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

% *Date of Decision: 08th May, 2023*

+ W.P.(C) 9233/2019 & CM APPL. 38091/2019

RUPINDER KAUR

..... Petitioner

Through: Mr. Rahul Aggarwal, Advocate.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Rajesh Gogna, Central
Government Standing Counsel with
Ms. Priya Singh, Advocate.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. Present writ petition has been filed by the Petitioner seeking the following reliefs:-

“a) Issue a writ order or direction in nature of Certiorari calling for the entire record of the case and quashing the office order dated (OO)29.03.2019 purporting to remove the petitioner.

b) Issue a writ order or direction in nature of Certiorari calling for the entire record of the case and quashing the office order (OO) dated 17TH May, 2019 purporting to the appointment of respondent no. 4 as Messenger-cum-Cleaner in the Indian Embassy at Berne, Switzerland.

c) Issue a writ order or direction in nature of Certiorari calling for the entire record of the case and quashing the office order (OO) dated 26.03.2019.

d) Issue a writ order or direction in nature of Mandamus directing and commanding the respondents to treat petitioner continuously without break on duty as local Messenger-cum-Cleaner at the Indian Embassy in Berne [Switzerland] and allow her to work till she attains the age of superannuation of 65 years i.e. to say up to 27.12.2040 and pay all her emoluments accordingly.”

2. Narrative of facts as brought out in the writ petition is that
Petitioner was selected and appointed as Messenger-cum-Cleaner by

the Embassy of India, Berne vide Office Order dated 10.04.2018 on probation for a period of six months on monthly salary of CHF 3,000/- in the pay scale of CHF 3000-7350. Simultaneously, another Office Order dated 10.04.2018 was issued by the Embassy of India, Berne specifying the conditions of service of the Petitioner, which according to the Petitioner did not contain any stipulation for extending the probation period and therefore at the end of six months her services were deemed to be confirmed.

3. On 24.09.2018, an office addendum was issued by the Embassy deleting para 7(1) of the order dated 10.04.2018 disentitling the Petitioner to claim overtime allowance, against which Petitioner made representations. As a counterblast to this, on 26.03.2019 probation period of the Petitioner was extended by three months i.e. upto 09.07.2019, despite there being no power to extend the probation period. Petitioner was not allowed to report on duty and was manhandled by the security guards. A detailed representation was thereafter made to the competent authority by the Petitioner on 14.04.2019, ventilating her grievances.

4. The Indian Embassy issued an advertisement for filling up the post of Messenger-cum-Cleaner on its website and local newspaper requiring applications to be submitted on or before 08.05.2019. This led to filing of writ petition being WP(C) 5476/2019 assailing re-advertisement of the post. On 20.05.2019 when the writ petition was listed, counsel for the Respondents informed the Court that services of the Petitioner had been terminated vide order dated 29.03.2019 and the petition was rendered infructuous. Respondent No.1 therein was directed by the Court to furnish the details of the fresh appointee to the Petitioner within a week and Petitioner was given liberty to challenge the appointment, if so aggrieved, before the appropriate forum and the

writ petition was disposed of. Vide order dated 17.05.2019 Sh. Omraj

Lama/Respondent No. 4 was appointed as Messenger-cum-Cleaner on probation for six months, whose appointment is also challenged in the present writ petition.

5. Challenging the order of termination dated 29.03.2019, learned counsel for the Petitioner submits that while it is true that confirmation cannot be sought as a matter of right by the Petitioner, being a probationer, however, it is a settled law that where termination of probation is shown to be actuated by *malafide*/vindictiveness and/or is founded on allegations, it cannot be sustained in law, if no inquiry was held prior to the termination in consonance with principles of natural justice. It is equally settled that once the probation period comes to an end and there is no stipulation in the appointment letter or the governing Rules, giving power of extension to the employer, probation will be deemed to be confirmed, on expiry of the initial period of probation.

6. It is contended that Petitioner was appointed by Office Order dated 10.04.2018 on probation for six months and there was no stipulation in the offer of appointment permitting the Respondents to extend the probation period. In view of the settled law, on expiry of six months Petitioner ought to have been confirmed in service and therefore the impugned order terminating her services prior to attaining the age of superannuation i.e. 65 years is illegal and a colourable exercise of power. Moreover, termination is a direct result of protest by the Petitioner against non-grant of overtime allowance, as she had been working for 12-14 hours in a day and is founded on allegations of non-performance and thus an inquiry ought to have been held, giving an opportunity to the Petitioner to present her case against the proposed termination. Law permits the Courts to lift the veil to ascertain if the termination was tainted with *malafide* and whether the allegations were the motive or foundation for the termination order

and therefore if this Court finds that termination is founded on allegations and is not a simpliciter order of termination, the impugned order becomes vulnerable and liable to be quashed, as admittedly Respondents have not held any inquiry before passing the said order.

7. Mr. Gogna, learned counsel appearing on behalf of the Respondents submits that Petitioner was appointed as a locally recruited Messenger-cum-Cleaner vide Office Order dated 10.04.2018 and her services were governed by the Employment Contract signed between her and the Embassy of India, Berne on 10.04.2018. The contract is a contract of personal service which cannot be enforced in the Court. Petitioner was neither a public servant nor Government employee and was not entitled to regularization. As per the terms of contract her services were terminated by paying one month's salary in lieu of one month's notice.

8. It is further submitted that at present the Embassy at Berne has 14 locally recruited staff and their services are governed by the Employment Contracts and no law aids the Petitioner in asserting a vested right for extension of her contract. Petitioner's initial probation was extended by three months, however, her work was not found to be satisfactory and the Respondents were entitled to take a conscious decision not to extend the same. Warnings were given to the Petitioner to improve her work, but there was no improvement and there was also lack of sincerity in performing the duties assigned. The purpose of placing an employee on probation is to test if the work/performance is satisfactory and where the employer is not satisfied with the performance, he has every right to dispense with the services of a probationer and no law mandates confirmation of a probationer, despite unsatisfactory service.

9. I have heard the learned counsels for the parties and examined their contentions.

10. Petitioner was appointed vide order dated 10.04.2018 as Messenger-cum-Cleaner in the Embassy of India, Berne. Appointment order indicates that the appointment was on probation for a period of six months and during the said period Petitioner's services were liable to be terminated any time without notice at the discretion of the Head of Mission, if the work and conduct was unsatisfactory. Even on successful completion of probation the services were liable to be terminated *albeit* by giving one month's notice or one month's pay in lieu thereof, if the need arose. While accepting the offer of appointment under the "Employment Contract" Petitioner had furnished an undertaking that she fully understood the implications of the Employment Contract and accepted the same without any protest or demur.

11. The primordial argument in the writ petition is that the order of termination of probation is *malafide* and both stigmatic and punitive and a counterblast to Petitioner's legitimate demand for overtime allowance since she was being made to work for hours far in excess of the time period stipulated under the Contract of Employment. In order to examine this contention it would be pertinent to peruse the impugned order of termination, which is extracted hereunder for ready reference:-

*"Embassy of India
Berne*

Bern/Admn/579/04/2018

29th March, 2019

Office Order

In terms of Para 10 of Order No. Bern/Admn/579/04/2018 dated 10/04/2018 & subsequent amendments dated 24/09/2018, 03/10/2018, 03/01/2019 and 26/03/2019, it has been decided to terminate the services of Ms Rupinder Kaur as Messenger-cum-cleaner with immediate effect from 29.03.2019 (A/N)

*(Roshni Thomson)
Second Secretary (HOC)"*

12. To test the argument of the Petitioner and to adjudicate on the limited issue whether Petitioner's services have been rightly or wrongly terminated it would be relevant and necessary to have a close look at the law on the subject. It is settled that it is the domain of the employer to appoint a person on probation and to extend the probation and confirm the probationer or discharge him/her, if the performance during the probation period is found to be unsatisfactory. It is equally settled that a probationer cannot assert as a matter of right that probation ought to be continued and/or he or she be confirmed at the end of the probation period. Likewise, assessment/judgement of service as satisfactory or otherwise, is of the employer and Courts cannot substitute the decision. There are, however, some exceptions which have been carved out by judicial decisions warranting interference by the Courts pertaining to termination of a probationer, such as where the termination is founded on allegations of misconduct or is a result of *malafide* action, in which case an inquiry must precede the decision to terminate or continue the probationer. I may refer to a few decisions in this regard hereinafter.

13. In ***Anoop Jaiswal v. Government of India and Another, (1984) 2 SCC 369***, the Supreme Court held as under:-

"12. It is, therefore, now well settled that where the form of the order is merely a camouflage for an order of dismissal for misconduct it is always open to the court before which the order is challenged to go behind the form and ascertain the true character of the order. If the court holds that the order though in the form is merely a determination of employment is in reality a cloak for an order of punishment, the court would not be debarred, merely because of the form of the order, in giving effect to the rights conferred by law upon the employee."

14. In ***State of Uttar Pradesh and Another v. Kaushal Kishore Shukla, (1991) 1 SCC 691***, the Supreme Court held as under:-

"7.Whenever, the competent authority is satisfied that the work and conduct of a temporary servant is not satisfactory or that his continuance in service is not in public interest on account of his

unsuitability, misconduct or inefficiency, it may either terminate his services in accordance with the terms and conditions of the service or the relevant rules or it may decide to take punitive action against the temporary government servant. If it decides to take punitive action it may hold a formal inquiry by framing charges and giving opportunity to the government servant in accordance with the provisions of Article 311 of the Constitution. Since, a temporary government servant is also entitled to the protection of Article 311(2) in the same manner as a permanent government servant, very often, the question arises whether an order of termination is in accordance with the contract of service and relevant rules regulating the temporary employment or it is by way of punishment. It is now well settled that the form of the order is not conclusive and it is open to the court to determine the true nature of the order. In Parshotam Lal Dhingra v. Union of India [1958 SCR 828 : AIR 1958 SC 36 : (1958) 1 LLJ 544] , a Constitution Bench of this Court held that the mere use of expressions like 'terminate' or 'discharge' is not conclusive and in spite of the use of such expressions, the court may determine the true nature of the order to ascertain whether the action taken against the government servant is punitive in nature. The court further held that in determining the true nature of the order the court should apply two tests namely: (1) whether the temporary government servant had a right to the post or the rank or (2) whether he has been visited with evil consequences; and if either of the tests is satisfied, it must be held that the order of termination of a temporary government servant is by way of punishment.....”

15. It would be useful to refer to the judgment of the Supreme Court in ***Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta and Others, (1999) 3 SCC 60***, as under:-

“21. If findings were arrived at in an enquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as “founded” on the allegations and will be bad. But if the enquiry was not held, no findings were arrived at and the employer was not inclined to conduct an enquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similar is the position if the employer did not want to enquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegations would be a motive and not the foundation and the simple order of termination would be valid.”

16. Courts have repeatedly drawn distinctions between ‘motive’ and ‘foundation’ as the backdrop to termination of a probationer and

relevant would it be to refer to a judgment of the Supreme Court in ***Chandra Prakash Shahi v. State of U.P. and Others, (2000) 5 SCC 152*** as follows:-

“28. The important principles which are deducible on the concept of “motive” and “foundation”, concerning a probationer, are that a probationer has no right to hold the post and his services can be terminated at any time during or at the end of the period of probation on account of general unsuitability for the post in question. If for the determination of suitability of the probationer for the post in question or for his further retention in service or for confirmation, an inquiry is held and it is on the basis of that inquiry that a decision is taken to terminate his service, the order will not be punitive in nature. But, if there are allegations of misconduct and an inquiry is held to find out the truth of that misconduct and an order terminating the service is passed on the basis of that inquiry, the order would be punitive in nature as the inquiry was held not for assessing the general suitability of the employee for the post in question, but to find out the truth of allegations of misconduct against that employee. In this situation, the order would be founded on misconduct and it will not be a mere matter of “motive”.

29. “Motive” is the moving power which impels action for a definite result, or to put it differently, “motive” is that which incites or stimulates a person to do an act. An order terminating the services of an employee is an act done by the employer. What is that factor which impelled the employer to take this action? If it was the factor of general unsuitability of the employee for the post held by him, the action would be upheld in law. If, however, there were allegations of serious misconduct against the employee and a preliminary inquiry is held behind his back to ascertain the truth of those allegations and a termination order is passed thereafter, the order, having regard to other circumstances, would be founded on the allegations of misconduct which were found to be true in the preliminary inquiry.”

17. In ***Muir Mills Unit of NTC (U.P.) Ltd. v. Swayam Prakash Srivastava and Another, (2007) 1 SCC 491, State of W.B. and Others v. Tapas Roy, (2006) 6 SCC 453 and Rajesh Kumar Srivastava v. State of Jharkhand and Others, (2011) 4 SCC 447*** and various other judgments, the Supreme Court has repeatedly held that an order terminating the services of a probationer on the ground of unsatisfactory performance is not a stigmatic order and there is no requirement of following the principles of natural justice in such a case. In ***Rajesh Kumar Srivastava (supra)*** the Supreme Court held

that while taking a decision to terminate the services of a probationer, no notice is required to be given where the decision is taken by the employer considering the employee's over all performance, conduct and suitability to the job and strictly speaking, these are not cases of removal but of discharge simpliciter. In *Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences and Another, (2002) 1 SCC 520*, the Supreme Court once again deliberated on the semantic concepts like 'motive' and 'foundation' and reiterated and re-affirmed the position that termination founded on misconduct is illegal but where misconduct is the motivating factor, termination warrants no interference.

18. Therefore the position that emerges in law with respect to termination of services of a probationer is that if the termination is by an order simpliciter and is on ground of unsuitability of the employee for the post and/or unsatisfactory performance, the action will be tenable in law since the stimulus or motive is the unsatisfactory service. However, if findings were arrived at in an inquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as "founded" on the allegations and will be bad in law. Therefore there is no straightjacket formula and in each case the 'motive' or 'foundation' behind the termination order will have to be ascertained to decide whether the termination order is bad in law.

19. In the present case it is seen that the order of termination is a simpliciter order of discharge stating that the Respondents had decided to terminate the services of the Petitioner with immediate effect from 29.03.2019 and cannot be termed as a stigmatic order. It is stated by the Respondents in the counter affidavit that at no stage the Petitioner was given any private work for any functionary of the Embassy and the work allotted was strictly as per the Employment Contract. Several

oral warnings and three memos had been issued to the Petitioner for her non-performance as a Cleaner, however, Petitioner failed to improve and lacked sincerity to undertake the responsibilities assigned to her. Her non-performance was impacting the work at the Embassy which was not a good reflection on the concerned Ministry. In sum and substance, the stand of the Respondents is that the services of the Petitioner were dispensed with on account of unsatisfactory performance during the probation period as there was no improvement, despite warnings. This Court is unable to agree with the Petitioner that the impugned order is stigmatic or punitive. It is an innocuous and a simpliciter order of discharge as the Respondents did not find the work of the Petitioner to be satisfactory enabling them to extend probation period and/or to confirm her services. Purpose of placing a person on probation is to assess and judge the performance so that a conscious call can be taken by the employer either to continue and finally confirm the services of the probationer or to discharge him or her. Petitioner has been unable to establish any *malafide* or that there were any allegations of misconduct etc. which formed the foundation of the impugned order.

20. In *Abhijit Gupta v. S.N.B. National Centre, Basic Sciences, (2006) 4 SCC 469*, the Supreme Court while dealing with an identical issue observed that the Appellant therein was rightly terminated on probation as the record made it clear that he was advised and warned a number of times to improve his behaviour, conduct and discharge of work but there was none. In *Gurvinder Singh Saini v. Director of Education and Ors., 2016 SCC OnLine Del 6106*, a Co-ordinate Bench of this Court, relying upon several judicial precedents and dealing with the case of a termination order of a probationer observed as follows:-

“11. It is seen that termination of the petitioner was by a

nonstigmatic order of termination dated 25.11.1997, and therefore, the petitioner cannot argue that services of the petitioner were terminated by a stigmatic order. In fact, ratios of the judgments of the Supreme Court show that even if reasons are given showing as to why the services are not satisfactory, and which may result in some sort of observations as to lack of potential or character of a probationary employee, even then, such language has been held by the Supreme Court to be not stigmatic. This is clearly stated in the judgment in the case of Tapas Roy (supra) wherein the Supreme Court has said that in a wider sense stigma is implicit in an order of termination during probation but it is only when something is more than imputing unsuitability for the post in question that order may be considered as stigmatic. In that case, it was also observed that the probationer was guilty of frequent unauthorised absence from training centre and which indicates his lack of interest in training and his scant respect for discipline and which observations have been held by the Supreme Court to be not stigmatic.

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17. 10(ii) Once again, this argument urged on behalf of the petitioner is misconceived, because as already discussed above, satisfaction of services or otherwise has to be judged by the school and this Court cannot substitute its own opinion for that of the school by holding that services of the petitioner were satisfactory although the respondent nos. 2 and 3/school found that services were not satisfactory. Also, the issue of malafides in a case like the present cannot have any effect once the issue is of satisfactory services or otherwise of an employee wherein it is the competent authority/the school which decides the satisfactory nature of services of an employee or otherwise.”

21. Coming to the next and the only other plank of the argument of the Petitioner that since there was no stipulation in the appointment order with regard to extension of probation, Petitioner was deemed to have been confirmed at the end of the six months’ period and was thus entitled to continue up to the age of superannuation, suffice would it be to state that the argument cannot be accepted in view of the long line of judgments holding to the contrary. In **Wasim Beg v. State of U.P. and Others, (1998) 3 SCC 321**, the Supreme Court delineated three possible categories of cases in the context of probation and confirmation as follows:-

“15. Whether an employee at the end of the probationary period automatically gets confirmation in the post or whether an order of confirmation or any specific act on the part of the employer

confirming the employee is necessary, will depend upon the provisions in the relevant Service Rules relating to probation and confirmation. There are broadly two sets of authorities of this Court dealing with this question. In those cases where the Rules provide for a maximum period of probation beyond which probation cannot be extended, this Court has held that at the end of the maximum probationary period there will be a deemed confirmation of the employee unless Rules provide to the contrary. This is the line of cases starting with State of Punjab v. Dharam Singh [AIR 1968 SC 1210 : (1968) 3 SCR 1] , M.K. Agarwal v. Gurgaon Gramin Bank [1987 Supp SCC 643 : 1988 SCC (L&S) 347] , Om Parkash Maurya v. U.P. Coop. Sugar Factories Federation [1986 Supp SCC 95 : 1986 SCC (L&S) 421 : (1986) 1 ATC 95] , State of Gujarat v. Akhilesh C. Bhargav [(1987) 4 SCC 482 : 1987 SCC (L&S) 460 : (1987) 5 ATC 167] .

16. *However, even when the Rules prescribe a maximum period of probation, if there is a further provision in the Rules for continuation of such probation beyond the maximum period, the courts have made an exception and said that there will be no deemed confirmation in such cases and the probation period will be deemed to be extended. In this category of cases we can place Samsher Singh v. State of Punjab [(1974) 2 SCC 831 : 1974 SCC (L&S) 550] which was the decision of a Bench of seven Judges where the principle of probation not going beyond the maximum period fixed was reiterated but on the basis of the Rules which were before the Court, this Court said that the probation was deemed to have been extended. A similar view was taken in the case of Municipal Corpn. v. Ashok Kumar Misra [(1991) 3 SCC 325 : 1991 SCC (L&S) 1046 : (1991) 16 ATC 927] . In Satya Narayan Athya v. High Court of M.P. [(1996) 1 SCC 560 : 1996 SCC (L&S) 338] although the Rules prescribed that the probationary period should not exceed two years, and an order of confirmation was also necessary, the termination order was issued within the extended period of probation. Hence the termination was upheld.*

17. *The other line of cases deals with Rules where there is no maximum period prescribed for probation and either there is a Rule providing for extension of probation or there is a Rule which requires a specific act on the part of the employer (either by issuing an order of confirmation or any similar act) which would result in confirmation of the employee. In these cases unless there is such an order of confirmation, the period of probation would continue and there would be no deemed confirmation at the end of the prescribed probationary period. In this line of cases one can put Sukhbans Singh v. State of Punjab [AIR 1962 SC 1711 : (1963) 1 SCR 416 : (1963) 1 LLJ 671] , State of U.P. v. Akbar Ali Khan [AIR 1966 SC 1842 : (1966) 3 SCR 821 : (1967) 1 LLJ 708], Kedar Nath Bahly. State of Punjab [(1974) 3 SCC 21], Dhanjibhai Ramjibhai v. State of Gujarat [(1985) 2 SCC 5 : 1985 SCC (L&S) 379] and Tarsem Lal Verma v. Union of India [(1997) 9 SCC 243 : 1997 SCC (L&S) 1149] , Municipal Corpn. v. Ashok Kumar Misra [(1991) 3 SCC 325 : 1991 SCC (L&S) 1046 : (1991) 16 ATC*

927] and *State of Punjab v. Baldev Singh Khosla* [(1996) 9 SCC 190 : 1996 SCC (L&S) 1210] . In the recent case of *Dayaram Dayal v. State of M.P.* [(1997) 7 SCC 443 : 1997 SCC (L&S) 1797 : AIR 1997 SC 3269] (to which one of us was a party) all these cases have been analysed and it has been held that where the Rules provide that the period of probation cannot be extended beyond the maximum period there will be a deemed confirmation at the end of the maximum probationary period unless there is anything to the contrary in the Rules.”

22. In the case of ***High Court of M.P. through Registrar and Others v. Satya Narayan Jhavar*, (2001) 7 SCC 161**, the Supreme Court negated the contention that there was automatic or deemed confirmation in law, 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.”

23. In ***Registrar, High Court of Gujarat and Another v. C.G. Sharma*, (2005) 1 SCC 132**, the Supreme Court held that there is no automatic/deemed confirmation in service jurisprudence and a probationer remains probationer unless specifically confirmed based on his work evaluation, in the absence of any stipulation in the rules

prescribing maximum period of probation. Relevant passage is as under:-

“26. A large number of authorities were cited before us by both the parties. However, it is not necessary to go into the details of all those cases for the simple reason that sub-rule (4) of Rule 5 of the Rules is in pari materia with the Rule which was under consideration in the case of State of Maharashtra v. Veerappa R. Saboji [(1979) 4 SCC 466 : 1980 SCC (L&S) 61] and we find that even if the period of two years expires and the probationer is allowed to continue after a period of two years, automatic confirmation cannot be claimed as a matter of right because in terms of the Rules, work has to be satisfactory which is a prerequisite or precondition for confirmation and, therefore, even if the probationer is allowed to continue beyond the period of two years as mentioned in the Rule, there is no question of deemed confirmation. The language of the Rule itself excludes any chance of giving deemed or automatic confirmation because the confirmation is to be ordered if there is a vacancy and if the work is found to be satisfactory. There is no question of confirmation and, therefore, deemed confirmation, in the light of the language of this Rule, is ruled out. We are, therefore, of the opinion that the argument advanced by learned counsel for the respondent on this aspect has no merits and no leg to stand. The learned Single Judge and the learned Judges of the Division Bench have rightly come to the conclusion that there is no automatic confirmation on the expiry of the period of two years and on the expiry of the said period of two years, the confirmation order can be passed only if there is vacancy and the work is found to be satisfactory. The Rule also does not say that the two years' period of probation, as mentioned in the Rule, is the maximum period of probation and the probation cannot be extended beyond the period of two years. We are, therefore, of the opinion that there is no question of automatic or deemed confirmation, as contended by the learned counsel for the respondent. We, therefore, answer this issue in the negative and against the respondent.”

24. It would be profitable to refer to a recent judgment of the Division Bench of this Court in ***Medical Council of India v. Sangeeta Sharma and Another, 2019 SCC OnLine Del 8276***, where it was held as under:-

“21. Thus, whenever a person is appointed as a probationer for a specified period, he does not automatically stand confirmed upon the expiry of such probation period, unless the maximum period of probation is prescribed and the person is allowed to continue even after the expiry of such maximum period of probation. Unless and until the relevant recruitment rules or the terms of appointment specifically provide for either deemed confirmation - by providing

for a maximum period of probation, or confirmation is effected by passing an order to that effect, merely because the express probation period has expired, it cannot be said to confer on the probationer the status of deemed confirmed.”

25. Having perused the aforesaid judgments and tested on their anvil, in the present case, it cannot be said that the Petitioner ought to have been confirmed at the end of six months' probation period. The appointment order only provides a probation period of six months and neither stipulates a maximum period of probation nor prescribes that at the end of six months Petitioner would be confirmed by efflux of time. No rule or judgment or any stipulation in the appointment order has been pointed out by the learned counsel for the Petitioner which leads this Court to conclude in her favour and therefore it cannot be held that the Petitioner was a confirmed employee merely on account of her probation period having come to an end by efflux of time.

26. In view of the aforesaid facts and judgments, this Court comes to an irresistible conclusion that the impugned order of termination dated 29.03.2019 is a non-stigmatic order by which Respondents have simply discharged the Petitioner on account of unsatisfactory performance during probation period and no interference is warranted. Since this Court finds no merit in the submissions of the Petitioner, there is no reason to quash the appointment of Respondent No. 4, which is one of the reliefs sought by the Petitioner.

27. Writ petition is accordingly dismissed along with the pending application.

JYOTI SINGH, J

MAY 08, 2023/shivam