

Form No. J.(2)
Item No.14
Court No. 1
KS

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

HEARD ON: 02.12.2025

DELIVERED ON: 02.12.2025

**CORAM:
THE HON'BLE ACTING CHIEF JUSTICE SUJOY PAUL
AND
THE HON'BLE JUSTICE PARTHA SARATHI SEN**

WP.CT 120 of 2025

**Nilotpal Banerjee
Vs.
Union of India & Ors.**

Appearance:-

**Mr. Ujjal Roy
Mr. Arpa Chakraborty
Sk. Abdur Rahim**

.....For the Petitioner

**Mr. D. N. Roy, Sr. Adv.
Ms. Sayani Chowdhury**

.....For the U.O.I./Respondent No.1

**Mr. Anubhav Sinha
Mr. Shirsho Banerjee
Ms. Shruti Shaw**

.....For the Respondent Nos.2 to 5

JUDGMENT (ORAL):

Per, Partha Sarathi Sen, J.:-

1. The subject-matter of the instant writ petition is the judgment and order dated 24.04.2025 as passed by the Central Administrative Tribunal, Calcutta Bench,

Calcutta (hereinafter referred to as the “said Tribunal” in short) in O.A. No.350/01124/2022.

2. By the impugned judgment and order, the Tribunal declined to interfere with the order of termination of the original applicant as has been communicated to him vide office order dated 03.02.2016, a copy of which has been annexed at page 78 of the instant writ petition.
3. At the time of hearing, Mr. Roy, learned counsel appearing on behalf of the writ petitioner/original applicant took us to page no.55 of the instant writ petition being a copy of Memo dated 30.08.2012. It is submitted by Mr. Roy that on perusal of the said Memo dated 30.08.2012 it would reveal that the writ petitioner was appointed to the Post of Upper Division Clerk in the E.S.I. Corporation, West Bengal Region (hereinafter referred to as “the Corporation” in short). It is argued that from the various Clauses of the said Memo of Appointment it would reveal that the appointment of the present writ petitioner/original applicant was primarily on a temporary basis subject to satisfactory completion of the period of probation, performance in the job and other criteria, as prescribed in the rules and orders on the subject.
4. In course of his argument, Mr. Roy, then took us to page no.74 of the instant writ petition, being a copy of the office order dated 30.07.2015 as has been issued by an instrumentality of the said Corporation. It is submitted by Mr. Roy that from the said office order it would reveal that the present writ petitioner alongwith 17

other employees of the Corporation were found to be successfully completed the period of probation.

5. It is further submitted by Mr. Roy that the issuance of office order dated 30.07.2015 categorically indicates that the present writ petitioner alongwith 17 other employees of the Corporation have been confirmed in the service.
6. Drawing attention to page no.75 of the instant writ petition being a copy of the Memo dated 06.11.2015 it is argued by Mr. Roy that all on a sudden such Memo was issued to the writ petitioner indicating that the certificate of disability as has been submitted by the writ petitioner was found to be not genuine and rather the same, according to the Corporation, was found to be false and fake, which was duly replied to by the present writ petitioner in writing indicating that such disability certificate was obtained by him from a disability camp as held on 05.08.2010 at Mohammad Bazar Block Primary Health Centre.
7. It is further submitted by Mr. Roy that without giving due adherence to the reply dated 19.11.2015, the respondent/Corporation herein passed the order of termination dated 03.02.2016 of the writ petitioner under Rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1965 (hereinafter referred to as the "Temporary Service Rules, 1965", in short).
8. It is submitted by Mr. Roy that on perusal of the order of termination it would reveal that the respondent/Corporation has wrongly come to a conclusion that the present writ petitioner was still a temporary employee without looking to

the fact that the writ petitioner has successfully completed the period of probation and, therefore, by no stretch of imagination, the employment of the writ petitioner can be terminated under the Temporary Rules and on the contrary, the same has to be done in terms of the provisions under the CCS (CCA) Rules, 1965 (hereinafter referred to as the 'CCS Rules' in short).

9. It is further argued by Mr. Roy that since the writ petitioner was terminated from his employment without holding any disciplinary proceeding and without following the provisions of the CCS Rules, the respondent/Corporation has thus violated the provisions of Article 311 of the Constitution of India. It is, thus, argued by Mr. Roy that the learned Tribunal while passing the impugned order has failed to visualize the true, purport and implication of the provision of Article 311 of the Constitution of India vis-à-vis CCS Rules.
10. It is further submitted that the Tribunal while passing the order impugned has wrongly come to a finding that for issuing the order of termination against the present writ petitioner, the respondent/Corporation rightly invoked Rule 5(1) of the said Temporary Rules. It is also submitted by Mr. Roy that on account of such serious miscarriage of justice, an interference in the judicial review is very much warranted.
11. Mr. Roy in course of his submission, placed his reliance upon the reported decision of *Union of India & Ors. vs. Soumitra Dey & Anr. : 2023 SCC OnLine Cal. 5095*. It is submitted by Mr. Roy that a Co-ordinate Bench of this Hon'ble

High Court while deciding an identical case found violation of Article 311 of the Constitution of India on the part of the authority while terminating an employee, which has been wrongly interpreted by the Tribunal in the impugned judgment.

12. *Per contra*, Mr. Sinha, learned counsel appearing on behalf of the respondent/Corporation also places his reliance upon page 55 of the instant writ petition being the copy of the Memo of Appointment dated 30.08.2012. It is submitted by Mr. Sinha that on careful perusal of the said Memo of Appointment dated 30.08.2012, it would reveal that the appointment of the present writ petitioner was purely on a temporary basis and the same would be confirmed subject to satisfactory completion of the period of probation, performance in the job and other criteria as prescribed in the Rules and orders on the subject.
13. It is, thus, argued by Mr. Sinha that by no stretch of imagination, it can be said that merely because of the writ petitioner has successfully completed the period of probation, the writ petitioner's employment in the Corporation has become permanent.
14. At this juncture, attention of ours is drawn to Clause - 9(5) of the Employees' State Insurance Corporation (Staff and Conditions of Service) Regulations, 1959, (hereinafter referred to as the '**said Regulations**', in short). It is argued by Mr. Sinha that the said Clause clearly mandates that confirmation of the employee of

the Corporation will be done after he has satisfactorily completed his period of probation and his case has been favourably considered by the DPC and has been cleared from all angles.

15. It is submitted by Mr. Sinha that on a conjoint reading of page nos. 55, 58 and 59 of the instant writ petition being memos dated 30.08.2012, 06.11.2012 and 20.11.2012 it would reveal that all along it has been indicated by the Corporation while issuing the aforesaid letter of appointment that the appointment of the writ petitioner was provisional in nature and the same is subject to verification of character, antecedent, qualification, caste, disability etc. with a further addendum that if on verification any of the documents/information furnished, reveals false, the same would render the candidate unsuitable for the service and in such event, the incumbent would be liable to be terminated from the Corporation forthwith without making any further correspondence.
16. Drawing reference to page 75 of the instant writ petition being a copy of the show-cause notice dated 06.11.2015, it is argued by Mr. Sinha that even after noticing that the disability certificate, as has been produced by the writ petitioner is fake, the Corporation observed the principles of natural justice and thus, issued a show-cause notice, which was replied to by the writ petitioner and not being satisfied with the explanation, as offered by the writ petitioner, the termination order dated 03.12.2016 was issued without any stigma to the writ petitioner which is in consonance to the terms and conditions as contained

in the aforementioned three memos. It is thus, submitted by Mr. Sinha that there cannot be any doubt that the writ petitioner was never a permanent employee and therefore, the Corporation has rightly invoked the provision of the temporary service rules in stead of CCS Rules.

17. In course of his submission, Mr. Sinha places his reliance upon a reported decision of a coordinate Bench of this Court in the case of *Shyamapada Patra vs. Union of India & Ors.* reported in 2024 SCC OnLine Cal. 2376. It is submitted by Mr. Sinha that in an identical situation, the said coordinate Bench in the case of *Shyamapada Patra (supra)* declined to interfere with the order of termination of the writ petitioner since the said Coordinate Bench found that the writ petitioner obtained his employment by production of false certificate, which has been subsequently detected by the authorities.
18. It is further argued by Mr. Sinha that the reported decision of *Soumitra Dey (supra)* as cited from the side of the writ petitioner is distinguishable from the facts and circumstances of the instant writ petition in view of the fact that in the case of *Soumitra Dey (supra)*, the employee was terminated on the charge of misconduct and after facing disciplinary proceeding.
19. It is further argued by Mr. Sinha that the reported decision of *Soumitra Dey (supra)* was also placed before the said tribunal and the said Tribunal rightly distinguished the same. It is thus, submitted by Mr. Sinha that there is hardly any scope to interfere with the order impugned.

20. Ms. Roy Chowdhury, Ld. Advocate duly led by Mr. Ray, Ld. Sr. Advocate appearing on behalf of Union of India adopted the argument of Mr. Sinha.
21. We have meticulously gone through the entire materials, as placed before us. We have given our due consideration over the submissions of the learned advocates for the contending parties.
22. In order to arrive at a logical conclusion of the instant *lis*, we, at the very outset, propose to look to the order of appointment, as has been issued by the Corporation in the name of the writ petitioner vide memo dated 30.08.2012. On perusal of the said Memo dated 30.08.2012, it reveals that the appointment of the writ petitioner was purely temporary in nature and the confirmation to the post is subject to satisfactory completion of the period of probation, performance in the job and other criteria, as prescribed in the Rules.
23. In course of his argument, Mr. Roy strenuously argued that the office order dated 30.07.2015 may be considered as an office order of confirmation in view of the fact that the writ petitioner has completed two years period of probation successfully.
24. On comparative study of the Memo of Appointment dated 30.08.2012 and the office order dated 30.07.2015, it reveals that the subsequent office order dated 30.07.2015 merely speaks about successful completion of period of probation for two years, however, the said office order is absolutely silent with regard to the performance of the writ petitioner in the job and other criteria.

25. At this juncture, we propose to look to Clause - 5(9) of the said Regulations, which is quoted hereinbelow in verbatim:

“(9) Confirmation of an employee will be made only one in his service and will be in the regular post in the entry grade. An employee shall be confirmed in the post after he has satisfactorily completed his period of probation and his case has been considered by the DPC and has been cleared from all angles.”

26. On perusal of the aforementioned clause of the said Regulations, it reveals that the confirmation of an employee under the Corporation depends upon fulfilling the following three criteria:-

- (i) Satisfactory completion of period of probation.
- (ii) Favourable consideration by the DPC.
- (iii) Clearance from all angles.

27. At this juncture, we propose to look to the some of the reported decision of the Hon’ble Supreme Court which are operating in the field. In the reported decision of **High Court of MP Vs. Satya Narayan Jaberi** reported in **(2001) 7 SCC 161** the Supreme Court had an occasion to consider the question of deemed confirmation in service jurisprudence and in doing so held thus:-

“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 and 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.

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].

(Emphasis Supplied)

28. The same view was taken by the Hon'ble Apex Court in the cases of **Commissioner of Police Vs. R.S. More** reported in **(2003) 2 SCC 408** and **Rajinder Singh Chauhan Vs. State of Haryana** reported in **(2005) 13 SCC 179**.
29. Keeping in mind the aforementioned provision of the said regulation and the proposition of law as enunciated in the reported decision of **Satya**

Narayan Jhavar (supra) and **R.S. More (supra)**, it appears to us that on behalf of the writ petitioner, no material could be placed that apart from successful completion of the petition of probation, he has qualified in respect of the aforementioned remaining two criteria as mentioned in the said regulation. On the contrary, materials have been placed from the respondent/Corporation that the appointment of the writ petitioner was purely provisional/ temporary in nature. It has been shown to us that such appointment was subject to verification of all credentials and certificates from the competent authority. From the materials as placed before us, we find that the respondent Corporation has not passed any order certifying favorable consideration by the DPC and the candidature of the writ petitioner got clearance from all angles.

30. We have noticed that the respondent/Corporation made correspondence with the disablement certificate issuing authority and the alleged disablement certificate issuing authority has confirmed that such authority has not issued the certificate of disablement, as has been placed by the writ petitioner before the Corporation.
31. Such being the position, the onus, in our considered view, is absolutely on the employee, who is the writ petitioner herein to substantiate that such certificate is genuine and in our considered view nothing could be placed that the writ petitioner has discharged his onus.

32. In view of the discussions made hereinabove, we have no hesitation to hold that the writ petitioner has miserably failed to produce any cogent material to substantiate that his service has been confirmed with the Corporation and such being the position, in considered view of us, the respondent/Corporation is absolutely justified in invoking the temporary rules while issuing the letter of termination in stead of CCS Rules.
33. Before parting with, we, however, feel it obligatory to mention that the said termination notice was without any stigma and could be passed under Temp. Service Rules.
34. In considered view of ours, the proposition of law as decided in the case of *Shayamapada Patra (supra)* is squarely applicable to the facts and circumstances of the present case inasmuch as a Co-ordinate Bench of this Court in the case of *Shyamapada Patra (supra)* found no reason to interfere with the order of termination of the petitioner since in course of verification it was found that the petitioner has furnished fake certificate.
35. The reported decision of *Soumitra Dey (supra)* as cited from the side of the writ petitioner is distinguishable from the facts and circumstances of the instant writ petition. Since in the said case, the termination of the petitioner occurred on account of alleged misconduct and such termination was found to be punitive in nature.

36. In view of the discussions made hereinabove, we, thus, find no reason to interfere with the order impugned. As a result, the instant writ petition **fails** and is hereby **dismissed**.
37. Interim order, if there be any, stands hereby vacated.
38. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

I agree.

(PARTHA SARATHI SEN, J.)

(SUJOY PAUL, ACJ.)