

Municipal Corporation, Raipur vs Ashok Kumar Misra on 16 April, 1991

Equivalent citations: 1991 AIR 1402, 1991 SCR (2) 320, AIR 1991 SUPREME COURT 1402, 1991 (3) SCC 325, 1991 AIR SCW 1241, 1991 LAB. I. C. 1266, 1991 (2) ALL CJ 899, (1991) 2 SCR 320 (SC), (1991) 2 JT 599 (SC), 1991 (2) SCR 320, (1991) JAB LJ 397, 1991 SCC (L&S) 1046, (1991) 2 CURLR 826, (1991) 78 FJR 495, (1991) 2 LAB LJ 343, (1991) 2 LAB LN 481, (1992) 6 SERVLR 714, (1991) 16 ATC 927

Author: K. Ramaswamy

Bench: K. Ramaswamy, N.M. Kasliwal

PETITIONER:
MUNICIPAL CORPORATION, RAIPUR

Vs.

RESPONDENT:
ASHOK KUMAR MISRA

DATE OF JUDGMENT 16/04/1991

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
KASLIWAL, N.M. (J)

CITATION:
1991 AIR 1402 1991 SCR (2) 320
1991 SCC (3) 325 JT 1991 (2) 599
1991 SCALE (1) 753

ACT:
Madhya Pradesh Government Servants' Central Conditions of Service Rules, 1961: Rule 8 - Probationer - Expiry of prescribed period of probation - Termination of service - Whether Valid - Whether entitled to right to deemed confirmation - Madhya Pradesh Civil Services Classification. Control and Appeal Rules, 1966: Rule 9A and Municipal Officers' and Servants' Recruitment Rules: Rule 14- Whether applicable.

HEADNOTE:

The respondent was appointed in the appellant Corporation and put on probation for a period of two years. About three month's after the completion of two years' period he was served with one month's notice for termination of his service. Challenging the termination order the respondent filed a suit for declaration that the termination without enquiry and opportunity of being heard was violative of Rule 9A of the Madhya Pradesh Civil Services Classification, Control and Appeal Rules 1966 and that he became a permanent employee of the Corporation with continuity of service and arrears of salary. The trial court dismissed the suit, and appeal, it was confirmed. The High Court allowed the respondent's second appeal and decreed the suit.

In the appeal, by special leave, before this Court, on behalf of the appellant-Corporation it was contended that the respondent being a probationer, would acquire permanent status only on confirmation, that the High Court had committed manifest error in law in holding that on the expiry of two years' period of probation, the respondent must be deemed to have been confirmed under Rule 14 of the Municipal Officers' and Servants' Recruitment Rules, which were no longer in force, and that Rule 8 of the Madhya Pradesh Government Servants' General Conditions of Service expressly provided confirmation of probation as a condition precedent and since notice terminating respondent's service was issued, in terms of the rules, before confirmation, it was valid in law.

On behalf of the respondent, it was contended that by operation of the resolution passed by the Municipal Corporation under Section 25 of

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the Central Provinces and Bearer Municipality Act, 1922, the Municipal Officers and Servants was governed by recruitment rules thereunder, that since no action was taken by the appellant Corporation to dispense with the respondent's service, on the expiry of the period of two years, as envisaged in Rule 14 of the Municipal Officers' and Servants' Recruitment Rules, the respondent must be deemed to have been confirmed, and consequently, the only power the Corporation had was to terminate the respondent's service in accordance with the classification, Control and Appeal Rules, after conducting an enquiry and giving him reasonable opportunity, that too for misconduct, but since no such procedure was adopted, the notice was illegal and the High Court was justified in granting the decree.

Allowing the appeal, this Court,

HELD: 1.1 Under the Note to sub-rule (2) of Rule 8 of the Madhya Pradesh Govt. Servants', General Conditions of Service Rules, 1961 if the probationer is neither confirmed nor discharged from service at the end of the period of probation, he should 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 should 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. [375F-H]

1.2 Confirmation of probation would be subject to satisfactory completion of the probation and pass in the prescribed examinations. Expiry of the period of probation, therefore, does not entitle him with a right to 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. [326A-B]

1.3 If the rules do not empower the appointing authority to extend the period of probation beyond the prescribed period, or where the rules are absent about confirmation or passing of the prescribed test for confirmation of probation, inaction for a very long time may lead to an indication of the satisfactory completion of probation. [327D-E]

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1.4 Rule 8 expressly postulates otherwise. Hence mere expiry of the initial period of probation which is subject to extension for another period of one year 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 on fulfillment of the conditions stipulated in the Rule only confers the status of approved probation. [327E-F]

State of Punjab v. Dharam Singh [1968] 3 SCR 1; Om Prakash Maurya v. U.P. Co-op. Sugar Factories Federation, Lucknow & Ors. [1986] Suppl.SCC 95; M.A. Agarwal v. Gurgaon Bank & Ors., [1987] Suppl. SCC 643 and State of Gujarat v. Akhilesh C. Bhargav & Ors., [1987] 3 SCR 1091, distinguished.

1.5 Note to sub- rule (2) read with sub-rule (6) of Rule 8 manifest 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. The respondent shall, therefore, 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 month's 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 the extendable period of one year the order of termination was made. Hence, 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. [327G-H, 328A]

In the circumstances the High Court, committed manifest error of law in decreeing the suit. [328B]

2. By virtue of the resolution passed by the Municipal Council, which subsequently became Municipal Corporation, making a draft bye-law, exercising power under section 173(2) of the Madhya Pradesh Municipal Act, 1922 and confirmed under Section 25(1) of the Act, adopting Government rules to regulate the conditions of service of officers and servants of the Municipal Committee, the Fundamental Rules, Civil Service Regulations, Government Servants' Conduct Rules, and General Book Circulars of the State Government, as amended from time to time, etc. would apply to the officers of the Municipal Committee and the previous rules were superseded and were no longer in force. Hence the reliance placed by the High Court on Rule 14 of the Municipal Officers' and Servants' Rules is wrong. [324D-E, G-H]

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JUDGMENT:

CIVIL APPELLANT JURISDICTION: Civil Appeal No. 722 of 1978.

From the Judgment and Decree dated 11.4.1977 of the Madhya Pradesh High Court in Second Appeal No. 315 of 1970.

S.K.Gambhir for the Appellant.

S.S. Khanduja for the Respondent .

The Judgment of the Court was delivered by K.RAMASWAMY,J. The facts in this appeal would lie in a short compass. The appellant appointed the respondent as Lower Division Clerk on September 22, 1966 and put him on probation for a period of two years which expired on September 21, 1968. On December 9, 1968, the appellant served him with one month's notice terminating the services with effect from January 9, 1969. Calling in question the order of termination, the respondent laid the suit for declaration that the termination without enquiry and an opportunity of being heard was violative of Rule 9A of the Madhya Pradesh Civil Service Classification Control & Appeal (Rules), 1966 with consequential declaration that he became a permanent employee of the corporation with cotiuity of service and arrears of salary. The Trial Court dismissed the suit and on appeal it was confirmed. The High Court in Second Appeal No. 315/70 by judgment and decree dated April 11, 1977 allowed the appeal and decreed the suit as prayed for. On leave under Art. 136 the Appellant filed this appeal.

Shri S.k.Gambhir, learned counsel for the appellant contended that the respondent being a probationer, acquires permanent status only on confirmation. Before confirmation the appellant had exercised its power, in terms of the rules, and terminated the respondent's service. The High Court committed manifest error of law in its finding that on expiry of two years period of probation the respondent must be deemed to have been confirmed under Rule 14 of the Municipal Officers and Servants Recruitment Rules which no longer were in force. He further contended that rule 8 of the Madhya Pradesh Government Servants' General Conditions of Service Rules, 1961 for short 'the Rules' expressly provides confirmation of probation as a condition precedent. Notice was issued terminating the service before confirmation and so it is valid in law. Shri S.S. Khanduja, learned counsel for the respondent contended that by operation of the resolution passed by the Municipal Corporation under s. 25 of the Central Provinces and Berar Municipality Act 1922 the Municipal Officers and Servants are governed by recruitment rules thereunder. Rule 14 thereof, relied on by the High Court expressly provided to put an employee on probation for a period of two years subject to being confirmed. At the end of the probationary period, if the probationer was found unfit, the Municipal Committee shall, if he was a direct recruit, to dispense with his service and if he has been recruited by transfer, to revert to his original post. On expiry of the period of two years, no action was taken by the Municipal Corporation. Therefore, the respondent must be deemed to have been confirmed. Thereafter the only power which the Corporation had was to terminate the service of the respondent in accordance with Classification Control and Appeal Rules after conducting an enquiry and giving him reasonable opportunity that too for misconduct. No such procedure was adopted. Therefore, the impugned notice was illegal and the High Court was justified in granting the decree.

The first question is, which are the relevant rules that would be applicable to the respondent? Admittedly, the Municipal Council became a Municipal Corporation on or after August 26, 1967. A resolution was passed making a draft bye-law by a Municipal Council on November 11, 1960, exercising the power under s. 178(3) of the Madhya Pradesh Municipal Act, 1922 and confirmed the same under s. 25 (1) of the said Act, adopting Government Rules to regulate the conditions of service of officers and servants of Municipal Committee which provides thus:

"The fundamental rules and the Civil Service regulations as amended from time to time in their applications to M.P., the M.P. Government Servants Conduct Rules 1959, as amended from time to time and the General Book Circulars of the Govt. of M.P. as in force for the time being shall apply to the officers and servants of the M.C. in the same way as they apply to Govt. Servants".

Thus, it is clear that the Fundamental Rules, Civil Service Regulations, Govt, Servants Conduct Rules and the General Book Circulars of the Government of Madhya Pradesh as amended from time to time, etc. shall apply to the officers and servants of the Municipal Committee. The Previous rules were thus superseded and were no longer in force. Reliance on Rule 14 referred to above made by the High Court is, therefore, wrong. Rule 8 of the Rules reads thus:

"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."

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. In *State of Punjab v. Dharam Singh*, [1968] 3 SCR 1 considering the effect of continuing a probationer in service after the period of probation was completed, the Constitution Bench held that there was no rule for the extension of probation after October 1, 1960 and it was not possible to presume the competent authority extended it beyond October 1, 1960. Thus in the above case there was no power to extend the probation in the rules beyond the specified period. It was held that:

"The initial period of probation of the respondents ended on October 1, 1958. By allowing the respondents to continue in their posts thereafter without any express order of confirmation, the competent authority must be taken to have extended the period of probation upto October 1, 1960 by implication. But under the proviso to Rule 6(3), the probationary period could not extend beyond October 1, 1960. In view of the proviso to Rule 6(3), it is not possible to presume that the competent authority extended the probationary period after October 1, 1960, or that there after the respondents continued to hold their posts as probationers".

Accordingly it was held that the respondent therein was deemed to have been confirmed.

In *Om Prakash Maurya v. U.P. Co-op. Sugar Factories Federation, Lucknow & Ors.* [1986] Suppl. SCC 95 this Court held that U.P. Co-op. Sugar Factories Federation Service Rules, 1976 made under the U.P. Co-op. Societies Act were in force. Regulations 17 of 1975 Regulations does not permit continuance of an employee for a period of more than two years. One year normally was the period of probation and further being extended to a period of one more year. Rule 5 of 1976 Rules does not prescribe any limit on the extension of the probationary period. In the light of the operation of those rules when the probationary period was prescribed on promotion to the post of Commercial Officers with a condition that his probationary period may be extended and he could be reverted to the post of Office Superinten-

dent without any notice, this Court held that the stipulation for extension of probationary period in the appointment order must be considered in accordance with the proviso to regulation 17(1) which means that the probationary period could be extended for a period of one year more and the probationary period was further extended to one year during which period the service of the appellant was neither terminated nor was he reverted to his substantive post, instead he was allowed to continue. On those facts this Court held that "since under those regulations' appellant's probationary period could not be extended beyond the maximum period of two years, he stood confirmed on the expiry of maximum probationary period and there after he could not be reverted to lower post treating him on probation". In *M.A. Agarwal v. Gurgaon Bank & Ors.*, [1987] Suppl. SCC 643 and in *State of Gujarat v. Akhilesh C. Bhargav & Ors.* [1987] 3 SCR 1091 this Court reiterated the same view.

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 and 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 respondent's 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 on calendar month's 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 year's 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. By an interim order passed by this court, the respondent received a sum of Rs. 5,000 from the appellant. The appellant shall not recover the same from him. The appeal is accordingly allowed. The judgment and decree of the High Court is set aside and that of the Trial Court and the Ist Appellate Court are confirmed. But in the circumstances parties are directed to bear their own costs.

N.P.V.

Appeal allowed.