Supreme Court of India
Wasim Beg vs State Of Uttar Pradesh & Ors on 5 March, 1998
Author: M S Manohar
Bench: Sujata V. Manohar, D.P. Wadhwa.

PETITIONER:
WASIM BEG

Vs.

RESPONDENT:
STATE OF UTTAR PRADESH & ORS.

DATE OF JUDGMENT: 05/03/1998

BENCH:
SUJATA V. MANOHAR, D.P. WADHWA.

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T Mrs. Sujata V. Manohar, J.

Leave Granted.

The appellant was appointed as Assistant Manager in the respondent-U.P. State Leather Development and Marketing Corporation on 22.11.1974.

On 10th of January, 1978 the appellant was selected and appointed as Divisional Manager in the respondent- Corporation. The letter of appointment which is dated 10th of January, 1978 states as follows :-

".....

> His appointment will be on probation for a period of one year which can be extended at the discretion of the Managing Director. His services are liable to be terminated on one month's notice or salary in lieu thereof. He will be governed by the Service Rules of the Corporation....."

The appellant continued to work as Divisional Manager of the respondent-Corporation till 21st of April, 1981 when he was re-designated as Works Manager. He continued thereafter in the said post. In April 1983 he was allowed to cross the Efficiency Bar.

It is the contention of the respondent that initially the work of the appellant was good but subsequently his work and performance deteriorated as a result of which the Corporation had to suffer losses. The appellant was given several warnings but his performance did not improve. At the meeting of the Board of Directors of the respondent- Corporation held on 8th of February, 1985, the entire service record of the appellant together with the report of the Managing Director was placed before the Board. After perusing the report and the service record of the appellant, the Board took a decision to terminate the services of the appellant. This decision was confirmed at the next meeting of the Board of Directors held on 31st of March, 1985.

Thereupon, an order dated 31st of March, 1985 was issued terminating the services of the appellant. The order stated that the appellant was discharged from the service of the Corporation with immediate effect and that in lieu of three months' notice he will be paid three months pay. The pay for three months was deposited in the account of the appellant by the respondents.

From 31st of March, 1985 the appellant absented himself from work and his whereabouts were not known. As the order of termination could not be served on him, ultimately the respondent-Corporation published a notice dated 12th of April, 1985 in Hindi newspaper 'Amar Ujala' published from Agra to the effect that the services of the appellant had been terminated as per Board's Resolution No, 57.19 and the registered order dated 31.3.1985 and that in lieu of three months' notice three months' pay had been deposited in the appellant's personal savings account.

The appellant filed a writ petition against the order of termination in the High Court of Allahabad on 18th the April, 1985 being Writ Petition No. 5464 of 1985. In this writ petition the High Court granted on 19th of April, 1985, an interim stay of the order of termination. However, since the appellant did not join service after the stay order, the High Court vacated the stay order on 6th of November, 1985 observing that the appellant would be entitled to full salary in case he succeeds.

The writ petition has been ultimately dismissed by the High Court by its impugned order dated 29.4.1997. The High Court has upheld the order of termination on the ground that the appellant was a probationer on the date of termination of his services n 31st of March, 1985. Hence termination by three months' notice was a valid termination.

The Service Rules which were in force at the time of the appellant's appointment as Divisional Manager were Model Service Rules for State Enterprises which were adopted by the respondent-Corporation by a resolution dated 30th of July, 1976. The relevant Rule relating to appointment on probation was 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 appointing authority has discretion to extend the period of probation without assigning any reason therefore."

The relevant Rule relating to confirmation was 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 top weed out inefficient employees who is 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 not suitable for continued employment of the Corporation. The discharge shall be only on grounds of continued inefficiency or dishonestly, serious dereliction of duty or moral turpitude and is not to be considered as a punishment under the disciplinary proceedings....."

A confirmed employee could be discharged by giving three months' notice or by giving three months salary in lieu thereof under the circumstances set out in the Rule relating to confirmation. However, in the case of he discharge of an employee during the period of probation the notice required is 30 days of notice in writing or a sum equal to 30 days' substantive pay plus dearness allowance. The discharge of a confirmed employed is permissible on the grounds set out in the said Rule after hearing the employee.

With effect from 1st of January, 1981, the U.P. State Leather Development and Marketing Corporation Limited General Rules came into force replacing the earlier Service Rules. Under the new Rules of 1981 also there were Rules which provided for probation and confirmation. The relevant Rule relating to appointment on probation was 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 for two years without assigning any reason therefor. After the expiry of three years' probationary period if the employee is not confirmed, he will have a right to represent his case to the Board whose decision shall be final."

Discharge during the period of probation as under the earlier Rules was by 30 days notice in writing or sum equal to one month's substantive pay plus dearness allowance. The Rule relating to confirmation under these Rules was as follows :-

> "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 next higher level than the appointing authority for that category of post. The competent authority of getting a recommendation from the appointing authority for the discharge of a confirmed employee with reasons thereof, may give an opportunity to the employee concerned for explaining himself before coming to a decision.
>
> This provision in the Rule 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, not suitable for continued employment of the Corporation.
>
> The discharge shall be only on grounds of continued inefficiency or dishonesty, serious dereliction of duty or conviction by a court involving moral turpitude and is not be considered as a punishment under the disciplinary proceedings. ....."

The appellant was appointed on probation as Divisional Manager on 10.1.1978. The letter of appointment mentioned that his probation was for a period of one year. under the earlier Service Rules then in force, the respondents had the discretion to extend the period of probation without assigning any reason therefor. But there was no such order extending the period of probation of he appellant. A s per the Rule relating to probation, the appointing authority was required to issue tot he appellant a certificate of having satisfactorily completed probation at the end of the probationary period. No such certificate has been issued. The Rule relating to Confirmation states that the employee shall be deemed to have become confirmed employee after he has successfully completed the period of probation. The deemed confirmation depends on satisfactory completion of probation. The High Court has taken the view that since no certificate has been issued by the respondents at

the end of one year about the appellant having satisfactorily completed his period of probation, he remained on probation for a period of seven years till 1985 when his services were terminated by the order of 31st of March, 1985.

We find from the affidavit in reply which was filed by the respondents in the writ petition before the High Court, that the respondents have nowhere contended that the appellant was on probation or that his order of discharge is on the basis that he was a probationer. On the contrary, in paragraph 8 of the affidavit of Shri N.D. Singhal, Assistant Secretary of the respondent-Corporation, which was filed before the High Court, it is stated that an employee of the Corporation first placed on probation and before the expiry of the probationary period no notice or pay in lieu of notice is required to be given (sic.). This (i.e. notice or pay in lieu of notice) is required to be given only when the services of the employee concerned are confirmed.

In the said affidavit the respondent-Corporation has also reproduced extracts from the report submitted by the Managing Director in the meeting of the Board of Directors held on 8th of April, 1985. The Managing Director has stated in the report, inter alia, as follows :-

> "Shri Wasim Beg who had joined this Corporation of 24.11.1974 as Asstt. Manager and was promoted to the post of Divisional Manager in the scale of pay Rs. 800-1450 (revised Rs. 1350-3100) per month w.e.f.
>
> 10.1.79 on a regular basis. He was put in charge on regular basis....."

The date 10.1.1979, as the date from which the appellant worked on regular basis, is significant because it shows the end of the probationary period of one year from the date of hi appointment on 10.1.1978. The respondent- Corporation, therefore, did not contend before the High Court, however, has held that the appellant was a probationer on the basis of the Service Rule which was then in force.

Whether an employee at the end of probationary period automatically gets confirmation in the post or whether an order of confirmation or any specific act on the part of the employer confirming the employee is necessary, will depend upon the provisions in the relevant Service Rules relating to probation and confirmation. There are broadly two sets of authorities of this Court dealing with this question. In those cases where the Rules provide for a maximum period of probation beyond which probation cannot be extended, this Court had held that at the end of the maximum probationary period there will be deemed confirmation of the employee unless Rules provide to the contrary. This is the line of cases starting with State of Punjab v. Dharam Singh (1968 [3] SCR 1), M.K. Agarwal v. Gurgaon Gramin Bank & Ors. (1987) Supp. SCC 643), Om Prakash Maurya v. U.P. Cooperative Sugar Factories Federation, Lucknow & Ors. (1986 Supp. SCC

95), State of Gujarat v. Akhilesh C. Bhargav & Ors. (1987 [4] SCC 482).

However, even when the Rules prescribe a maximum period of probation, if there is a further provision in the Rules for continuation of such probation beyond the maximum period, the courts

have made an exception and said that there will be no deemed confirmation in such cases and the probation period will be deemed to be extended. In this category of cases we can place Samsher Singh v. State of Punjab & Anr. (1974 [2] SCC 831) which was the decision of a Bench of seven judges where the principle of probation not going beyond the maximum period fixed was reiterated but on the basis of the Rules which were before the Court, this Court said that the probation was deemed to have been extended. A similar view was taken in the case of Municipal Corporation, Raipur v. Ashok Kumar Misra (1991 [3] SCC 325). In Satya Narayan Athya v. High Court of Madhya Pradesh & Anr. (1996 [1] SCC 560), although the Rules prescribed that the probationary period should not exceed two years, and an order of confirmation was also necessary, the termination order was issued within the extended period of probation. Hence the termination was upheld.

The other line of cases deals with Rules where there is no maximum period prescribed for probation and either there is a Rule providing for extension of probation or there is a Rule which requires a specific act, on the part of the employer (either by issuing an order of confirmation or any similar act) which would result in confirmation of the employee. In these cases unless there is such an order of confirmation, the period of probation would continue and there would be no deemed confirmation at the end of the prescribed probationary period. In this line of cases one can put Sukhbans Singh v. State of Punjab (1963 [1] SCR

416), State of Uttar Pradesh v. Akbar Ali Khan (1966 [3] SCR

821), Shri Kedar Nath Bahl v. The State of Punjab & Ors. (1974 [3] SCC 21), Dhanjibhai Ramjibhai v. State of Gujarat (1985 [2] SCC 5) and Tarsem Lal Verma v. Union of India and Ors. (1997 [9] SCC 243), Municipal Corporation, Raipur v. Ashok Kumar Misra (supra) and State of Punjab v. Baldev Singh Khosla (1996 [9] SCC 190). In the recent case of Dayaram Dayal v. State of M.P. and Anr. (AIR 1997 SC 3269) (to which one of us was a party) all these cases have been analysed and it has been held that where the Rules provide that the period of probation cannot be extended beyond the maximum period there will be a deemed confirmation at the end of the maximum probationary period unless there is anything to the contrary in the Rules.

In the present case under the Service Rules in force at the time when the appellant was appointed on probation, there was no time-limit on the period up to which probation can be extended. The appointing authority was required to issue a certificate of the appellant having satisfactorily completed the period of probation. The provision relating to deemed confirmation would come into effect on his satisfactorily completing probationary period. From the affidavit filed by the respondent-Corporation as also looking to the report which was submitted by the Managing Director to the Board of Directors on 8.2.1985, it is clear that the appellant was considered by the respondents as having satisfactorily completed his period of probation on 9.1.1979, an d he was considered as a regular employee form 10.1.1979. In the affidavit of the respondent-Corporation before the High Court also it has been very fairly stated that the services of the appellant were satisfactory for the first few years and his work was very good. It was only thereafter that serious problems arose regarding his work and the corporation suffered losses on that account. It is, therefore, not possible to hold that the appellant remained a probationer till his discharge.

The respondents, however, contend that the services of the appellant have been terminated validly in accordance with the provisions relating to discharge of employees. On 31.3.1985 when the appellant was discharged the new Service Rules framed by the respondent-Corporation were in force which have been set out hereinabove. Under those Service Rules a confirmed employee can be discharged form service on three months' notice or giving three months' notice or giving three months' salary in lieu thereof. In the present case, the fact that such three months' notice or three months' salary in lieu thereof was given to the appellant would also indicate that he was treated as a confirmed employee. As a probationer he would have been entitled only to 30 days' notice. The relevant Service Rule set out earlier further provides that discharge in the case of a confirmed employee should be only on the grounds of continued inefficiency or dishonesty, serious dereliction of duty or conviction by a court. It should be used to weed out inefficient employees who, in spite of a number of warnings, have failed to correct themselves or employees who are not, in the opinion of the Board, suitable for continued employment. The report of the Managing Director which was placed before the Board of Directors gives cogent reasons for his discharge. His conduct in connection with several contracts has been set out in detail in the report and the loss occasioned thereby to the respondent-Corporation has also been set out in detail. It was on the basis of this report that the Board of Directors decided to terminate the services of the appellant. The appellant had also been earlier warned by the Managing Director. Therefore, there is no breach of this part of the Rule relating to discharge.

However, there is an important safeguard in this Rule relating to discharge of a confirmed employee. The competent authority under the Rule is required to give an opportunity to the employee concerned for explaining himself before coming to a decision regarding his discharge. The Rule provides that the competent authority on getting a recommendation from the appointing authority for the discharge of a confirmed employee with reasons thereof, may give an opportunity to the employee concerned for explaining himself before coming to a decision. Although the word used is 'may', in the context it has to be construed as 'shall' so that the principles of natural justice are complied with when the principles of natural justice are complied with when the competent authority considers the question of discharge of an employee for reasons which are set out in the Rule. Even if one assumes that the earlier service Rules apply to the appellant, the earlier service Rules are also similar and they also require that the employee should be heard before taking a decision on the discharge of an employee. This was not done in the present case although very serious allegations were levelled against the appellant in the report of the Managing Director, and the appellant's conduct in respect of a number of contracts had been seriously questioned in the report. Apart from anything else, when the Rules specifically require that an opportunity of explaining himself should be given to the employee, the denial of such opportunity is a serious violation of the principles of natural justice and vitiates the decision. The order of termination, therefore, cannot be sustained looking to the relevant Rules, and applying the e principles of natural justice when the employee and is not a probationer. The impugned order of termination is, therefore, set aside.

We are informed that the appellant would otherwise retire on superannuation in June 1998. The respondent- Corporation has also stated that the financial condition of the Corporation is very poor as it has already incurred accumulated losses of Rs.669-65 lakhs against the total paid-up capital of

Rs. 573.94 lakhs. The activities of the Corporation have been partially closed down by Government Order dated 20.1.1994 and the Corporation has already resorted to the process of retrenchment of a large number of employees. Looking to all the facts and circumstances monetary compensation to the appellant for wrongful termination would serve the ends of justice. In this connection, the respondent- Corporation has pointed out that on 19th of April, 1985, within a forthright of the order of termination, the appellant moved the High Court obtained an ad interim order of stay of the impugned order. Despite obtaining a stay of the impugned order, the appellant did not work in the respondent-Corporation. The respondents have stated in their affidavit before the High Court that even when the appellant came for work after the order of stay, he did not do any work. He tried to influence the bulk customers of the respondent-Corporation and insisted that they break their dealings with the Corporation. The respondents alleged t hat the appellant tried his best to create a situation in which the respondent-Corporation would be compelled to accept him or suffer huge losses. The appellant was in a senior managerial position. The High Court, relying upon this affidavit of the respondent as also after noting that the appellant had not joined the respondent-Corporation after obtaining the order of stay, vacated the order of stay on 6.11.1985. The order vacating stay states, inter Ala, as follows :-

> "It has been alleged in paragraph 11 of the counter-affidavit that the petitioner did not attend the office soon after the passing of he termination order dated 31st of March, 1985. No re-joinder affidavit has been filed. Taking all the facts and circumstances stated in the counter-affidavit, we are of opinion that the present case is not fit for granting any injunction. In the event of success of the writ petition, the petitioner will be entitled to salary for the period his services remain terminated. We reject the application and the interim order of stay dated 19.4.1985 is vacated ."
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> The appellant has thus not worked in the respondent-

Corporation since the date of his termination. His salary upto to October, 1985 has been paid to him as directed by the High Court. The record which is before us does not show what the appellant has earned from October, 1985 upto date. But looking to the fact that he has not worked with the respondent-Corporation and that they stay order which enabled him to work in the Corporation had to be vacated on account of the appellant's conduct which shows that he was not desirous of working in the respondent's organisation, in the totality of circumstances of the present case, a monetary compesation of Rs. 2 lakhs would be adequate to compensate the appellant. The respondents are, therefore, directed to pay to the appellant the sum of Rs.2 lakhs within a period of three months from today.

The appeal is accordingly allowed with costs.