

High Court Of Madhya Pradesh Thru. ... vs Satya Narayan Jhavar on 14 August, 2001

Equivalent citations: AIR 2001 SUPREME COURT 3234, 2001 AIR SCW 3112, 2001 LAB. I. C. 3281, 2001 (7) SCC 161, 2001 (2) UJ (SC) 1281, 2001 (5) SCALE 233, (2001) 5 SCALE 233.2, 2002 (1) BLJR 450, 2001 UJ(SC) 2 1281, (2001) 6 JT 368 (SC), 2001 (8) SRJ 427, (2001) 4 LAB LN 1248, (2001) 91 FACLR 626, (2001) 6 SUPREME 106, (2002) 4 ESC 31, (2002) 1 PAT LJR 25, (2002) 1 JLJR 40, 2001 SCC (L&S) 1087, (2002) 1 JAB LJ 103, (2001) 3 SCT 1114, (2001) 3 SCJ 135, (2001) 3 SERVLR 645, (2001) 3 CURLR 540

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Bench: S.N. Phukan, B.N. Agrawal

CASE NO.:

Appeal (civil) 5303 of 2001

PETITIONER:

HIGH COURT OF MADHYA PRADESH THRU. REGISTRAR & ORS.

Vs.

RESPONDENT:

SATYA NARAYAN JHAVAR

DATE OF JUDGMENT: 14/08/2001

BENCH:

G.B. Pattanaik, S.N. Phukan & B.N. Agrawal

JUDGMENT:

WITH Civil Appeal No._5304_____of 2001 [Arising out of SLP (C) No. 11663/2000] Civil Appeal No._5305_____of 2001 [Arising out of SLP (C) No. 11673/2000], Civil Appeal No._5306_____of 2001 [Arising out of SLP (C) No. 11675/2000], Civil Appeal No._5307_____of 2001 [Arising out of SLP (C) No. 11686/2000], Civil Appeal No._5308_____of 2001 [Arising out of SLP (C) No. 11688/2000], Civil Appeal No._5309_____of 2001 [Arising out of SLP (C) No. 11704/2000].

JUDGMENT B.N. AGRAWAL,J.

Leave granted.

Common judgment impugned in these appeals has been passed by Madhya Pradesh High Court in Letters Patent Appeals preferred by the respondents in these appeals, excepting Civil Appeal arising out of SLP (C) No. 11675 of 2000, which was preferred by the present appellant, whereby the Letters Patent Appeal preferred by the appellant has been dismissed and the order of learned Single Judge allowing the writ application upheld, but other appeals have been allowed and the judgment rendered by learned Single Judge dismissing the writ applications has been set aside.

Necessary facts giving rise to these appeals are that respondents in these appeals, excepting Civil Appeals arising out of SLP (C) Nos. 11675 and 11704 of 2000, were appointed as Civil Judges (Trainee), Class II, on different dates temporarily on officiating basis upon the recommendations of the State Public Service Commission under the provisions of Madhya Pradesh Judicial Service (Classification, Recruitment and Conditions of Service) Rules, 1955 (hereinafter referred to as 'the Rules') and they were required to undergo six months training before being appointed on probation for a period of two years. After completion of six months training, their probation period started on different dates as per rule 24 of the Rules wherein the initial probation period was two years which could be extended for a further period of two years, meaning thereby the maximum period of probation under the Rules was four years. Cases of these respondents were considered for confirmation within a period of four years but they were not found fit by the Full Court, as such the same were deferred on the first occasion and later on, after expiry of four years period of probation. Case of only respondent in Civil Appeal arising out of SLP (C) No. 11457 of 2000 was considered only once and that also after the probation period and he having not been found fit for confirmation, upon the recommendation of the High Court, his service was terminated and so far others are concerned, their cases for confirmation were considered, even after probation period, every year for a couple of years, but, as in spite of giving repeated opportunities to improve themselves, they could not improve, ultimately the Full Court recommended for terminating their services whereupon the same were terminated. Services of the respondents in the aforesaid five appeals, excepting Civil Appeals arising out of SLP (C) No. 11457/2000, were terminated after few years of expiry of four years period of probation whereas the service of respondent in Civil Appeal arising out of SLP (C) No. 11457/2000 was terminated within few months from the expiry of period of probation.

One Samarudas Banjare, whose heirs are respondents in Civil Appeal arising out of SLP (C) No. 11675 of 2000, was appointed as Civil Judge (Trainee) and he joined as such on 15.7.1976 and after completing six months training his probation period started on 14.1.1977 and expired on 13.1.1981. His case for confirmation was considered by the Full Court and he was not found fit for confirmation. Therefore, on 29.8.1981 the Full Court recommended to terminate his services whereupon on 19.11.1981 the same were terminated. The said termination order was challenged before the High Court in a writ application which was allowed and reinstatement order was passed whereupon he joined on 25.9.1985 and when the said order of reinstatement was challenged before this Court, the same was upheld, but it was directed that Shri Banjare should be kept under close watch for three years. Thereafter case of this employee was considered every year, but he was not found fit for confirmation and accordingly it was resolved to terminate his services which were terminated in the year 1992.

Respondent in Civil Appeal arising out of SLP (C) No. 11704/2000 was appointed as Civil Judge (Trainee) on 27.10.1987 and after completing six months training she joined as probationer on 1.5.1988 and maximum period of probation expired on 30.4.1992. Thereafter her case was considered by the Full Court for confirmation and she having not been found fit, it was resolved to terminate her services which were terminated on 23.12.1993.

Challenging the orders of termination, different writ applications were filed. Writ application of respondent in appeal arising out of SLP (C) No.11704 of 2000 was heard separately by a learned Single Judge of the High Court and the same was dismissed. Other six writ applications were heard by another learned Single Judge of the High Court and same were disposed of by a common judgment whereby the writ application filed by Samardudas Banjare was allowed and order of his termination from service was quashed, but no order of reinstatement was passed as during the pendency of the writ application the said person died, whose heirs were substituted and it was directed that they would be entitled to all arrears of emoluments from the date of the order of termination till the date of his death. So far as other writ applications are concerned, the same were dismissed.

Challenging order passed in the writ application filed by Samarudas Banjare, the High Court preferred a Letters Patent Appeal whereas others filed separate appeals challenging the dismissal of their writ applications. All the appeals were heard and disposed of by a common judgment. Appeal filed by the High Court has been dismissed by the Division Bench with modification that heirs of Samarudas would be entitled to only 50% of the back wages whereas other six appeals have been allowed, the orders of termination of the respondents have been set aside and they have been directed to be reinstated with 50% of the back wages. Hence separate petitions were filed for grant of special leave to appeal.

When the SLPs were placed for consideration before a two Judge Bench, reliance was placed on behalf of the respondents upon an earlier two Judge Bench decision of this Court in Dayaram Dayal vs. State of M.P. & Anr., 1997 (7) SCC 443, which was also a case under rule 24 of the Rules wherein it was laid down that as no order of confirmation was passed within the maximum period of probation, the probationer - judicial officer would be deemed to have been confirmed after expiry of four years period of probation, therefore, after expiry of the period of probation his services could not have been terminated on the ground that he was not found fit for confirmation by the Full Court. As correctness of the said decision was doubted, the matter was referred to larger bench and accordingly it has been placed before us.

Shri P.P. Rao, learned senior Counsel appearing on behalf of the appellant-High Court, in support of the appeal, submitted that in Dayaram Dayals case (supra) this Court failed to appreciate the correct ratio laid down by the Constitution Bench in the case of State of Punjab vs. Dharam Singh, (1968) 3 SCR 1, and seven Judge Bench decision of this Court in the case of Samsher Singh vs. State of Punjab & another, (1974) 2 SCC 831, which have been followed in other cases. According to learned counsel, under rule 24 of the Rules, after expiry of maximum period of probation, a judicial officer cannot be deemed to have been automatically confirmed and he can be confirmed only if his service is found to be satisfactory and he passes departmental examinations. Therefore, in view of the fact

that the High Court did not find them fit for confirmation, their services were rightly terminated. Shri R.K. Jain, learned senior Counsel appearing on behalf of the respondents, submitted that the case of Dayaram Dayal (supra) has been correctly decided as after expiry of maximum period of probation, the respondents were automatically confirmed and accordingly the Division Bench of the High Court was justified in quashing the order of termination as after deemed confirmation services of a judicial officer could not have been terminated in the exercise of powers under rule 24 of the Rules, but the same could have been terminated only by following the procedure prescribed for holding an inquiry in a departmental proceeding, which has not been done in the case on hand. Learned counsel further submitted that in any view of the matter in terms of rule 24 of the Rules, order of termination could have been passed immediately after expiry of four years maximum period of probation and not after several months and years, as has been done in the cases on hand. In view of the rival submissions, the question which we are called upon to consider is as to whether decision of this Court in Dayaram Dayals case was correctly decided and rule 24 of the Rules postulates that services of a judicial officer shall be deemed to have been confirmed on the expiry of period of four years, which is the maximum period of probation, when during the aforesaid period no order of termination was passed.

To appreciate the point in issue, it would be useful to refer to rule 24 of the Rules which runs thus:-

R.24 (1) Every candidate appointed to the cadre shall undergo training for a period of six months before he is appointed on probation for a period of two years, which period may be extended for a further period not exceeding two years. The probationers may, at the end of period of their probation, be confirmed subject to their fitness for confirmation and to having passed, by the higher standard, all such departmental examinations as may be prescribed.

(2) During the period of probation, he shall be required to do magisterial work and acquire experience in office routine and procedure.

(3) If during the period of probation he has not passed the prescribed departmental examinations, or has been found otherwise unsuitable for the service, the Governor may, AT ANY TIME, THEREAFTER, dispense with his services.

[Emphasis added] The question of deemed confirmation in service Jurisprudence, which is dependent upon language of the relevant service rules, has been 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 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. 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 officer concerned is deemed to have been confirmed upon expiry

of the maximum period of probation in case before its expiry 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 require 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 the person concerned has passed the requisite test, he cannot be deemed to have been confirmed merely because the said period has expired.

Now we proceed to consider the first line of cases in which the earliest one is Sukhbans Singh vs. State of Punjab, (1963) 1 SCR 416. In that case the Constitution Bench was considering the question of confirmation under rule 22 of the Punjab Civil Service (Executive Branch) Rules, 1930 which provides that a candidate on first appointment to the service shall remain on probation for a period of 18 months and proviso thereto enables the Governor to extend the period of probation. Rule 24 of the said Rules provides that on the completion of the period of probation prescribed or extended, a member of the service shall be qualified for substantive appointment. It was laid down by this Court that a probationer cannot automatically acquire the status of a permanent member of service, unless of course the rules under which he is appointed expressly provide for such a result and the rules in that case did not contain any such provision. Rules 22, 23 and 24 were interpreted to mean that such a probationer is merely qualified for substantive permanent appointment where a probationer is not reverted by the Government under rule 23 on the ground that in the opinion of the Government his work or conduct was found to be unsatisfactory and where his service is not terminated under rule 23, he continues to be a probationer, but requires the qualification for substantive permanent appointment. According to the Rules, at the end of the probationary period, a probationer who is neither terminated nor absorbed in a substantive post will be eligible for being made permanent and he will continue to be a probationer. The very fact that a person is a probationer implies that he has to prove his worth and suitability for the higher post in which he is officiating. If his work is not found to be satisfactory, he is liable to be reverted to his original post even without assigning any reason. In the said case, this Court further observed that it would not be correct to say that the probationer has any right to the higher post in which he is officiating or a right to be confirmed and he being a probationer merely made eligible for being absorbed in a permanent post, is in no better position.

In G.S. Ramaswamy & Ors. Vs. Inspector-General of Police, Mysore, (1964) 6 SCR 279, another Constitution Bench was considering a case of promotion of Sub-inspector of Police under rule 486 of Hyderabad District Police Manual which provides that all officers who are promoted will be on probation for a period of two years and they may be reverted at any time during the aforesaid period if their work and conduct are not satisfactory, or they are found unsuitable for the appointment to which they have been promoted. This Court observed that the aforesaid provision in the Rules negatives the contention that the concerned officers had an indefeasible right to promotion and they could not be reverted after they had once started acting on the promoted post. By placing reliance upon the wordings of rule 486 which provides that promoted officer would be confirmed at the end of the probationary period if he has given satisfaction, this Court observed that according to the Rules when the probationary period is over and the promoted officer has given satisfaction during the whole of that period, he will be confirmed and the fact that he is actually promoted, temporarily

or as officiating, does not give him any right to continuance even during the period of two years probation inasmuch as he will be liable to be reverted at any time even during those two years if his work is found unsatisfactory and he can be confirmed only when the authority concerned has found that his work and conduct were satisfactory during the probation period. In that case, it was contended by placing reliance upon the following sentence in rule 486, namely, promoted officers will be confirmed at the end of their probationary period if they have given satisfaction that the said rule expressly provided for automatic confirmation after the period of probation is over. This Court repelled the contention and held that such a rule does not contemplate automatic confirmation after the probationary period of two years, as a promoted officer can be confirmed under the rules only if he has given satisfaction, which condition of giving satisfaction must be fulfilled before a promoted officer can be confirmed under the rules and the same obviously means that the authority competent to confirm an officer must pass an order to the effect that the probationer has given satisfaction and is, therefore, confirmed.

Again Constitution Bench in the case of State of Uttar Pradesh vs. Akbar Ali Khan, (1966) 3 SCR 821, was considering the question of confirmation of a probationer with reference to rules 12 and 14 of Uttar Pradesh Subordinate Revenue Executive Service (Tehsildar) Rules, 1944 which read thus:-

Rule.12.- Every listed candidate on appointment in or against a substantive vacancy shall be placed on probation. The period of probation shall be two years.

Rule 14.- If it appears at any time during or at the end of the period of probation that a person appointed on probation has not made sufficient use of his opportunities or has failed to pass the departmental examination completely or if he has otherwise failed to give satisfaction, he may be reverted to his substantive appointment:

Provided that the Board may extend the period of probation to three years. An extension beyond this period shall require the sanction of the Governor. Every extension whether granted by the Board or the Governor shall specify the exact date up to which it is granted.

In the light of the aforesaid rules, the Court in that case while laying down the law observed thus at pages 825 and 826:-

The respondent was posted as a Tahsildar, and placed on probation for two years. The initial period of probation was liable to be extended by the Board of Revenue or by the Governor. There is no rule that on the expiry of the period of probation the probationer shall be deemed to have been confirmed in the post which he is holding as a probationer. If a probationer was found not to have made sufficient use of his opportunities or had failed to pass the departmental examination completely or if he had otherwise failed to give satisfaction he may be reverted to his substantive appointment: again confirmation in the appointment at the end of the period of probation could only be made if the probationer had passed the departmental examination for tahsildars completely and the Commissioner reported that he was fit

for confirmation and that his integrity was unquestionable. It is common ground in this case that the respondent had not passed the departmental examination before 1955. He had therefore not qualified himself for confirmation.

The scheme of the rules is clear: confirmation in the post which a probationer is holding does not result merely from the expiry of the period of probation, and so long as the order of confirmation is not made, the holder of the post remains a probationer. It has been held by this Court that when a first appointment or promotion is made on probation for a specified period and the employee is allowed to continue in the post, after the expiry of the said period without any specific order of confirmation he continues as a probationer only and acquires no substantive right to hold the post. If the order of appointment itself states that at the end of the period of probation the appointee will stand confirmed in the absence of any order to the contrary, the appointee will acquire a substantive right to the post even without an order of confirmation. In all other cases, in the absence of such an order or in the absence of such a service rule, an express order of confirmation is necessary to give him such a right. Where after the period of probation an appointee is allowed to continue in the post without an order of confirmation, the only possible view to take is that by implication the period of probation has been extended, and it is not a correct proposition to state that an appointee should be deemed to be confirmed from the mere fact that he is allowed to continue after the end of the period of probation.

[Emphasis added] In the case of Shri Kedar Nath Bahl vs. The State of Punjab & Ors., (1974) 3 SCC 21, a person applied for the post and he was appointed on a post which belonged to Punjab Provincial Service Class I and the post was temporarily sanctioned upto February 28, 1955 and was likely to continue thereafter. The post was extended from time to time upto November 4, 1958 when the same was discontinued and on the discontinuance, the appellant was reverted to his original post. When a writ application was filed before the High Court challenging the order of reversion, the same was dismissed and dismissal was upheld by Division Bench of the High Court in appeal as well as this Court on further appeal being brought to this Court. While dismissing the appeal, this Court laid down the law thus at page 26:-

The law on the point is now well settled. Where a person is appointed as a probationer in any post and a period of probation is specified, it does not follow that at the end of the said specified period of probation he obtains confirmation automatically even if no order is passed in that behalf. Unless the terms of appointment clearly indicate that confirmation would automatically follow at the end of the specified period, or there is a specific service rule to that effect, the expiration of the probationary period does not necessarily lead to confirmation. At the end of the period of probation an order confirming the officer is required to be passed and if no such order is passed and he is not reverted to his substantive post, the result merely is that he continues in his post as a probationer. The terms of appointment do not show that the appellant would be automatically confirmed on the expiry of the

first six months of probation nor is any rule brought to our notice which has the effect of confirming him in the post after six months of probation. The position of the appellant, therefore, till the abolition of the post on November 4, 1958, was that he continued to be a probationer and has no right to the post. It, therefore, follows that when the tenure of the post came to an end, he was automatically reverted to his original post as an Inspector on which he had the lien.

[Emphasis added] In the case of Tarsem Lal Verma vs. Union of India & Ors., (1997) 9 SCC 243, a person was occupying the post of Photographic Officer under Ministry of Defence, Armed Forces Film and Photo Division (Photographic Officer) Recruitment Rules, 1982 whereby the probation period was fixed at two years and no maximum period was prescribed. When the two years probation period of the concerned officer expired, the probationer was not terminated from service even though the work and conduct were found to be not satisfactory and in order to give him an opportunity to improve his performance, the period of probation was extended beyond the period of two years by an additional 550 days. In that case the person concerned claimed that as the period of two years had expired, he would be deemed to have been automatically confirmed. The Administrative Tribunal rejected the contention on the ground that the rules did not prescribe any maximum period of probation and the probationer was allowed to continue in service even after expiry of the probation period of two years to enable him to show improvement. When the matter was brought to this Court, order of the Tribunal was affirmed in view of observations aforementioned.

Amongst the other line of cases, the sheet anchor of the respondent is a Constitution Bench decision of this Court in the case of State of Punjab vs. Dharam Singh, (1968) 3 SCR 1, which has been heavily relied upon. In that case the Court was considering effect of a probationer continuing on the post after expiry of the maximum period of probation prescribed under rule 6 of the Punjab Educational Service (Provincialised Cadre) Class III Rules, 1961 which runs thus:-

R.6. (1) Members of the Service, officiating or to be promoted against permanent post, shall be on probation in the first instance for one year.

(2) Officiating service shall be reckoned as period spent on probation, but no member who has officiated in any appointment for one year shall be entitled to be confirmed unless he is appointed against a permanent vacancy.

(3) On the completion of the period of probation the authority competent to make appointment may confirm the member in his appointment or if his work or conduct during the period of probation has been in his opinion unsatisfactory he may dispense with his services or may extend his period of probation by such period as he may deem fit or revert him to his former post if he was promoted from some lower post.

Provided that the total period of probation including extension, if any, shall not exceed three years.

(4) Service spent on deputation to a corresponding or higher post may be allowed to count towards the period of probation, if there is a permanent vacancy against which such member can be confirmed.

The respondent in that case was appointed on 1st October, 1957 on permanent post and under rule 6(3) he continued to hold the post on probation in the first instance for one year. Maximum period of probation fixed by the rule was three years which expired on October 1, 1960, but the respondent continued to hold the post after October 1, 1960 and no formal order confirming him in his post was passed. On February 10, 1963 service of the respondent was terminated and when the matter was challenged before the Punjab High Court by filing a writ application, the same was rejected on the ground that the respondent was a temporary employee. Thereafter, when the appeal was preferred before the Division Bench, the same was allowed holding that the respondent was not temporary employee, he held the post on probation and on the expiry of maximum period of three years of probation he must be deemed to have been confirmed on his post, as such the order of termination was really an order of removal from service by way of punishment without holding any inquiry as such violative of Article 311 of the Constitution. When the matter was brought to this Court, appellate order of the High Court was confirmed and it was held that under rule 6(3) referred to above, four courses of action were open to the appointing authority, namely, (a) to extend the period of probation, provided the total period of probation, including extensions, would not exceed three years, or (b) to revert the employee to his former post if he was promoted from lower post, or (c) to dispense with his services if his work or conduct during the period of probation was not satisfactory, or (d) to confirm him in his appointment. It was held that though the initial period of probation of the respondent in that case expired on 1st October, 1958, by allowing him to continue in his post thereafter without any express order of confirmation, the competent authority must be deemed to have extended the period of probation upto October 1, 1960 by implication which is the maximum period of probation, but under proviso to rule 6(3) the probation period could not extend beyond October 1, 1960. The Court observed that in view of the proviso to rule 6(3) it was not possible to presume that the competent authority extended the probation period after October 1, 1960 or that thereafter the respondent continued to hold the post as probationer. While laying down the law, this Court observed thus at pages 5-6:-

as in the present case, the service rules fix a certain period of time beyond which the probationary period cannot be extended, and an employee appointed or promoted to a post on probation is allowed to continue in that post after completion of the maximum period of probation without an express order of confirmation, he cannot be deemed to continue in that post as a probationer by implication. The reason is that such an implication is negated by the service rule forbidding extension of the probationary period beyond the maximum period fixed by it. In such a case, it is permissible to draw the inference that the employee allowed to continue in the post on completion of the maximum period of probation has been confirmed in the post by implication.

[Emphasis added] While considering the matter, the Court further observed thus at pages 6-7:-

Immediately upon completion of the extended period of probation on October 1, 1960, the appointing authority could dispense with the services of the respondents if their work or conduct during the period of probation was in the opinion of the authority unsatisfactory. Instead of dispensing with their services on completion of the extended period of probation, the authority continued them in their posts until sometime in 1963, and allowed them to draw annual increments of salary including the increment which fell due on October 1, 1962. The rules did not require them to pass any test or to fulfil any other condition before confirmation. There was no compelling reason for dispensing with their services and re-employing them as temporary employees on October 1, 1960, and the High Court rightly refused to draw the inference that they were so discharged from service and re-employed. In these circumstances, the High Court rightly held that the respondents must be deemed to have been confirmed in their posts. Though the appointing authority did not pass formal orders of confirmation in writing, it should be presumed to have passed orders of confirmation by so allowing them to continue in their posts after October 1, 1960. After such confirmation, the authority had no power to dispense with their services under r.6(3) on the ground that their work or conduct during the period of probation was unsatisfactory.

[Emphasis added] From the aforesaid passage, it would be clear that as rule 6 did not require a person to pass any test or to fulfill any other condition before confirmation, this Court was of the view that upon the expiry of maximum period of probation the probationer could be deemed to have been confirmed which goes to show that if such provision would have been there in the rules, the conclusion might have been otherwise.

In the case of Wasim Beg vs. State of U.P. & Ors., (1998) 3 SCC 321, a person was selected for appointment as Divisional Manager by U.P. State Leather Development and Marketing Corporation Limited under Model Service Rules for State Enterprises which were adopted by the said Corporation. The relevant rules relating to appointment on probation were as follows:-

Any employee regularly appointed for the first time or promoted to any post in the corporation shall be placed on probation for a period of one year from the date of joining the new post.

The performance of the employee in the new post will be watched during the probation and the appointing authority will issue a certificate of having satisfactorily completed the probation at the end of the period. The appointing authority has discretion to extend the period of probation without assigning any reason therefor.

The relevant rules relating to confirmation were as follows:- Confirmation.- An employee directly appointed or promoted to any post in the Corporation shall be deemed to have become a confirmed employee in that grade after he has successfully completed the period of probation.

A confirmed employee may be discharged from the service of the Corporation under the orders of the competent authority on three months notice or by giving 3 months salary in lieu thereof. The competent authority for purposes of this rule will be the next higher level than the appointing authority for that category of post. The competent authority on getting a recommendation from the appointing authority for the discharge of a confirmed employee with reasons therefore, may give an opportunity to the employee concerned for explaining himself before coming to a decision.

This provision in the Rules should obviously be sparingly and discreetly used only to weed out inefficient employees who in spite of a number of warnings and admonition have failed to correct themselves or employees who are in the opinion of the Board of Directors or the Managing Directors as the case may be no suitable for continued employment of the Corporation. The discharge shall be only on grounds of continued inefficiency or dishonesty, serious dereliction of duty or moral turpitude and is not to be considered as a punishment under the disciplinary proceedings [Emphasis added] In the letter of appointment dated 10th January, 1978, it was mentioned that the incumbent will be on probation for a period of one year which could be extended at the discretion of the Managing Director and the service was liable to be terminated on one months notice or salary in lieu thereof. The person concerned was allowed to work as Divisional Manager for a period of about 3 years when he was re-designated as Works Manager on 21st April, 1981. Thereafter he continued on the said post and in April, 1983 he was allowed to cross efficiency bar. Initially, work of the incumbent was good but subsequently his work and performance deteriorated as a result of which the Corporation had to suffer losses. As in spite of warning his performance did not improve, on 31.3.1985 the services were terminated and it was directed that in lieu of three months notice he will be paid three months pay. The said order was unsuccessfully challenged before the High Court. Thereafter, when appeal was preferred before this Court, the same was allowed, order of the High Court was set aside and the termination order was quashed, but in view of the stand taken by the Corporation that the person concerned was going to superannuate within a few months, the Court did not pass an order of reinstatement, but directed the Corporation to pay a lump sum of Rs. 2 lakhs to him.

In the said case no maximum period of probation was prescribed either by the letter of appointment or the rules. The rules laid down that an employee shall be deemed to have become a confirmed employee after he has successfully completed the period of probation. From the affidavit filed by the Corporation as well as the report of the Managing Director, it was clear that the incumbent was considered by the Board as having satisfactorily completed his period of probation on 9.1.1979 i.e.,

before expiry of one year period of probation and was considered as a regular employee from 10.1.1979. From the affidavit filed by the Corporation it was clear that the services of the incumbent were satisfactory for the first few years and work was very good and only thereafter his work deteriorated as a result of which the Corporation suffered losses. Thus in view of the stand taken that the incumbent had successfully completed the period of probation, he was deemed to have become a confirmed employee, as enumerated in the rules referred to above.

The view taken in the case of Dharam Singh (supra) has been consistently followed in the cases of Om Prakash Maurya vs. U.P. Cooperative Sugar Factories Federation, Lucknow & Ors., (1986) Suppl. SCC 95, M.K. Agarwal vs. Gurgaon Gramin Bank and Ors. (1987) Suppl. SCC 643, State of Gujarat vs. Akhilesh C. Bhargav & Ors., (1987) 4 SCC 482, which are cases in which a maximum period for extension of probation was prescribed and termination after expiry of the said period was held to be invalid inasmuch as the officer must be deemed to have been confirmed.

In the last line of cases, we may first refer to a decision by seven Judges Bench of this Court in the case of Shamsher Singh vs. State of Punjab & Anr., (1974) 2 SCC 831, where the Court was considering a case under Punjab Civil Services (Judicial Branch) Rules 1951 where maximum period of probation was prescribed as three years. There one Shamsher Singh was appointed on May 1, 1964 as Subordinate Judge on probation. On March 22, 1967 a notice was issued requiring him to show cause why his services be not terminated as he was found unsuitable for the job as there were serious charges against him. After filing of show cause, the services were terminated. Another person-Ishwar Chand Agrawal was appointed as Judicial Officer on probation initially for a period of two years and the maximum period of three years expired on November 11, 1968. Thereafter, as the High Court found that the work as well as conduct of the Judicial Officer were unsatisfactory and there were serious charges against him, notice was given as to why his services be not terminated and ultimately after submission of show cause, upon the recommendation of the Full Court on 15th December, 1969, the services were terminated. Both the incumbents challenged the order of termination by filing separate writ applications before the Punjab High Court which were dismissed necessitating filing of appeals by special leave before this Court. In that case this Court was dealing with termination of services of the probationer under rule 9 of Punjab Civil Services (Punishment and Appeal) Rules, 1952 and rule 7(3) of the Punjab Civil Services Judicial Branch Rules, 1951. Services of Shamsher Singh were terminated under rule 9 and that of Ishwar Chand Agrawal under rule 7(3) referred to above. Rule 9 provided that where it is proposed to terminate the employment of a probationer, whether during or at the end of the period of probation, for any specific fault or on account of unsatisfactory record or unfavourable reports, implying the unsuitability for the service, the probationer shall be apprised of the grounds of such proposal, and given an opportunity to show cause against it, before orders are passed by the authority competent to terminate the appointment. Thus it was held that rule 9 contemplates an inquiry into the grounds of proposal of termination of the employment of the probationer. Rule 7(1) provided that every Subordinate Judge in the first instance be appointed on probation for two years but this period may be extended from time to time, expressly or impliedly, so that the total period of probation, including extension, does not exceed three years. Explanation to rule 7(1) provided that the period of probation shall be deemed to have been extended if a Subordinate Judge is not confirmed on the expiry of his period of probation. Rule 7(3) prescribes that an order of confirmation is necessary. It lays down that on completion of

period of probation of any member of service the Governor may, on the recommendation of the High Court, confirm him in his appointment if he is working against a permanent vacancy or if his work or conduct is reported by the High Court to be unsatisfactory, dispense with the services or revert him to his former substantive post, if any, or extend his period of probation and thereafter pass such orders as he may have passed on the expiry of the first period of probation. Rule 7 thus confers powers on the Governor on the recommendation of the High Court to confirm or to dispense with the services or to revert the judicial officer or to extend his period of probation. In the case of Shamsheer Singh, law laid down by the Constitution Bench in the case of Dharam Singh (supra) was approved, but it was distinguished because of language of the relevant rule especially Explanation to rule 7(1) and it was held that the provision prescribing the maximum period of probation as three years is directory and not mandatory and the period of probation shall be deemed to have been extended even beyond the period of three years till proceeding commenced by the notice came to an end either by confirmation or discharge of the probationer. It was specifically laid down in that case that no confirmation by implication can arise in view of the nature of relevant rules. But as it was found by the Court therein that services of both the persons aforementioned were terminated on serious charges of misconduct which could have been done by holding an inquiry only as required under rule 9 and the same having not been done, the orders of termination were held to be bad being in infraction of the provisions of rule 9 of the aforesaid Rules as well as Article 311 of the Constitution and consequently the same were quashed by this Court.

In the case of Municipal Corporation, Raipur v. Ashok Kumar Misra, (1991) 3 SCC 325, the Court was considering the question of confirmation of a probationer under Rule 8 of M.P.Govt. Servants General Conditions of Service Rules, 1961, prescribing maximum period of probation which runs thus:-

8. Probation.-(1) A person appointed to a service or post by direct recruitment shall ordinarily be placed on probation for such period as may be prescribed.

(2) The appointing authority may, for sufficient reasons, extend the period of probation by a further period not exceeding one year.

Note.- A probationer whose period of probation is not extended under this sub-rule, but who has neither been confirmed nor discharged from service at the end of the period of probation shall be deemed to have been continued in service, subject to the condition of his service being terminable on the expiry of a notice of one calendar month given in writing by either side.

(3) A probationer shall undergo such training and pass such departmental examinations during the period of his probation as may be prescribed.

(4) and (5) are not relevant, hence omitted.

(6) On the successful completion of probation and the passing of the prescribed departmental examinations, the probationer shall be confirmed in the services or post to which he has been appointed.

[Emphasis added] There, the incumbent was appointed as lower division clerk in Raipur Municipal Corporation on 22nd September, 1966 on probation for a period of two years which expired on September 21, 1968. On December 9, 1968, he was served with one months notice terminating his services with effect from January 9, 1969. The said order was challenged by filing a suit on the ground that order of termination having been passed without giving opportunity of hearing was invalid as the person concerned became a confirmed employee after expiry of period of probation. The suit was dismissed by the trial court and the same was affirmed in appeal. Thereafter, when the matter was taken to the High Court in second appeal, the same was allowed, suit was decreed and order of termination was quashed. Against the order of the High Court when appeal was brought to this Court, the same was allowed, order of High Court was set aside and the termination order was upheld. While considering Rule 8, the Court observed thus at page 328:-

Thus, it is clear from Rule 8 of the Rules that the procedure to place a direct recruit on probation for a prescribed period was provided. The appointing authority would be entitled to place a direct recruit on probation for a specified period and for sufficient reasons may extend the period of probation to a further period not exceeding one year. Under the note to sub- rule (2) if the probationer is neither confirmed nor discharged from service at the end of the period of probation, he shall be deemed to have been continued in service as probationer subject to the condition of his service being terminated on the expiry of a notice of one calendar month given in writing by either side. As per sub-rule (6) on passing the prescribed departmental examination and on successful completion of the period of probation, the probationer shall be confirmed in the service or post to which he has been appointed. Then he becomes an approved probationer. Therefore, after the expiry of the period of probation and before its confirmation, he would be deemed to have been continued in service as probationer. Confirmation of probation would be subject to satisfactory completion of the probation and to pass in the prescribed examinations. Expiry of the period of probation, therefore, does not entitle him with a right to a deemed confirmation. The rule contemplates to pass an express order of confirmation in that regard. By issue of notice of one calendar month in writing by either side, the tenure could be put to an end, which was done in this case. "

After referring to the Rule, the Court laid down the law at page 330 which runs thus:-

Exercise of the power to extend the probation is hedged with the existence of the rule in that regard followed by positive act of either confirmation of the probation or discharge from service or reversion to the substantive post within a reasonable time after the expiry of the period of probation. If the rules do not empower the appointing authority to extend the probation beyond the prescribed period, or where the rules are absent about confirmation or passing of the prescribed test for confirmation of probation then inaction for a very long time may lead to an indication of the satisfactory completion of probation. But in this case Rule 8 expressly postulates otherwise. The period of probation is subject to extension by order in writing for another period of one year. Passing the prescribed examinations and successful

completion of probation and to make an order of confirmation are condition precedent. Mere expiry of the initial period of probation does not automatically have the effect of deemed confirmation and the status of a deemed confirmation of the probation. An express order in that regard only confers the status of an approved probationer. We are of the view that note to sub- rule (2) read with sub-rule (6) of Rule 8 manifests the legislative intent that confirmation of the probation of the respondent would be made only on successful completion of the probation and the passing of the prescribed examinations. It is not the respondents case that he passed all the examinations. He shall be deemed to be continued on probation. Before confirmation the appointing authority is empowered to terminate the service of the probationer by issuing one calendar months notice in writing and on expiry thereof the service stands terminated without any further notice. Within three months from the date of expiry of original two years period of probation and within one years period, the order of termination was made. In this view the question of conducting an inquiry under the Classification, Control and Appeal (Rules) after giving an opportunity and that too for specific charges does not arise. The High Court, therefore, committed manifest error of law in decreeing the suit.

[Emphasis added] In the case of *Jai Kishan v. Commissioner of Police and another*, 1995 Supp (3) SCC 364, the Court was considering the question of deemed confirmation under Rule 5(e) of Central Services (Temporary Service) Rules, 1966 where the maximum period of probation was three years. The said Rule runs thus:-

5(e)- (i) All direct appointments of employees shall be made initially on purely temporary basis. All employees appointed to the Delhi Police shall be on probation for a period of two years:

Provided that the competent authority may extend the period of probation but in no case shall the period of probation extend beyond three years in all.

(ii) The services of an employee appointed on probation are liable to be terminated without assigning any reason.

(iii) After successful completion of period of probation, the employee shall be confirmed in the Delhi Police by the competent authority, subject to the availability of permanent post.

In that case, the concerned person was appointed as a temporary constable on 9th September, 1982. During the period of probation, the incumbent was required to complete successfully the probation after complying with the condition of passing the test. The confirmation into service was a condition precedent for continuance as a member of Delhi Police Service. The incumbent was given opportunity not only for a period of three years of probation but even thereafter two years more time was given to him to improve his performance but as he could not improve, his services were terminated which order was challenged before the Administrative Tribunal and after rejection of the

Review Petition, the matter was brought to this Court in appeal where it was contended that after expiry of period of three years, the incumbent must be deemed to have been confirmed. This Court repelling the contention dismissed the appeal stating thus at page 365:-

It is contended by the learned counsel for the appellant, placing reliance on State of Punjab v. Dharam Singh, AIR 1968 SC 1210, that even if the appellant was not confirmed by passing any order, on expiry of three years he must be deemed to have been confirmed as a member of the Service. Thereafter, the respondents had no jurisdiction to terminate his service. It is difficult to accept the contention. Dharam Singh case bears no relevance, as similar provision was not there in the rule concerned. Successful completion of probation is a condition precedent for confirmation as envisaged in clause (iii) of Rule 5(e) of the Rules. The authorities have power to allow maximum period of three years of probation. In this case instead of giving him three years, they have given a long 5 years period so as to see whether the appellant would improve his performance in the service. Since they found that there was no satisfactory improvement, his probation was terminated and he was removed from service as a probationer. Under these circumstances, we do not find any illegality in the action taken by the respondents warranting interference.

In the case of State of Punjab v. Baldev Singh Khosla, (1996) 9 SCC 190, question of deemed confirmation was considered under Rule 10 of Punjab State Cooperative Service (Class II) Rules, 1958, prescribing thereunder maximum period of probation as three years and the said Rule runs thus:-

10. Probation.- All members of the service shall on appointment remain on probation in the first instance for a period of two years, provided that Government may allow service rendered on a post on an identical cadre or in the higher post in another department to count for probation in the post in the service.

(2) Provided further that in the case of members promoted from the State Service Class III continue officiating of four months or over shall be reckoned as a period spent on probation.

(3) If the work or conduct of any candidate or member during the period of training or probation in the opinion of Government is not satisfactory they may dispense with his service if he has been recruited by direct appointment or may revert him to his former post if he has been recruited by promotion or by transfer. On the conclusion of the period of probation of any member of the service, Government, may, if vacancy exists, confirm him in his appointment; if his work or conduct has, in its opinion been satisfactory may extend his period of probation by such period as it may think fit and thereafter pass such orders as it could have passed on the expiry of the first period of probation, provided that the total period of probation, including extension, shall not exceed three years in any case.

There, the person was promoted as an Assistant Registrar, Cooperative Societies by resolution dated 21st March, 1990 and he completed the period of probation on 25th November, 1992 which was

extended from time to time. On 15th September, 1993, a show cause notice was issued to him as to why he should not be reverted to the substantive cadre on the ground that in the year 1991-92, i.e., during the initial period of probation, there were adverse remarks against him and he could not improve his performance even during the year 1993-94 for which an opportunity was given in spite of the fact that period of probation was extended by giving opportunity to him to improve his performance. On consideration of the reply to the show cause notice, order was passed on 11th February, 1994 reverting him to the substantive post from which he was promoted. When the said order was challenged before the High Court in writ application, the same was allowed and the order of termination was quashed on the ground that upon the expiry of three years period of probation, he must be deemed to have been confirmed and, therefore, the question of reversion did not arise. Thereafter the said order was challenged before this Court in appeal, in which while repelling the contention of deemed confirmation, appeal was disposed of observing thus at page 191:-

Learned counsel for the respondent contends that since the rule provides an outer limit of three years, if the respondent had not been reverted within that period, he must be deemed to have been confirmed and the High Court, therefore, was right in concluding that the respondent is a confirmed probationer. We do not find force in the contention. Sub-rule (3) of Rule 10 clearly envisages that on conclusion of the period of probation of any member of the service the Government may, if vacancy exists, confirm him in his appointment; if his work or conduct has, in its opinion, not been satisfactory, it may extend his period of probation by such period as it may think fit and thereafter pass such orders as could have been passed on the expiry of his period of probation. It would thus be seen that the outer limit of three years provided under the rules is an enabling provision to allow the probationer to continue in service without being reverted or discharged from service for failure to satisfactorily complete the period of probation, but that would not mean that the probationer, on expiry of three years period, must be deemed to have been confirmed. The rule itself envisages a positive order of confirmation. So long as the order of confirmation is not made, even after expiry of probation, the probationer may continue and remain in service, but by allowing him to remain in service it cannot be concluded that he must be deemed to have been confirmed.

The rule also envisages that during the period of probation, the appointing authority is required to see that the performance of the work done by the probationer is to the satisfaction of the appointing authority. It is seen that for the years 1991 and 1992 there were adverse remarks made upon the performance of the respondent. Obvious for that reason, his confirmation was not made. On the other hand, the period of probation was further extended as admitted by the respondent. Under these circumstances, he cannot be deemed to have been confirmed. However, since the authorities had extended the period of probation and given him chance to improve his performance during the year 1993- 94, that period was not taken into consideration before reverting the respondent from service. The appointing authority is, therefore, directed to consider whether he is fit to be confirmed, on the basis of his performance for the subsequent period and in case it considers that he may be

confirmed, it would be open to them to pass appropriate orders. In case, even after consideration of the performance for the year 1993-94, his record is not found satisfactory, appropriate orders may be passed and communicated to the respondent.

[Emphasis added] In the case of Chief General Manager, State Bank of India and another v. Bijoy Kumar Mishra, (1997) 7 SCC 550, the question of deemed confirmation was considered under paragraphs 15 and 16 of State Bank of India Officers (Determination of Terms and Conditions of Service) Order, 1979, prescribing maximum period of probation as three years which are as under:-

Probation

15.(1) A person appointed as a Probationary Officer or a Trainee Officer shall be on probation for a period of two years (2) Any other employee of the Bank promoted as an officer to the Junior Management Grade shall be on probation for a period of one year.

(3) Any other person appointed to any grade including junior management grade shall be on probation for such period as may be decided by the competent authority:

Provided that the competent authority may, in the case of any officer, reduce or dispense with the period of probation. Confirmation

16. (1) An officer referred in paragraph 15 shall be confirmed in the service of the Bank, if, in the opinion of the competent authority, the officer has satisfactorily completed the training in any institution, to which the officer may have been deputed for training, and the in-service training in the Bank:

Provided that an officer directly recruited to the Junior Management Grade may be required also to pass a test in a language other than his mother-tongue.

(2) If, in the opinion of the competent authority, an officer has not satisfactorily completed either or both the trainings referred to in sub-paragraph (1) or if the officer has not passed the test referred to therein or an officer's service is not satisfactory, the officer's probation may be extended by a further period not exceeding one year.

(3) Where during the period of probation, including the period of extension, if any, the competent authority is of the opinion that the officer is not fit for confirmation:

(a) in the case of a direct appointee, his services may be terminated by one month's notice or payment of one month's emoluments in lieu thereof, and

(b) in the case of a promotee from the Banks service, he may be reverted to the grade or cadre from which he was promoted.

There, the person concerned was appointed as a Probationary Officer in the State Bank of India, on 24th October, 1980, joined duty on 15th December, 1980 and maximum period of probation was to expire on 14th December, 1983. During the initial period of two years of probation, the person absented himself from duty from 2nd April, 1981 for a long period and the last date of his presence in the duty was in the first week of August, 1983 and he remained absent till the year 1988. This shows that he remained absent from much before the date of expiry of three years period of probation and remained absent thereafter continuously for a period of five years. In the year 1986-87, he joined M.Phil Course in Punjab University without obtaining permission of the bank. The Bank issued an order dated 4th October, 1988 terminating his services which necessitated filing of writ application before the Orissa High Court challenging order of termination on the ground that the officer shall be deemed to have been confirmed upon expiry of three years maximum period of probation as such the order of termination was invalid. The High Court accepted the contention of deemed confirmation and quashed the order, but the said order has been set aside by this Court on appeal being preferred repelling the case of deemed confirmation on the ground that there was no conduct of the employer allowing the employee to continue to work on the post even after expiry of maximum period of probation in view of the fact that the incumbent remained absent from duty for a long period during the period of probation, on the date of expiry of the maximum period of the probation and even thereafter, as such there was no occasion for the bank to allow him to continue to work after completion of the probation period. The Court distinguished the case of Dharam Singh (supra) stating at page 555 thus:-

It is obvious that the decision in State of Punjab v. Dharam Singh, (1968) 3 SCR 1, can have no application in a case where the employee was absent from duty from a date much prior to the expiry of the maximum period of probation and remained absent even thereafter for a long time. There was no occasion in such a case for the employer to allow the employee (respondent) to continue to work on the post after the expiry of the maximum period of probation because he was absent and was not working on the post at the time of the expiry of the period of probation. Deemed confirmation results from the conduct of the employer in permitting continuance in service after the expiry of the maximum period of probation fixed by the rules. When there is no such conduct of the employer, the very foundation for the argument of deemed confirmation and reliance on Dharam Singh is not existent.

[Emphasis added] In the case of Dayaram Dayal (supra), a two Judge Bench of this Court was considering a case covered by Rule 24 of the Rules, in which the incumbent was appointed as Civil Judge Class II in M.P. Subordinate Judicial Service on 22nd October, 1985 and after completing six months training, he was put on probation for two years which period was completed on 22nd May, 1988. On 2nd March, 1990, he was placed under suspension pending some charges and in the year 1991 after inquiry, punishment of stoppage of two annual increments with cumulative effect was awarded. There were certain adverse remarks in ACRs between the years

1987-88 and 1992-93. On 3rd May, 1992, the Full Court having not found him fit for confirmation, deferred the matter to give one more opportunity. In the year 1993 again, the High Court did not find him fit for confirmation as such his services were terminated by paying one months salary in lieu of notice as required under Rule 24. When the said order was challenged in a writ application, the same was dismissed and order of dismissal was affirmed in appeal. Thereafter, when the matter was challenged before this Court, the appeal was allowed, judgments of the High Court were set aside and order of termination was quashed holding that the incumbent would be deemed to have been confirmed on the expiry of four years maximum period of probation prescribed under the Rules following Constitution Bench decision of this Court in the case of Dharam Singh (supra) where Rules did not require an incumbent to pass any test or fulfill any other condition before confirmation, as noticed by the Constitution Bench itself in that case which goes to show that if the Rules would have required a person to pass any test or fulfill any other condition before confirmation, it was not possible to draw an inference that merely because an employee was allowed to continue on the post upon completion of the maximum period of probation, he was confirmed by implication. There the Court proceeded on the facts of that case, which do not show any assessment of work and conduct of the probationer being made and he being not found fit for confirmation by the competent authority during the period of probation. In the absence of any opinion formed after considering the performance of probationer, it was presumed in that case that there being nothing adverse against the officer, there was no compelling reason not to confirm him on the post inasmuch as there was no plea on behalf of the State that his work and conduct was not satisfactory. The Rules did not require any condition of assessment of work at the end of extended period of probation or passing of departmental examination. In the said case, order of termination was issued more than two years after the expiry of maximum period of probation which was completed on 1st October, 1960 and the order of termination was issued in 1963 without any assessment of his performance.

In the case on hand, correctness of the interpretation given by this Court to rule 24 of the Rules in the case of Dayaram Dayal (supra) is the bone of contention. In the aforesaid case, no doubt, this Court has held that a maximum period of probation having been provided under sub-rule (1) of rule 24, if a probationers service is not terminated and he is allowed to continue thereafter it will be a case of deemed confirmation and the sheet anchor of the aforesaid conclusion is the Constitution Bench decision of this Court in the case of Dharam Singh (supra). But, in our considered opinion in the case of Dayaram Dayal (supra), rule 24 of the Rules has not been interpreted in its proper perspective. A plain reading of different sub-rules of rule 24 would indicate that every candidate appointed to the cadre will go for initial training for six months whereafter he would be appointed on probation for a period of 2 years and the said period of probation would be extended for a further period not exceeding 2 years.

Thus, under sub-rule (1) of rule 24 a maximum period of 4 years probation has been provided. The aforesaid sub-rule also stipulates that at the end of the probation period the appointee could be confirmed subject to his fitness for confirmation and to have passed the departmental examination, as may be prescribed. In the very sub-rule, therefore, while a maximum period of probation has been indicated, yet the question of confirmation of such a probationer is dependent upon his fitness for such confirmation and his passing of the departmental examination by the higher standard, as prescribed. It necessarily stipulates that question of confirmation can be considered at the end of the period of probation, and on such consideration if the probationer is found suitable by the Appointing Authority and he is found to have passed the prescribed departmental examination then the Appointing Authority may issue an order of confirmation. It is too well settled that an order of confirmation is a positive act on the part of the employer which the employer is required to pass in accordance with the Rules governing the question of confirmation subject to a finding that the probationer is in fact fit for confirmation. This being the position under sub-rule (1) of rule 24, it is difficult for us to accept the proposition, broadly laid down in the case of Dayaram Dayal (supra), and to hold that since a maximum period of probation has been provided thereunder, at the end of that period the probationer must be held to be deemed to be confirmed on the basis of the judgment of this Court in the case of Dharam Singh (supra).

In the case of the Judicial Officers who are respondents before us, it is the positive case of the High Court that their case for confirmation was considered while they were continuing on probation but the Full Court did not consider them suitable for confirmation and they were given a further opportunity of improving themselves. Even notwithstanding such opportunity they having failed to improve themselves and the High Court having considered them unsuitable for confirmation the order of termination emanated. It is difficult for us to comprehend that a probationer while continuing on probation, on being considered is found unsuitable for confirmation by the Appointing Authority and yet it can be held to be a deemed confirmation because of maximum period of probation indicated in the rule, merely because instead of termination of the services he was allowed to continue and was given an opportunity for improving and even after the opportunity he failed to improve and finally the Appropriate Authority finding him unsuitable directs termination of his services. The very fact that sub-rule (1) of rule 24 while prescribing a maximum period of probation therein entitles a probationer for being considered for confirmation and confers a right on the Appointing Authority to confirm subject to the fitness of the probationer and subject to his passing the higher standard of all departmental examination must be held to be an inbuilt provision in sub-rule (1) which would negative the inference of a confirmation in the post by implication, as interpreted by this Court in the case of Dharam Singh (supra) while interpreting rule 6 of the Punjab Educational Services (Provincialised Cadre) Class III Rules, 1961. Ordinarily a deemed confirmation of a probationer arises when the letter of appointment so stipulates or the Rules governing service condition 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 (supra). But it cannot be said that merely because a maximum period of probation has been provided in Service Rules, continuance of the probationer thereafter would ipso facto must be held to be a deemed confirmation which would certainly run contrary to Seven Judge Bench Judgment of this Court in the case of Samsher Singh (supra) and Constitution Bench decisions in the cases of Sukhbans Singh (supra), G.S. Ramaswamy (supra) and

Akbar Ali Khan (supra).

Apart from sub-rule (1) of rule 24 of the Rules, the effect of sub-rule (3) may also be considered. Under sub-rule (3), if a probationer has been found unsuitable for the service during the period of probation or he has failed to pass the prescribed departmental examination then the Governor at any time thereafter may dispense with his services. The power for dispensing with services has been conferred upon the Governor to be exercised at any time after the period of probation if the probationer is found unsuitable or if he has failed to pass the prescribed departmental examination. If the interpretation given by this Court in the case of Dayaram Dayal (supra) to sub-rule (1) of rule 24 is held to be correct then this power of the Governor under sub-rule (3) would become otiose inasmuch as a probationer would acquire a deemed confirmation on the expiry of the maximum period of probation provided in sub-rule (1). Sub-rule (3) of rule 24, therefore, is another inbuilt provision in the Rules which can be held to be a special provision to negate the inference of deemed confirmation on the expiry of the maximum period of probation indicated in sub-rule (1), as has been observed by this Court in the case of Dayaram Dayal (supra) also and which is in conformity with the decisions of this Court in the cases of Samsher Singh (supra), Sukhbans Singh (supra), G.S. Ramaswamy (supra) and Akbar Ali Khan (supra). Rule 24, on a plain grammatical meaning being given to the words used therein does not provide for a deemed confirmation on expiry of the maximum period of probation, and on the other hand it contemplates a positive order of confirmation to be passed by the Appropriate Authority, if the Authority concerned is satisfied about the fitness of the probationer for confirmation, and if the probationer has passed the departmental examination, as prescribed. Mere continuance of the probationer after considering his case for confirmation during the period of probation and finding him unsuitable for confirmation by the decision of the Full Court, by no stretch of imagination can be construed to be a confirmation by implication, as was held by this Court in the case of Dharam Singh (supra) and that can never be the intention of the Rule Making Authority. If the Full Court would not have considered the suitability of the probationer for confirmation while the probation period was continuing, the matter might have stood on a different footing.

The importance of the suitability of the officer for confirmation need not be emphasised and such suitability under the Rules is required to be adjudged by the Full Court of the High Court. The Constitution itself while indicating that the claims of Scheduled Castes and Scheduled Tribes to services and posts shall be taken into consideration in Article 335, have further added that such claim should be consistent with maintenance of efficiency of administration. The Subordinate judiciary is the foundation on which the super-structure is built. It would be the solemn duty of every authority on whom the administration of justice vests, to see that the said foundation is not shaken by any process including the process of allowing adjudged unsuitable person to man the post. While interpreting rule 24 and considering the question whether a deemed confirmation can at all be conferred, the aforesaid principle must be borne in mind and unless the Rules explicitly say so, by implication a status of deemed confirmation ought not to be granted, particularly when the Full Court of the High Court has adjudged the Judicial Officers unsuitable. In this view of the matter, we have no hesitation to come to a conclusion, that the decision of this Court in the case of Dayaram Dayal (supra) does not lay down the correct position with regard to the interpretation of rule 24 of the Rules. As has been stated earlier in this batch of cases, the question of confirmation of

each of the probationers was considered by the Full Court within the maximum period of probation provided in sub-rule (1) of rule 24, but the Full Court found them not fit for confirmation and instead of adjudging them unsuitable and recommending for termination, the Court deferred their case for further consideration and thereby granted further opportunity for proving their worth for confirmation. Such continuance of the probationers, in our considered opinion, would not confer the status of deemed confirmation, merely because a maximum period of probation has been provided there in sub-rule (1) of rule 24.

In the result, the appeals are allowed, judgment passed by Division Bench of the High Court is set aside and all the writ applications stand dismissed. In the circumstances of the case, we direct that the parties shall bear their own costs.

J. [G.B.PATTANAIK] J. [S.N.PHUKAN] ...J. [B.N.AGRAWAL] 14TH AUGUST, 2001.