

21. The above referred Employees' Service Regulation does not provide maximum period of probation for a person appointed to a permanent vacancy. Therefore, the petitioner would fall in the cases of category (i), wherein the employee can be terminated at any time even after completion of probation period.

22. The judgments in the case of State of Punjab (supra) and *Anoop Jaiswal* (supra), are distinguishable on facts for the reasons that, during the period of probation twice show cause notices were

served upon the petitioner and even the enquiry was initiated against him.

23. The above referred facts, sufficiently show that for the purpose to arrive at conclusion that whether the services of the petitioners are satisfactory or not, there was sufficient material available with the employer to hold in negative, and considering the allegations made in the show cause notice or the charges on which the enquiry was initiated, I do not find any reason to interfere with the order of termination on the ground that the services of the petitioners were not found satisfactory.

24. In the circumstances, as the petitioner cannot be considered as deemed confirmed on completion of the probation period of one year, he has no right on the post as held by the Full Bench of this Court in *Writ Petition No.5998 of 2019* (supra).

25. In the circumstances, I do not find any merits in the present petition, accordingly, it is **dismissed**.

Rule is discharged. No costs.

[ANIL S. KILOR, J.]