

Before M. M. Kumar and Gurdev Singh, JJ.

DR. RAVINDER SINGH,—Petitioner

versus

STATE OF PUNJAB.M,—Respondents

C.W.P. No. 7449 of 2011

28th July, 2011

Constitution of India—Art. 226, 309–311.—Punjab Animal Husbandry (Class-I) Service Rules, 1966.—RI. 6 & 7—Punjab Civil Services (General & Common Conditions of Service) Rules, 1994—RI. 7—Appointment as veterinary in State of Punjab—Did not pass departmental exam within specified period of 2½ years—Order of removal from service after about 6 years—Maximum period of probation was 2 years—Petitioners deemed confirmed—Order of termination set aside.

Held, that the petitioner was deemed to be confirmed and there services cannot be termination except in accordance with the provisions of Article 311 of the Constitution, which is after issuance of charge sheet, regular departmental inquiry etc. In other words, the termination can be as a measure of punishment and not on account of non-completion of probation period. Considered from that point of view, the impugned orders of termination cannot be sustained and are thus, liable to be set aside.

(Para 9)

Rajiv Atma Ram, Senior Advocate, with Saurabh Arora, Advocate,
for the petitioner(s).

Suvir Sehgal, Addl. Advocate General, Punjab, *for the respondent.*

M.M. KUMAR, J.

(1) This order shall dispose of CWP Nos. 7449 and 9690 of 2001 as the common question of law and facts are involved. The petitioner(s) have filed these petitions under Article 226 of the Constitution challenging the orders passed by the respondent State of Punjab removing them from service from the post of Veterinary Officer on the ground that they failed to pass the departmental examination within the stipulated period of 2½ years.

(2) The facts may first be noticed. Dr. Ravinder Singh (petitioner in CWP No. 7479 of 2001) and Dr. Raminder Pal Singh (petitioner in CWP No. 9690 of 2001) were appointed as Veterinary Officer in the respondent State of Punjab,—*vide* appointment letters dated 4th September, 1997 and 25th January, 1995 respectively. In para 2 of their appointment letters it was mentioned that their services were to be governed by the rules known as 'the Punjab Animal Husbandry (Class-I) Service Rules, 1996 (for brevity, 'the 1996 Departmental Rules') and they would be on probation for a period of two years in the first instance. These rules have been made specifically applicable to the employees working in the Animal Husbandry Department. The rules have been framed under proviso to Article 309 of the Constitution.

(3) Rule 6 of the 1996 Departmental Rules deals with 'departmental examination'. Sub-rule (1) of Rule 6 prescribes that every member of the

service is required to qualify the papers as specified by the Government from time to time within a period of two years and six months from the date of appointment, unless he has already done so. Sub-rule (2) of Rule 6 entails that if any person fails to qualify the departmental examination within the stipulated period, he would not earn his future grade increments till he passes it. After passing the departmental examination the increments would be released retrospectively. However, as per the proviso to sub-rule (2) he would not be entitled to get arrears of the released grade increments for the period during which he could not qualify the examination. It is further relevant to mention that by virtue of Rule 7 of the 1996 Departmental Rules, the provisions of the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994 (for brevity, 'the 1994 General Rules') have been *mutatis mutandis* made applicable to the members of the service in respect of the matters which are not specifically provided in the 1996 Departmental Rules. These rules have been framed under proviso to Article 309 of the Constitution with the object of filling up the gaps left in the specific rules applicable to various employees working in different departments. Rule 7, therefore, would apply to the issues which are not covered by the specific rules.

(4) Under Rule 6(1) of the 1996 Departmental Rules, the petitioner(s) were required to pass the departmental examination within a period of 2½ years of their appointment i.e. by 3rd March, 2000 and 24th July, 1997 respectively. It is conceded position that they could not qualify the departmental examination within the stipulated period. Their initial probation period of two years expired on 3rd September, 1999 and 24th January, 1997 respectively, which has not been extended. The petitioner(s) were issued similarly worded show cause notices, dated 11th July, 2000 and 4th July, 2000, stating that since they could not pass the departmental examination within the stipulated period, therefore, they are liable to be removed from service under Rule 7 of the 1994 General Rules. In the show cause notice issued to Dr. Ravinder Singh it was additionally mentioned that he has also not crossed his probation period successfully. The petitioner(s) claimed that they had filed their respective reply to the said show cause notices. However, on 23rd October, 2000, and 25th October, 2000, the respondent State of Punjab passed orders removing the petitioner(s) from service by invoking Rule 7 of the 1994 General Rules. The petitioner(s)

thereafter preferred appeal against the said orders of removal. In the case of Dr. Ravinder Singh the appeal was rejected,—*vide* order dated 8th December, 2000, whereas in the case of Dr. Raminder Pal Singh the appeal/representation is stated to have been filed by the competent authority. In the backdrop of the above factual matrix the petitioner(s) approached this Court for quashing of the order dated 23rd October, 2000 and 25th October, 2000 respectively.

(5) While issuing notice of motion operation of impugned orders were stayed by this Court in both the cases. Resultantly the petitioner(s) continued in service. It is also relevant to mention that during the pendency of writ petition(s), the petitioner(s) again appeared in the departmental examination conducted by the respondent, State of Punjab. Dr. Ravinder Singh (petitioner in CWP No. 7449 of 2001) even cleared the departmental examination held in October 2001, as is evident from notification dated 14th May, 2008 (Annexure 'A' to CWP No. 7449 of 2001). He has been temporarily declared as pass subject obviously to the result of his petition. In the other case, Dr. Raminder Pal Singh also appeared in the departmental examination conducted in October, 2001, but his result has not been declared.

(6) In the written statement(s) filed in these petitions it has been asserted that no illegality has been committed in removing the petitioner(s) from service once they failed to pass the departmental examination within the stipulated period of 2½ years. It has been pointed out that the 1996 Departmental Rules are silent in respect of the probation period. Rule 7 of the 1996 Departmental Rules specifies that in respect of the matter which are not specifically provided in the said Rules, the members of the service would be governed by the provisions of the 1994 General Rules. In this manner the provisions of the 1994 General Rules have been treated to have given the overriding effect over the provisions of the 1996 Departmental Rules. The services of the petitioner(s) have been dispensed with under Rule 7 of the 1994 General Rules because it specifically provides that if in the opinion of the appointing authority, the work or conduct of a person during the period of probation is not satisfactory or if he has failed to pass the departmental examination, if any prescribed in Service rules within a period of not exceeding two and a half years from the date of appointment, the services of such an employee could be dispensed with in case he was appointed by direct recruitment.

(7) We have heard learned counsel for the parties at length and perused the paper book with their able assistance. It would first be proper to read the relevant provisions of the 1996 Departmental Rules and 1994 General Rules. Rule 6 and 7 of the 1996 Departmental Rules and Rule 7 of the 1994 General Rules are set out, which read as under :

Rule 6 and 7 of the 1996 Departmental Rules

“6. Departmental Examination:—(1) Every member of the Service unless he has already done so, shall within a period of two years and six months from the date of appointment qualify such papers comprising such syllabus and of such standard as may be specified by the Government from time to time.

(2) If any person fails to qualify the Departmental Examination within the aforesaid stipulated period he shall not earn his future grade increments till he passes it. After passing the Departmental Examination the increments shall be released retrospectively :

Provided that he shall not be entitled to get arrears of the released grade increments for the period during which he could not qualify the examination.”

“7. Application of the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994.—

In respect of the matters which are not specifically provided in these rules, the members of the service shall be governed by the provisions of Punjab Civil Services (General and Common Conditions of Service) Rules, 1994, as amended from time to time.”

Rule 7 of the 1994 General Rules

“7. Probation.—(1) A person appointed to any post in the Service shall remain on probation for a period of two years, if recruited by direct appointment and one year if appointed otherwise :

Provided that :—

a. any period, after such appointment, spent on deputation on a corresponding or a higher post shall count towards the period of probation ;

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- b. in the case of an appointment by transfer, any period of work on an equivalent or higher rank, prior to appointment to the Service, may in the discretion of the appointing authority, be allowed to count towards the period of probation ;
 - c. any period of officiating appointment to the Service shall be reckoned as period spent on probation and
 - d. any kind of leave not exceeding six months during or at the end of period of probation, shall be counted towards the period of probation.
- (2) If, in the opinion of the appointing authority, the work or conduct of a person during the period of probation is not satisfactory for if he has failed to pass the departmental examination, if any prescribed in Service Rules within a period of not exceeding two and a half years from the date of appointment, it may :—
- a. if such person is recruited by direct appointment, dispense with his service, or revert him to a post on which he held lien prior to his appointment to the service by direct appointment ; and
 - b. if such person is appointed otherwise :—
 - i. revert him to former posts or
 - ii. deal with him in such other manner as the terms and conditions of the previous appointment permit.
- (3) On the completion of the period of probation of a person, the appointing authority may :—
- a. if his work and conduct has, in its opinion been satisfactory.
 - i. confirm such person, from the date of his appointment or from the date he completes his period of probation satisfactory, if he is not already confirmed, or
 - ii. declare that he has completed his probation satisfactorily, if he is already confirmed, or

- b. if his work or conduct has not been, in its opinion, satisfactory or if he has failed to pass the departmental examination, if any, specified in the Service Rules :—
- (i) dispense with his services, if appointed by direct appointment or if appointed otherwise revert him to his former post, or deal with him in such other manner as the terms and conditions of his previous appointment may permit ; or
 - (ii) extend his period of probation and thereafter pass such order as it could have passed on the expiry of the period of probation as specified in sub rule (i) :

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

(8) A conjoint reading of the 1996 Departmental Rules with the 1994 General Rules would show that the area concerning departmental examination is comprehensively covered by Rule 6. According to Rule 6, every member of the service is required to qualify departmental examination within 30 months (2 years and six months) from the date of appointment. The rule is exhaustive as it further provides the consequences of not passing the departmental examination. According to sub-rule (2) of Rule 6, in case of failure to qualify the departmental examination a member of the service would not earn his future grade increments till he qualifies the examination. However, the increments are to be released retrospectively as and when he passes the examination but he would not be entitled to get arrears of the released annual grade increments for the period during which he could not qualify the exam. Therefore, the 1994 General Rules would not apply in so far as the subject of qualifying the departmental examination is concerned because it is specifically covered by the 1996 Departmental Rules. It follows that Rule 7 of the General Rules would not constitute a basis to discharge a member of the service under Rule 7(2) on the ground that a member of the service has failed to pass the departmental examination within 2½ years. In other words, Rule 7 of the 1994 General Rules would apply only if during the period of probation a member of the service has not satisfactorily

performed his duty and his work and conduct during that period is not up to the mark. This part of the rule would not come in play in any case for variety of reasons. Firstly, there is nothing on the record to indicate that the work and conduct of the petitioner(s) has not been satisfactory during the period of probation. Dr. Raminder Pal Singh (petitioner in CWP No. 9690 of 2001) has completed the period of probation of three years on 24th January, 1998 whereas Dr. Ravinder Singh (petitioner in CWP No. 7449 of 2001) had completed the maximum period of probation of three years on 3rd September, 2000. In the absence of any order passed against them, they would be deemed to be confirmed because they were permitted to continue in service till 25th October, 2000 and 23rd October, 2000 respectively. In the case of **State of Punjab versus Dharam Singh, (1)** a Constitution Bench of Hon'ble the Supreme Court has dealt with the aforesaid proposition. Hon'ble Mr. Justice R. S. Bachawat, speaking for the Constitution Bench has laid down the law as under :—

- “5. In the present case, Rule 6 (3) forbids extension of the period of probation beyond three years. where, 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.”

(9) The aforesaid view of the Consitution Bench has passed through various analyses in the subsequent judgments of Hon'ble the Supreme Court. In the latest judgment rendered in the case of **Kazia Mohammed Muzzammil versus State of Karnataka (2)** an attempt

(1) AIR 1968 SC 1210

(2) (2010) 8 SCC 155

has been made to classify various cases under the heads of 'deemed confirmation', 'deemed extension' and principle of 'automatic confirmation'. It has been laid down that two streams of the case law on the subject supporting the concept of deemed/automatic confirmation and deemed extension would apply depending on the service rules which are applicable to an employee and the facts of each case. However, one thing has been put beyond any doubt that if the rules require specific decision of the competent authority and issuance of formal order of confirmation to end the period of probation then there cannot application of the rules of automatic/deemed confirmation. In other cases, the rule may not insist on issuance of specific order then the confirmation may follow particularly when maximum period of probation is prescribed putting everything beyond doubt. When we examine applicability of Rule 7(2) of the 1994 General Rule in the present case it becomes clear that the appointing authority may extend the initial period of two years or confirm such a person. However, if his work and conduct is not satisfactory then his services can also be terminated or he could be dealt with in such other manner as the terms and conditions of his previous appointment may permit. The proviso appended to Rule 7(3) (ii) makes it patent that the total period of probation including extension is not to exceed three years. There is no obligation cast on the employer to pass any order at the end of three years and this rule in terms is *pari materia* with rule 6 of the Punjab Educational Service (Provincialised Cadre) Class III Rules, 1961 and was considered by Hon'ble the Supreme Court in **Dharam Singh's case** (*supra*). In that case also after the expiry of three years, the employees continued to hold the posts but no formal order confirming them on the posts were passed. The orders terminating the services were passed after about six years whereas the maximum period of probation provided under the rules was three years. It was in the aforesaid facts and circumstances that the argument concerning deemed confirmation was accepted and the counter argument that a formal order of confirmation was necessary, was rejected. Therefore, we are of the view that the petitioner(s) were deemed to be confirmed and their services cannot be terminated except in accordance with the provisions of Article 311 of the constitution, which is after issuance of charge sheet, regular departmental

inquiry etc. In other words, the termination can be as a measure of punishment and not on account of non-completion of probation period. Considered from the point of view, the impugned orders of termination cannot be sustained and are, thus, liable to be set aside.

(10) Moreover, under the orders of this Court the petitioner(s) are still continuing in service. They also appeared in the subsequent departmental examination held in October, 2001. Even Dr. Ravinder Singh (petitioner in CWP No. 7449 of 2001) has passed the departmental examination, as is evident from notification dated 14th May, 2008 (Annexure 'A'). However, the result of Dr. Raminder Pal Singh has not been declared so far.

(11) As a sequel to the above discussion, these petitions are allowed. The impugned orders dated 23rd October, 2000 and 25th October, 2000 are set aside. In view of the fact that Dr. Ravinder Singh (petitioner in CWP No. 7449 of 2001) has taken the aforesaid examination in pursuance of interim order passed by this Court and his result was declared as a consequence of the order dated 24th January, 2008 passed in C.M. No. 4675 of 2007. The aforesaid order is made absolute. As a consequence he is held entitled to the benefits of increments on notional basis and he would not get the arrears for the period during which he could not qualify the departmental examination, as stipulated by Rule 6 of the 1996 Departmental Rules. The respondent State of Punjab is further directed to declare the result of the departmental examination taken by Dr. Raminder Pal Singh (petitioner in CWP No. 9690 of 2001) in October, 2001 forthwith and if he is found to have qualified the same he would also be entitled to all the benefits as per Rule 6 of the 1996 Departmental Rules. It is made clear that if Dr. Raminder Pal Singh fails to qualify the departmental examination then he will not be entitled to the payment of arrears and would be dealt with as per the provisions of Rule 6 of the 1996 Departmental Rules. The needful shall be done within a period of three months from the date of receipt of a copy of this order.

A photocopy of this order be placed on the file of the connected CWP No. 9690 of 2001.