

Supreme Court of India

Director (Production), Heavy ... vs Jagannath Prasad on 29 July, 1994

Equivalent citations: (1996) IILLJ 694 SC, 1995 Supp (4) SCC 699

Author: S Agrawal

Bench: S Agrawal, M Mukherjee

ORDER Mr. S.C. Agrawal, J.

1. Leave granted

2. The respondent, Jagannath Prasad, joined the Heavy Engineering Corporation as Engineer-probationer on February 12, 1964. On completion of the probation period he was appointed on the post of Assistant Engineer. Thereafter, he. was promoted as Junior Manager, Assistant Manager and Deputy Manager. While he was working as Deputy Manager he was promoted as Manager by order dated December 12, 1990. The said promotion of the respondent was on probation for a period of 12 months or till the date of his superannuation whichever was earlier. By order dated September 30, 1992 he was reverted back to the post of Deputy Manager with immediate effect. Feeling aggrieved by the said order of reversion the respondent moved a writ petition in the High Court under Article 226 of the constitution. ; The said writ petition was allowed by a Division Bench of the High Court by order dated September 4, 1993 and the order of reversion has been quashed. The High Court has placed reliance on Rules 1.8.1.1. and 1.8.1.2 of the HEC Establishment Manual to hold:

Clause 1.8.1.1 categorically specifies that the period of probation can be extended only up to 12 months for reasons to be recorded in writing. It is therefore, clear that for the purpose of extension of period of 12 months, not only the same has to be done by a specific order but also reasons there for have to be recorded. Rule 1.8.1.2 also puts an obligation upon the employer to communicate the decision of successful 12 months' probation period in time. Thus, a combined reading of the aforementioned rules clearly shows that the respondents were bound to issue specific orders extending the period of probation before it expired. It is not the case of the respondents that any such orders had been passed. If no such order had been passed, in our opinion, by necessary implication, the petitioner would be deemed to have been confirmed as his period of probation was not extended by a reasoned order.

Aggrieved by the said order of the High Court, the appellants have filed this appeal.

3. We have heard learned Counsel for the parties.

4. At the outset it may be stated that the High Court has committed an error in quoting the provisions contained in Rules 1.8.1.1 and 1.8.1.2 of the HEC Establishment Manual, 1976 as amended in 1988 which were in operation at the relevant time. The said rules which have been placed on record along with the supplementary counter-affidavit filed on behalf of the respondent read as under:

1.8.1.1. Period. - The period of probation prescribed on initial appointment and promotion, except in the following cases, is one year:

(i)-(iii) * * * The period can be extended up to 12 months for reasons to be recorded in writing in respect of those governed by the Standing Orders. With regard to others also the period up to which the period of probation can be extended is 12 months.

* * * 1.8.1.2. Procedure - Orders regarding completion/extension of the period of probation in respect of executives in the rank of Assistant Manager and above will be notified by the Headquarters Administration and Personnel Division.

Orders regarding completion/extension of the period of probation in respect of the employees in the rank of Junior Manager and below will be notified by the respective Administration and Personnel Departments of the Plants/Headquarters.

Decision on successful completion/extension of period of probation should be taken in time and orders issued. Where an employee is declared to have successfully completed the period of probation, he is eligible to draw the increment due to him from the date he is entitled to.

5. The said rules show that under Rule 1.8.1.1. the normal period of probation in the matter of initial appointment as well as on pro motion is 12 months except in respect of certain employees with whom we are not concerned. The said period can be extended for a further period of 12 months but in respect of employees who are governed by the Standing Orders there is a further requirement that the reasons for ex tension should be recorded in writing. Under Rule 1.8.1.2 it is required that an order should be passed for extending the period of probation as well as successful completion of probation.

6. Shri Sanyal, learned Counsel for the respondent, has urged that the requirement to re cord reasons for extending the period of probation applied not only to an employee who is governed by the Standing Orders but also to other employees who are not governed by the Standing Orders. In this context Shri Sanyal has placed reliance on the word 'also' contained in Rule 1.8.1.1. We find it difficult to accept this contention. The language of Rule 1.8.1.1 providing for extension of period of probation makes a distinction between employees who are governed by the Standing Orders and other employees. The requirement to record reasons for extension of the period of probation has been imposed only in respect of employees who are governed by the Standing Orders. We are unable to construe the said rule as imposing the requirement to record reasons for extension of the period of probation in respect of employee who are not governed by the Standing Orders. The respondent was admittedly not governed by the Standing Orders. The High Court was in error in proceeding on the basis that it was necessary to record reasons for extending the period of probation of the respondent.

7. The other contention urged by Shri Sanyal was that Rule 1.8.1.2 expressly required that an order extending the period of probation should be passed and in case such order is not passed before the expiry of the period of probation the employee should be deemed to have been confirmed. We are

unable to agree. Although Rule 1.8.1.2 postulates the passing of an order extending the period of probation, the failure to pass such an order before the expiry of the period of probation does not mean that the employee should be deemed to have been confirmed on the expiry of the period of probation initially fixed. This is so because Rule 1.8.1.2 requires that a decision on successful completion of period of probation should be taken in time and orders issued. This means that an express order about successful completion of probation is required and till such an order is issued the employee cannot be said to have been confirmed on the post on which he was promoted on probation.

8. No order regarding successful completion of probation by the respondent was passed in the present case and it is, therefore not possible to hold that the respondent had successfully completed the period of probation and he must be deemed to have been confirmed on the post of Manager on which he was appointed on probation. The High Court, in our opinion, was not right in holding that the respondent should be deemed to have been confirmed on the post of Manager.

9. The appeal is, therefore, allowed, the order dated September 4, 1993 passed by the High Court is set aside and the writ petition filed by the respondent is dismissed. No order as to cost.