

(2007) 09 AHC CK 0150

Allahabad High Court

Case No: None

Arvind Kumar Sinha

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Sept. 20, 2007

Acts Referred:

- Constitution of India, 1950 - Article 309, 311

Hon'ble Judges: V.K. Shukla, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

V.K. Shukla, J.

Petitioner has approached this Court questioning the validity of the order dated 26.07.2007 passed by Director General (Prisons Jail Administration & Reform Service) U.P. Lucknow, respondent No. 2 dispensing with the service of petitioner by mentioning that services of petitioner is no longer required in exercise of power vested under U.P. Temporary Government Servants (Termination of Service) Rules 1975.

2. Brief background of the case as mentioned in the writ petition is that in the year 1999 U.P. Public Service Commission U.P. invited application from eligible and desirous candidate for being considered for several category of posts. Petitioner also applied for consideration of his claim. Petitioner participated in each and every stages of the selection which comprised preliminary examination, mains written examination and interview. Petitioner was declared successful in each of the aforesaid stages and ultimately final result of the aforesaid selection was published wherein petitioner was shown to have been selected for the post of Deputy Jailor. On 25.03.2001 appointment order was issued to the petitioner mentioning therein that petitioner can be posted/transferred at any Jail/institution under the Jail Department. Further it was mentioned that nature of appointment of petitioner is temporary and said appointment can be dispensed with at any point of time without

giving any notice. Further mention was made that from the date of appointment for period of two years it would be probationary period of petitioner. Petitioner was posted at District Jail Ghazipur and he joined on 22.04.2001 and has started performing and discharging duties. Probation period of petitioner has been completed on 21.04.2003 and at no point of time period of probation as mentioned in the letter of appointment of petitioner has ever been extended. On 02.02.2004 censor entry was awarded to the petitioner by the Director General (Prisons Jail Administration & Reform Service) U.P. Lucknow, respondent No. 2 and thereafter on 27.05.2005 again censor entry was awarded to petitioner by the Director General (Prisons Jail Administration & Reform Service) U.P. Lucknow, respondent No. 2. Petitioner has contended that he has been sanctioned all benefits available to a confirmed and permanent employee including sanction of annual increment, regular monthly deductions from his salary towards G.P.F. and also Group Insurance. On 19.06.2007 an order was issued by the Director General notifying list of transferred Deputy Jailors and therein petitioner has been transferred and posted at Central Jail Bareilly. Petitioner was relieved on 07.07.2007 from District Jail, Ghazipur for joining at Central Jail Bareilly. Petitioner claims that he joined at Central Jail Bareilly on 09.07.2007 and thereafter after his joining he applied for leave for the period starting with effect from 10.07.2007 to 15.07.2007 for availing admissible joining time. Petitioner has further contended that he could not resume duties on 16.07.2007 on account of his illness accordingly an application on 14.07.2007 seeking medical leave had been sent. Petitioner has contended that said application has been sent by Speed Post accompanied by Medical certificate and on 17.07.2007 he has further intimated in regard to his illness by telegram. On 26.07.2007 petitioner sent a communication to the Director General (Prisons Jail Administration & Reform Service) U.P. Lucknow, respondent No. 2 detailing the facts pertaining to his illness as also the fact that he has been given medical fitness certificate and he would be resuming his duties at Central Jail, Bareilly on 27.07.2007. Thereafter on 28.07.2007, petitioner submitted his joining before Senior Superintendent of Jail Central Jail, Bareilly alongwith the fitness certificate dated 26.07.2007 then at the said juncture petitioner has been served with an order dated 26.07.2007 issued by the Director General (Prisons Jail Administration & Reform Service) U.P. Lucknow, respondent No. 2 terminating the service of the petitioner in exercise of power vested under U.P. Temporary Government Servant (Termination of Services) Rules 1975. Thereafter petitioner has submitted that he represented the matter on 01.08.2007 before the respondent No. 2 and thereafter nothing has been done then present writ petition has been filed questioning the validity of the decision taken against him.

3. Counter affidavit has been filed in the present case and it has been asserted that petitioner was appointed on purely temporary basis and during his continuance in service while he was under probation committed number of faults and as such rightly authority vested under U.P. Temporary Government Servant (Termination of

Services) Rules 1975 has been invoked. It has also been contended that petitioner was transferred from District Jail Ghazipur to Central Jail Bareilly and petitioner in spite of joining, never turned up again and has been absconding from service without any notice and it has been reiterated that petitioner's status is that of temporary employee and on earlier three occasion he committed misconduct which were prejudicial and against the interest of the State as well as against the norms of and provisions of service and in this background it has been conducted that petitioner was unsuitable and unfit for the Jail services which is highly disciplined services, as such action taken is not liable to be interfered with.

3. Rejoinder affidavit has been filed and therein it has been reiterated that appointment is to be considered in the light of recruitment rules and as far as appointment of Deputy Jailor is concerned same is governed by the provisions as contained under U.P. Jail Executive Subordinate (Non Gazetted) Service Rule 1980 and Rule 20 stipulated an appointment to be on probation for the period of two years which can be extended for reasons to be recorded by the appointing authority and that the period of probation except for exceptional reason will not be extended for more than one years and in no circumstances beyond the limit of two years in this background there exists a maximum period of four years of probation period and there can be no extension of probation period beyond the period of four years and on completion of four years of services from the date of joining the petitioner stands confirmed on the post of Deputy Jailor, in this background by invoking the authority vested under U.P. Temporary Government Servant (Termination of Services) Rules 1975, petitioner's services cannot be dispensed with. It has also been contended that 3rd censor entry which has been awarded to the petitioner on 19.07.2007 same had not been communicated to him and through counter affidavit petitioner has acquired knowledge of the same.

4. After pleadings mentioned above have been exchanged present writ petition is being taken up for final hearing and disposal with the consent of parties.

5. Sri Ashok Khare, Senior Advocate, assisted by Sri A.K. Mishra, Advocate made following submissions; (i) that petitioner is confirmed employee under the provisions of U.P. Jail Executive Subordinate (Non Gazetted) Service Rule 1980 and service of the petitioner could not have been dispensed in exercise of authority vested under U.P. Temporary Government Servant (Termination of Services) Rules 1975, as such exercise of authority in the fact of present case is nothing but misuser of the authority, (ii) Petitioner's appointment has been made on substantive basis on substantive post then by no stretch of imagination petitioner's services could have been treated as temporary services in terms of Rule 2 of U.P. Temporary Government Servant (Termination of Services) Rules 1975 and as petitioner does not all fall within the scope and ambit of "temporary employee" defined under aforesaid Rules as such provision of U.P. Temporary Government Servant (Termination of Services) Rules 1975 could not have been invoked, (iii) averments mentioned in the

counter affidavit reflects that non-joining of duties at Central Jail Bareilly has been made foundation and basis for dispensing with the services of the petitioner in this background without undertaking regular departmental proceedings services of the petitioner could not have been dispensed with.

6. Sri Piyush Shukla, learned Standing counsel on the other hand countered the said submission by contending that petitioner is temporary government servant and as per the term and condition of the appointment order, as during probation period conduct of the petitioner has not been found fair and as he has not been confirmed, as such rightly said power has been exercised dispensing with the service of the petitioner, in this background it has been contended that writ petition is liable to be dismissed.

7. To start with the first question is to be considered is as to whether petitioner is temporary government servant or services of the petitioner would be deemed to be confirmed as per the provisions of U.P. Jail Executive Subordinate (Non Gazetted) Service Rule 1980.

8. In order to appreciate the arguments, relevant provisions of all the three Rules are being looked into:

1. U.P. Temporary Government Servant (Termination of Services) Rules 1975

In exercise of powers conferred by the proviso to Article 309 of the Constitution, the Governor is pleased to make following Rules:

1. Short title, commencement and application- (i) These rules may be called the Uttar Pradesh Temporary Government Servants (Termination of Service) Rules 1975.

(ii) This rule and Rules 2, 3, and 4 shall be deemed to have been come into force on 30th January, 1953 and Rule 5 shall come into force at once.

(iii) They shall apply to all persons holding a civil post in connection with the affairs of Uttar Pradesh and who are under the rule-making control of Governor, but who do not hold a lien on permanent post under the Government of Uttar Praesh.

2. Definition: In these rules "temporary service" means officiating or substantive service on a temporary post, or officiating service on a permanent post under the Uttar Pradesh Government.

3. Termination of Service- (1) Notwithstanding anything to the contrary in any existing rules or orders on the subject the services of a government servant in temporary service shall be liable to termination at any time by notice in writing given either by the government servant to the appointing authority, or by the appointing authority to the government servant.

(2) The period of notice shall be one month:

Provided that the services of any such government servant may be terminated forthwith and on such termination the government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances, if any, for the period of the notice or as the case may be, for the period by which such notice falls, short of one month at the same rates at which he has drawing them immediately before the termination of his services.

Provided further that it shall be open to the appointing authority to relieve a government servant without any notice or accept notice for a shorter period without requiring the government servant to pay any penalty in lieu of notice.

Provided also that such notice given by the government servant against whom a disciplinary proceeding is pending or contemplated shall be effective only if it is accepted by the appointing, authority, provided in the case of contemplated disciplinary proceedings the government servant is informed of the non-acceptance of his notice before the expiry of that notice.

4. Savings: Notwithstanding anything in these rules, the tenure or continuance of engagement or employment of the following categories of persons shall be governed by the terms of their engagement or employment, and nothing in these rules shall be construed to require the giving to them, or by them of one month's notice or pay or penalty in lieu thereof before the termination of their engagement of employment-

(a) Persons engaged on contract; A

(b) persons not in whole-time employment of Government

(c) Persons paid out of contingencies

(d) Persons employed in work-charged establishment

(e) Persons re-employed after superannuation

(f) persons employed for a specified period whose services stand determined on the expiry of that period.

(g) Persons employed for a specified period on condition that the period may be curtailed at any time.

(h) Persons appointed in short-term arrangement or vacancies whose service stand determined on the expiry of the arrangement or vacancy.

5. Rescission and saving- (1) The Rule promulgated with Appointment (B) Department Notification No. 230/11 B-1953, dated January, 30, 1953 shall stand rescinded with effect from the date.

(2) Notwithstanding such rescission, anything done or any action taken or purporting to be done or taken under the said rule shall be deemed to have been

done or taken under these rules.

2. U.P. Jail Executive Subordinate (Non Gazetted) Service Rule 1980

English translation of Grih (Karagar) Anubhag-1 Noti. No. 2374/XXII-1392-5 June 6, 1980 published in U.P. Gazette, Extra dated 9th June, 1980. pp 8-13.

In exercise of the powers conferred by the proviso to Article 309 of the Constitution and in supersession of all existing rules and orders on the subject the Government is pleased to make the following rules regulating recruitment and conditions of service of persons appointed to the Uttar Pradesh Jail Executive Subordinate (Non-Gazetted) Service:

Part I- General

1. Short title and commencement-....

2. Status of service....

3. Definition: In these rules unless there is anything repugnant in the subject or context:

(a) ...

(b) ...

(c) ...

(d) ...

(e) ...

(g) ...

(h) "Member of service" means a person appointed in substantive capacity under these rules or the rules or orders on force prior to the commencement of these rules to a post in the cadre of the service.

(i) "Service" means the Uttar Pradesh Jail Executive Subordinate (Non-Gazetted) Service and

Part II- Cadre

4. Cadre off service- (1) The strength of the service and of each category of posts therein shall be such as may be determined by the Governor from time to time. (2) The strength of the service and each category of posts therein shall until orders varying the same are passed under Sub-rule (9) shall be as given as Appendix "A"

Provided that-

(1) the appointing authority may leave unfilled or the Governor may hold in abeyance any vacant post without entitling any person to payment of compensation

(2) the Governor may create from time to time such additional permanent or temporary posts as he may consider proper.

Part VI- Appointment, Probation, Confirmation and Seniority

19. Appointment- (1) On the occurrence of substantive vacancies, the appointing authority shall make appointments by taking candidates in the order in which they stand in the lists prepared under Rule 15, 16, 17 or 18 as the case may.

(2) The appointing authority may make appointment in temporary and officiating vacancies also from the lists, referred to in Sub-rule (1). If no candidates borne on these lists is available, he may make appointments in such vacancies from persons eligible for appointment under these rules, provided that such appointment shall not exceeded the period of one year without the Commission being consulted.

20. Probation- (1) A person on appointment to a post in the service in or against a substantive vacancy shall be placed on probation for a period of two years.

(2) The appointing authority may for reasons to be recorded extend the period of probation in individual cases specifying the date up to which the extension is granted.

Provided that save for exceptional reasons, the period of probation shall not be extended for more than one year and in no circumstances beyond the limit of two years.

(3) If it appears to the appointing authority at any time during or at the end of the period of probation or extended period of probation that a probationer has not made sufficient use of his substantive post opportunities or has otherwise failed to give satisfaction he may be reverted to his, if any, and if he does not hold a lien on any post, his services may be dispensed with.

(4) A probationer who is reverted or whose services are dispensed with under Sub-rule (3) shall not be entitled to any compensation.

(5) The appointing authority may allow continuous service, rendered in an officiating or temporary capacity in a post included in the cadre or any other equivalent or higher post to be taken into account for the purpose of computing the period of probation.

21. Confirmation- A probationer shall be confirmed in his appointment at the end of the period of probation or the extended period of probation if

(a) he has successfully undergone the prescribed training

(b) his work and conduct are reported to be satisfactory.

(c) his integrity is certified and

(d) the appointing authority is satisfied that he is otherwise fit for confirmation.

Appendix A

The sanctioned strength of the service is as follows:

		Number
----- ----- -----		
Name of Post		Permanent Temporary

1 Deputy Jailer		107 18

2 Assistant Jailer		218 19

3 Paid Apprentice Assistant Jailer		35 -

Note-(1) (*) Including two posts held in abeyance

(2) (**) Including eight posts held in abeyance.

3. The U.P. State Governments Servants Confirmation Rules 1991:

English translation of Karmik Anubhag-4 Noti No. 1648/XLV VII Ka-4090-48-89 dated February, 07,1991 published in the U.P. Gazette, Extra, Part-4 Sectin (Ka) dated 7th February, 1991, pp 4-6

1. Short title, commencement and application-

(1) ...

(2) ...

(3) ...

2. Overriding effect-....

3 Definitions

4. Confirmation where necessary- (1) Confirmation of a Government servant shall be made only on the post on which he is substantively appointed (i) through direct recruitment or (ii) by promotion, if direct recruitment is one of the sources of recruitment or (iii) by promotion if the post belongs to a different service.

(2) Such confirmation shall be made:

(i) against a post, whether permanent or temporary on which any other person does not hold a lien:

(ii) subject to the fulfilment of the conditions of confirmation laid down in the relevant service rules, or executive instructions issued by the Government as the case may be (iii) formal order shall be necessary to be issued by the appointing authority with regard to confirmation Explanation- Notwithstanding the fact that a Government servant is confirmed anywhere else. If he is directly recruited on any post, or is promoted to a post where direct recruitment is one of the sources of recruitment he will have to be confirmed thereon.

5. Confirmation where not necessary- (1) Confirmation will not be necessary if a Government servant is promoted on a regular basis after following the prescribed procedure to a post in cadre where promotion is the only source of recruitment.

(2) On promotion to a post referred to in Sub-rule (1) the Government servant will have all the benefits that a person confirmed in that grade would have if no promotion had been prescribed.

(3) Where probation is prescribed the appointing authority Shall on completion of the prescribed period of probation assess the work and conduct of the government servant himself and in case the conclusion is that the Government servant is fit to hold the higher grade he will issue a order declaring that the person concerned has successfully completed the probation. If the appointing authority considers that the work and conduct of the Government servant concerned has not been satisfactory or needs to be watched for some more time, he may revert him to the post of grade from which he was promoted or extended the period of probation in the manner prescribed.

(4) where confirmation on a lower feeding post is prescribed as a necessary condition for eligibility for promotion to a higher post, a person confirmed on the lowest under Sub-rule (1) of Rule 4 shall be eligible for promotion to the higher post and his confirmation on the lower feeding post shall not be necessary , if his work and conduct on that post has been satisfactory.

Illustrations- (1) in the "Lekhpal Service Rules" direct recruitment is the only source of recruitment to the post of Lekhpal "A" is appointed as Lekhpal through direct recruitment "A" will have to be confirmed on the said post under Sub-rule (1) of Rule 4

(2) ...

(3) ...

(4) ...

(5) ...

(5) ...

9. Bare perusal of the provisions as contained under U.P. Temporary Government Servant (Termination of Services) Rules 1975 would go to show that Rule 2 defines "temporary service" meaning as officiating or substantive service on a temporary post, or officiating service on a permanent post under the Uttar Pradesh Government. Rule 3 of the said Rule starts with non-obstante clause by mentioning that the services of a government servant in temporary service, can be terminated at any time by notice in writing given either by the government servant to the appointing authority, or by the appointing authority to the government servant. Period of notice has been prescribed as one month, as per Sub-rule (2) of Rule 3. First proviso to the said rule provides that the services of any such government servant may be terminated forthwith and on such termination the government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances, if any, for the period of the notice or as the case may be, for the period by which such notice falls, short of one month at the same rates at which he has drawing them immediately before the termination of his services. Second proviso further provides that it shall be open to the appointing authority to relieve a government servant without any notice or accept notice for a shorter period without requiring the government servant to pay any penalty in lieu of notice. Third proviso deals with situation wherein Government servant against whom disciplinary proceeding is pending or contemplated has given notice and the respective date from which said notice would be effective. Rule 4 deals with saving provision in respect of incumbent who are governed by the terms of their engagement or employment.

10. Under U.P. Jail Executive Subordinate (Non Gazetted) Service Rule 1980, Rule 3(h) defines "Member of service" a person appointed in substantive capacity under these rules or the rules or orders in force prior to the commencement of these rules to a post in the cadre of the service. Rule 3(i) defines "Service" as the Uttar Pradesh Jail Executive Subordinate (Non-Gazetted) Service. Part II deals with cadre of service, and Sub-rule (1) of Rule 4 of the aforesaid Rules clearly mentions that the strength of the service and of each category of posts therein shall be such as may be determined by the Governor from time to time. Sub-rule (1) of of Rule 4 of the aforesaid Rules deals with strength of the service and each category of posts to be such as determined by the Government from time to time and further Sub-rule (2) of Rule 4 provides that strength of service and each category of post therein shall until orders varying the same are passed under Sub-rule (9) shall be as given as Appendix "A". Provisos have been added, wherein first proviso gives authority to the appointing authority to leave unfilled or the Governor hold in abeyance any vacant post without entitling any person to payment of compensation. Second proviso authorizes the Governor to create from time to time such additional permanent or temporary posts as he may consider proper. Part V deals with procedure of recruitment. Rule 14 deals with determination of vacancies and Rules 15 deals with procedure for direct recruitment of the posts of Deputy Jailor, Assistant Jailor. Part VI

deals with appointment, probation, confirmation and seniority. Sub-rule (1) of Rule 19 provides that on the occurrence of substantive vacancies, the appointing authority shall make appointments by taking candidates in the order in which they stand in the lists prepared under Rule 15, 16, 17 or 18 as the case may. Sub-rule (2) of Rule 19 provides that the appointing authority may make appointment in temporary and officiating vacancies also from the lists, referred to in Sub-rule (1) and if no candidates borne on these lists is available, he may make appointments in such vacancies from persons eligible for appointment under these rules, provided that such appointment shall not exceeded the period of one year without the Commission being consulted. Thus, Sub-rule (1) of Rule 19 deals with appointment on the occurrence of substantive vacancies wherein appointing authority has to make appointments by taking candidates in order in which they stand in the lists prepared under Rules 15, 16, 17 or 18 as the case may be. Under Sub-rule (2) of Rule 19 the appointment authority may make appointment in temporary and officiating vacancies also from the said list. In respect of substantive vacancies, word "shall" has been used and in respect of temporary and officiating vacancies word "may be" has been used. Rule 20 of the aforesaid Rules 1980 is clear and specific which deals with probation specially Sub-rule (1) of Rule 20 which provides that a person on appointment to a post in the service in or against a substantive vacancy shall be placed on probation for a period of two years. Sub-rule (2) of Rule 20 provides that appointing authority may for reasons to be recorded extend the period of probation in individual cases specifying the date up to which the extension is granted. Proviso has been added therein which provides that save for exceptional reasons, the period of probation shall not be extended for more than one year and in no circumstances beyond the limit of two years. Thus, appointments which are made under Sub-rule (1) of Rule 19 i.e. against substantive vacancy are clearly referable to the incumbent who are to be kept on probation in term of Rule 20 and same is clearly indicative of the fact that incumbents appointment has been made against substantive vacancy. Normal rule of placement of an incumbent on probation is two years and thereafter extension of probation period is not to be done in mechanical manner or routine manner rather reasons will have to be recorded for extending the same and save for exceptional reasons the period of probation is not be extended for more than one year and in no circumstance beyond the limit of two years. Thus, normal period of probation is two years and in exceptional circumstance extra two years can be extended but not four years. Sub-rule (3) of Rule 20 clearly provides that if it appears to the appointing authority at any time during or at the end of the period of probation or extended period of probation that a probationer has not made sufficient use of his opportunities or has otherwise failed to give satisfactions. If any, and if he does not hold a lien on any post, his services may be dispensed with. Rule 21 of the aforesaid Rules deals with confirmation and provides that probationer shall be confirmed in his appointment at the end of the period of probation or the extended period of probation if, he has successfully undergone the prescribed training; his work and conduct are reported to be satisfactory; his integrity is

certified and the appointing authority is satisfied that he is otherwise fit for confirmation. In view of this exercise of confirmation has to be done at the end of the period of probation or the extended of period of probation. The U.P. State Government servants confirmation Rules 1991, is a special provision holding the field of confirmation, qua all persons holding a civil post in connection with the affairs of the State of U.P. and who are under the rule making control of the Governor under the proviso to Article 309 of the Constitution of India. Rule 2 of the said rules makes the intention clear, that same has overriding effect and provisions of said Rules shall have effect, notwithstanding anything to the contrary contained in any other Rules made by the Governor, under the proviso to Article 309 of the Constitution of India or orders in force. Rule 4 prescribes confirmation where necessary, and further prescribes that subject to the fulfilment of the conditions of confirmation laid down in the relevant service rules or executive instructions issued by the Government, as the case may be formal order shall be necessary to be issued by the appointing authority with regard to confirmation.

11. After noticing the provisions as quoted above, the view point of Hon"ble Apex Court on this aspect of the matter, as to when no order of confirmation has been passed in writing and the outer limit of probation period prescribed has come to an end then as to whether it would be the case of deemed confirmation or not is being looked into:

Hon"ble Apex Court in the case of [State of Punjab Vs. Dharam Singh](#), took the view that where 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 in such 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. Relevant paragraphs 1, 5, 6, 8 and 9 are being quoted below:

6 (1) Members of the Service, officiating or to be promoted against permanent posts, 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 extensions, 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 respondents were officiating in permanent posts and under Rule 6(3) they continued to hold those posts on probation in the first instance for one year. The maximum period of probation fixed by the rules was three years which expired on October 1, 1960. The respondents continued to hold their posts after October 1, 1960, but formal orders confirming them in their posts were not passed. Under Rule 7, the Director of Public Instruction, Punjab was the appointing authority. By two separate orders passed on February 10, 1963 and April 4, 1963, the Director terminated their services. The order in each case stated that the services of the respondent concerned "are hereby terminated in accordance with the terms of his employment. The order shall take effect after one month from the date it is served on him". Rule 12 provides that all matters relating to discipline, punishment and appeals, members of the service shall be governed by the Punjab Civil Services (Punishment and Appeal) Rules, 1952. The orders dated February 10 and April 4, 1963 were passed without holding any departmental enquiry and without giving the respondents any opportunity of making representations against the action taken against them. The respondents filed separate writ petitions in the Punjab High Court challenging the aforesaid orders on the ground that they had acquired substantive rights to their posts, and that the orders amounted to removal from service, and were passed in violation of Article 311 of the Constitution. The appellants pleaded that the respondents were temporary employees, that their services were terminated in accordance with the terms of their employment, and that the impugned orders did not amount to removal from service and were not in violation of Article 311. Learned single Judge of the High Court rejected the respondents contentions and dismissed the writ petitions. The respondents filed separate Letters Patent appeals against these judgments. The appellate Court allowed the appeals and set aside the impugned orders. The appellate Court held that the respondents were not temporary employees, that they held the posts on probation, that on the expiry of three years period of probation they must be deemed to have been confirmed in their posts, that the impugned orders having deprived them of their right to those posts amounted to removal from service by way of punishment and were passed in violation of Article 311 and the Punjab Civil Services (Punishment and Appeal) Rules, 1952. It is against these appellate orders that the present appeals have been filed after obtaining special leave.

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.

6. The employees referred to in Rule 6(1) held their posts in the first instance on probation for one year commencing from October 1, 1957. On completion of the one year period of probation of the employee, four courses of action were open to the appointing authority u/s 6(3). The authority could either (a) extend the period of probation provided the total period of probation including extensions would not exceed three years, or (b) revert the employee to his former post if he was promoted from some lower post, or (c) dispense with his services if his work or conduct during the period of probation was unsatisfactory, or (d) confine him in his appointment. It could pass one of these orders in respect of the respondents on completion of their one year period of probation. But the authority allowed them to continue in their posts thereafter without passing any order in writing under Rule 6(3). In the absence of any formal order, the question is whether by necessary implication from the proved facts of these cases, the authority should be presumed to have passed some order under Rule 6(3) in respect of the respondents, and if so, what order should be presumed to have been passed.

8. 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 up to 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 thereafter the respondents continued to hold their posts as probationers.

9. 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 services 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 Rule 6(3) on the ground that their work or conduct during the period of probation was unsatisfactory. It follows that on the dates of the impugned orders, the respondents had the right to hold their posts. The impugned orders deprived them of this right and amounted to removal from service by way of punishment. The removal from service could not be made without following the procedure laid down in the Punjab Civil Services (Punishment and Appeal) Rules, 1952 and without conforming to the constitutional requirements of Article 311 of the Constitution. As the procedure laid down in the Punjab Civil Services (Punishment and Appeal) Rules, 1952 was not followed and as the constitutional protection of Article 311 was violated, the impugned orders were rightly set aside by the High Court.

12. Thereafter in the case of [Samsher Singh Vs. State of Punjab and Another](#), Hon'ble Apex Court has approved the principal set out in the Dharm Singh case (supra) but in fact of the said case confirmation by implication has been negatived because before completion of 3 years High Court found prima facie that the work as well as the conduct of the appellant was unsatisfactory and notice was given to the appellant on 4 October, 1968 to show cause as to why his services should not be terminated, as such it was held that as notice was given at the end of the probation the period of probation gets extended till the inquiry proceedings commenced by the notice under Rule 9 comes to an end and further in this background the explanation to Rule 7(1) shows that the period of probation shall be deemed to have been extended impliedly if a Subordinate Judge is not confirmed on the expiry of this period of probation.

70. Counsel for the appellant relied on the decision of this Court in [State of Punjab Vs. Dharam Singh](#), where this Court drew an inference that an employee allowed to continue in the post on completion of the maximum period of probation is confirmed in the post by implication. In Dharam Singh's case (supra) the relevant rule stated that the probation in the first instance is for one year with the proviso that the total period of probation including extension shall not exceed three years. In Dharam Singh's case (supra) he was allowed to continue without an order of confirmation and therefore the only possible view in the absence of anything to the contrary in the Service Rules was that by necessary implication he must be regarded as having been confirmed.

71. Any confirmation by implication is negatived in the present case because before the completion of three years the High Court found prima facie that the work as well as the conduct of the appellant was unsatisfactory and a notice was given to the appellant on 4 October, 1968 to show cause as to why his services should not be terminated. Furthermore, Rule 9 shows that the employment of a probationer can

be proposed to be terminated whether during or at the end of the period of probation. This indicates that where the notice is given at the end of the probation the period of probation gets extended till the inquiry proceedings commenced by the notice under Rule 9 come to an end. In this back ground the explanation to Rule 7(1) shows that the period of probation shall be deemed to have been extended impliedly if a Subordinate Judge is not confirmed on the expiry of this period of probation. This implied extension where a Subordinate Judge is not confirmed on the expiry of the period of probation is not found in [State of Punjab Vs. Dharam Singh](#). This explanation in the present case does not mean that the implied extension of the probationary period is only between two and three years. The explanation on the contrary means that the provision regarding the maximum period of probation for three years is directory and not mandatory unlike in Dharam Singh's case (supra) and that a probationer is not in fact confirmed till an order of confirmation is made.

72. In this context reference may be made to the proviso to Rule 7(3). The proviso to the Rules states that the completion of the maximum period of three years' probation would not confer on him the right to be confirmed till there is a permanent vacancy in the cadre. Rule 7(3) states that an express order of confirmation is necessary. The proviso to Rule 7(3) is in the negative form that the completion of the maximum period of three years would not confer a right of confirmation till there is a permanent vacancy in the cadre. The period of probation is therefore extended by implication until the proceedings commenced against a probationer like the appellant are concluded to enable the Government to decide whether a probationer should be confirmed or his services should be terminated. No confirmation by implication can arise in the present case in the facts and circumstances as also by the meaning and operation of Rules 7(1) and 7(3) as aforesaid.

13. Thereafter in the case of M.K. Agarwal v. Gurgaon Gramin Bank : [1987]3SCR640 Hon"ble Apex Court has taken the view that if order of confirmation or discharge at the end of probation period has not been passed and consequences of absence of express confirmation has not been specified then in that event non-discharge of such a probationer after the expiry of probation period, held would result in implied confirmation. Relevant paragraph 8 is being quoted below:

8. The first point need not detain us. The period of the probation was one year, in the first instance. The employer could extend it only for a further period of six more months. The limitation on the power of the employer to extend the probation beyond 18 months coupled with the further requirement that at the end of it the services of the probationer should either be confirmed or discharged render the inference inescapable that if the probationer was not discharged at or before the expiry of the maximum period of probation, then there would be an implied confirmation as there was no statutory indication as to what should follow in the

absence of express confirmation at the end of even the maximum permissible period of probation. In cases where, as here, these conditions coalesce, it has been held, there would be confirmation by implication. See: [State of Punjab Vs. Dharam Singh, Om Parkash Maurya Vs. U.P. Cooperative Sugar Factories Federation, Lucknow and Others,](#)

14. Hon'ble Apex Court thereafter in the case of Daya Ram Daval v. State of M.P. 1997 SCC 1797 has taken the view that continuance in service beyond maximum period up to which probation could be extended in such situation, the employee is deemed to have been confirmed. Thereafter on the ground of unsatisfactory performance without holding disciplinary enquiry, termination has not been approved. Relevant paragraphs 5, 6, 7, 12 and 13 are being quoted below:

5. The point that arises for consideration in the appeal is: Whether in view of the fact that Rule 24 of the Rules prescribes not only the original period of 2 years of probation but also provides for extension of probation subject to a maximum of another 2 years, the appellant must be deemed to have been confirmed at the end of 4 years of probation even though no order of confirmation was issued and whether termination of his services without any inquiry must be held to be in violation of Art. 311 of the Constitution of India?

6. We have already set out the facts and the contentions. We shall now set out the rule which both sides tried to interpret in their favour. Rule 24 of the Rules reads as follows:

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 the period of their probation be confirmed subject to their fitness for confirmation and to having passed by the higher standard, all such departmental examination 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, therefore, dispense with his service.

It will be noticed that the rule does not merely fix a period of probation but also fixes a maximum period beyond which the probation cannot be continued and if that be so, the question is whether by implication the officer who is continued beyond the said maximum period must be deemed to have been confirmed by implication?

7. An examination of the rulings of this Court on the question of probation and confirmation shows that in some cases this Court has held that mere continuation

beyond the period of probation does not amount to confirmation unless the order of appointment or the rule contains a deeming provision while in some other cases, it has been held that in certain exceptional situations, it is permissible to hold that the services must be deemed to be confirmed. We shall show that there is no real conflict between the two sets of decisions and it depends on the conditions contained in the order of appointment and the relevant rules that are applicable.

12. Thus, even though the maximum period for extension could lead to an indication that the officer is deemed to be confirmed, still special provisions in such rules could negative such an intention.

13. It is, therefore, clear that the present case is one where the Rule has prescribed an initial period of probation and then for the extension of probation subject to a maximum, and therefore the case squarely falls within the second line of case, namely, [State of Punjab Vs. Dharam Singh](#), and the provision for a maximum is an indication of an intention not to treat the officer as being under probation after the expiry of the maximum period of probation. It is also significant that in the case before us the effect of the rule fixing a maximum period of probation is not whittled down by any other provision in the rules such as the one contained in [Samsher Singh Vs. State of Punjab and Another](#), or in Ashok Kumar Mishra's case AIR1991 SCW 1241. Though a plea was raised that termination of service could be effected by serving one month's notice or paying salary in lieu thereof, there is no such provision in the order of appointment nor was any rule relied upon for supporting such a contention.

15. Hon'ble Apex Court in the case of [Wasim Beg Vs. State of Uttar Pradesh and Others](#), has taken the view qua the question as to whether an employee at the end of the 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 has held that at the end of the maximum probationary period there will be a deemed confirmation of the employee unless Rules provide to the contrary. Relevant paragraphs 12, 15, 16, 17 and 18 are being extracted below:

12. 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 the appellant. As per the Rule relating to probation, the appointing authority was required to issue to the 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 a 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.

15. Whether an employee at the end of the 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 has held that at the end of the maximum probationary period there will be a deemed confirmation of the employee unless Rules provide to the contrary. This is the line of cases starting with [State of Punjab Vs. Dharam Singh](#), *M.K. Agarwal v. Gurgaon Gramin Bank* : [1987]3SCR640 ; [Om Parkash Maurya Vs. U.P. Cooperative Sugar Factories Federation, Lucknow and Others](#), [State of Gujarat Vs. Akhilesh C. Bhargav and Others](#),

16. 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 Vs. State of Punjab and Another](#), 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 Vs. Ashok Kumar Misra](#), In [Satya Narayan Athya Vs. High Court of M.P. and another](#), . 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.

17. 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 Vs. State of Punjab](#), [State of Uttar Pradesh Vs.](#)

[Akbar Ali Khan, Shri Kedar Nath Bahl Vs. The State of Punjab and Others, Dhanjibhai Ramjibhai Vs. State of Gujarat](#), and *Tarsem Lal Verma v. Union of India*, 1997 (9) SCC 243 *Municipal Corporation, Raipur v. Ashok Kumar Misra* 1991 AIR SCW 1241 (supra) and [State of Punjab Vs. Baldev Singh Khosla](#), In the recent case of [Dayaram Dayal Vs. State of M.P. and another \[OVERRULED\]](#), (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.

18. 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, and he was considered as a regular employee from 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.

16. Hon'ble Apex Court, thereafter in the case of High Court of [High Court of Madhya Pradesh thru. Registrar and Others Vs. Satya Narayan Jhavar](#), took the view, that case of Dayaram Dayal does not lay down correct law, in regard to interpretation of Rule 24 of the Rules. Relevant paragraphs 11, 36, 37 and 38 are being extracted below for ready reference:

11. 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.

36. 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 @page-SC3251 that a maximum period of probation having been provided under Sub-rule (1) of Rule 24, if a probationer's 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).

37. 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 (I) 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 (I) 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 [State of Punjab Vs. Dharam Singh](#),

38. 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 Shamsher Singh (supra) and Constitution Bench decisions in the cases of [State of Punjab Vs. Dharam Singh](#),

17. Hon''ble Apex Court in the case of [Mir Mohammad Khasim Vs. Union of India \(UOI\) and Others](#), has taken the view that where employee is continued after maximum period of probation then probationer has to be deemed to have been confirmed, but where no maximum period of probation is provided for there would be no automatic confirmation of employee on the expiry of the period unless an order is passed in this regard. Relevant paragraph 9 and 11 are being extracted below:

The moot question which arises for consideration is about the effect of the order of granting relaxation to the appellant from Rule 7(e) and the consequences which flow

from the said order. According to the appellant on successful completion of period of probation nothing further is required to be done before confirming the officer. All that was required had been accomplished since the appellant had cleared the tests as required under Rule 6(b) as well as has undergone the period of probation which has been considered to be successful completion @page-SC3262 of period of probation as per Rule 7(e). That being the position the appellant shall be deemed to have been confirmed. Whereas Ms. K. Amareshwari, learned senior Counsel for the respondent No. 3 submits that unless an order of confirmation is passed the appellant cannot be deemed to have been confirmed. It is further pointed out that the rules do not prescribe any maximum period of probation nor any provision says that it shall not be extended beyond any given period of time. In such circumstances, it is submitted, the law is settled that there will be no automatic confirmation unless such an order is passed. In our view, there cannot be any dispute about the proposition that where no maximum period of probation is provided there would be no automatic confirmation of the employee on expiry of period of probation unless an order is passed in that regard. In such cases it is taken that the period of probation continues unless and until an order of confirmation is passed. Our attention has been drawn to a decision in the case of [The Commissioner of Police, Hubli and Another Vs. R.S. More, .](#) In this case the appointing authority was empowered to extend the period of probation up to certain prescribed limit but there was a further provision that mere expiry of the prescribed period or extended period of probation would not entitle the probationer to claim satisfactory completion of his probation. Hence he would continue to be under probation and it would not be treated as deemed confirmation. In connection with this case it may be observed that the rule itself provided for extension of period of probation and thereafter that completion of period of probation or extended period of probation will not automatically entitle the employee deemed to have been confirmed unless a specific order in that regard is passed. Hence the above decision would not be of any help to the respondent. It may further be observed that in the matter of period of probation and confirmation it would always depend upon the language of the rule on the point. A reference has also been made to a decision of this Court in the case of High Court of [High Court of Madhya Pradesh thru. Registrar and Others Vs. Satya Narayan Jhavar, ,](#) more particularly to paragraph 11 of the judgment which we beneficially quote as under: [The Commissioner of Police, Hubli and Another Vs. R.S. More,](#)

18. The question of deemed confirmation in service Jurisprudence, is dependent upon language of the relevant service rules, terms and conditions of appointment and as noted above there are clearly three lines of cases on said point, (i) 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, (ii) 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, (iii) 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.

19. On the touch stone of the provisions quoted above and the judgment Hon^{ble} Apex Court which have been looked into the facts of the present case are being adverted to. In the present case categorical statement of fact has been mentioned in paragraph 31 of the writ petition that appointment granted to the petitioner is a regular and substantive appointment granted against a permanent post. This categorical statement of fact has not been categorically denied in the counter affidavit, and averments mentioned in paragraphs 23 to 36 of the writ petition has been dealt with in paragraph-14 of the counter affidavit by mentioning that contention have been repeated once again though same contention has been raised in the foregoing paragraphs which have already been replied. Thus, the fact of matter is that this fact has not been disputed that appointment of petitioner was on substantive basis. Letter of appointment dated 25.03.2001 did mention that appointment of petitioner would be temporary and same can be dispensed with without providing any opportunity or reasons but at same time it has also been clearly and specifically mentioned that from the date of appointment probation period would be two years. Condition which has been imposed in the letter of the appointment of the petitioner that appointment is purely temporary and same can be dispensed with at any point of time without disclosing reasons has to be harmonised with the condition that petitioner would be kept on probation for a period of two years. Under relevant service rules as per Appendix-A either there was permanent post or temporary post. Once appointment was to be made on temporary basis then certainly there is no requirement of keeping as incumbent on probation appointed against temporary or officiating vacancies but once appointment was made against substantive post after following due procedure prescribed for making appointment against the substantive vacancy, then incumbent has to be kept on probation for the period of two years. Incumbent who has been appointed on substantive basis, his appointment is to be governed under the provision as contained under Rules 19 and 20 of U.P. Jail Executive Subordinate (Non-Gazetted) Service Rules 1980, which clearly provides that on the occurrence of

substantive vacancies the appointing authority shall make appointments by taking candidates in the order in which they stand in the lists prepared under Rule 15, 16, 17 or 18 as the case may. Only incumbent appointed against the substantive vacancy has to be placed on probation for a period of two years which by giving reasons could be further extended for next two years and during continuance of probation period appointing authority has got full right to disengage and dispense with the services of probationer, without providing opportunity of hearing and without disclosing reasons, if it appears to the appointing authority, at any time during or at the end of period of probation or extended period of probation, that probationer has not made sufficient use of opportunities or has failed to give satisfaction. Appointing authority can impose only said conditions in the appointment letter which are subscribed by the rules and are compatible with the Rules, and in case any inconsistent condition has been imposed, then same has to be ignored, being irrelevant and out of context. Condition No. 3 of the appointment letter is clearly co-related with confirmation as "temporarily" usually denotes a person appointed in Civil Service for the first time and appointment is not permanent but temporary for the time being with no right to post. Condition No. 4 could be conveniently harmonised as probationer is on test and trial and during the probation period, or at the end of probation period or extended period of probation period, he/she could be disengaged without disclosing reasons and without providing opportunity of hearing and similarly till he/she is not confirmed his/her services could be disengaged as per the terms and conditions of appointment letter, as confirmation is to be regulated by terms and conditions contained in the order of appointment and the relevant rules that are applicable.

20. In the present case two years probation period has been provided for in term of Sub-rule (1) of Rule 20 of 1980 Rules. At no point of time appointing authority has ever proceeded to exercise and invoke the authority vested under Sub-rule (2) of Rule 20, and the proviso for extending the period of probation and four years period which is the maximum period of probation was permitted to be bypassed. Sub-rule (3) of Rule 20 gave authority to the appointing authority to dispense with the service of probationer at any time during or at the end of probation or extended period of probation if probationer has not made use of his opportunities. Undisputedly appointing authority further never proceed to exercise its authority under Sub-rule (2) of Rules 20 of the 1980 Rules by extending initial period of probation of two years and further at no point of time any steps were undertaken to dispense with the services of probationer. Rule 21 of Rules 1980 deals with confirmation and same clearly mentions that probationer shall be confirmed in his appointment at end of period of probation or the extended period of probation and further pre requisite term and condition as contained under Clause (a) to (d) has to be fulfilled. Thus, under Rules 21 confirmation is provided for. Confirmation is not automatic, as same is dependant on following four factors (a) has successfully undergone the prescribed training (b) work and conduct is reported to be satisfactory (c) integrity is certified

and (d) appointing authority is satisfied that he is fit for confirmation. Thus, under this Rule itself at the end of period of probation or the extended period of probation, probationer has to be confirmed, but said confirmation is not automatic and same is possible and feasible when pre-requisite terms and conditions are fulfilled, i.e. if he has successfully undergone the prescribed training; his work and conduct is satisfactory, his integrity is certified and the appointing authority is satisfied that he is otherwise fit for confirmation. Confirmation is positive act on the part of employer, which the employer is required to pass in accordance with Rules governing the question of confirmation subject to finding that the probationer is fit for confirmation. In the State of U.P., there is special rule, which covers exclusively the field of confirmation i.e. Rules of 1991, and as per the same, confirmation of government servant has to be made on the post which he is substantively appointed through direct recruitment, and such confirmation has to be made, subject to fulfilment of condition laid down in relevant service rules and formal order is necessary to be passed by appointing authority with regard to confirmation. Deemed confirmation theory is completely ruled out, from the language of the rule on the point, even though the maximum period of extension could lead to an indication that the officer is deemed to be confirmed, still special provision of such rules negates such contention.

21. Here petitioner was appointed on 25.03.2001 and pursuant to said order petitioner joined at District Jail Ghazipur on 22.04.2001. In the appointment letter it was mentioned that appointment is purely temporary and could be dispensed with at any time, without any notice or reason, and from the date of appointment probation period would be two years. Said term and condition of appointment was accepted without any reservation. Probation period was to come to an end on 21.04.2003. Prior to it, record reflects that unsatisfactory work of petitioner dated 24.03.2003, was there as on 24.03.2003, he left the jail while leaving for Varanasi, without making his signature and getting signature of another incumbent Sri K.C. Chaubey, and on account of same jail administration was effected. Before expiry of period of probation, traces of unsatisfactory work was there then there was no occasion for the petitioner to be confirmed as confirmation is positive act, and same could have been performed when pre-requisite terms and conditions of confirmation were fulfilled. Rule 21, makes it mandatory to confirm a probationer, but qua the said probationer, appointing authority has to satisfy himself, that pre-requisite term and condition are fulfilled. This is inbuilt provision in Sub-rule (1) of Rule 21 which would negate the inference of confirmation by implication. Confirmation by default is not at all in the scheme of things provided for. Often for administrative reasons, confirmation is delayed and made at subsequent time. If confirmation by implication, would be the sum and substance of the same then it would give handle to unscrupulous elements in service to manipulate things to their advantage, and render the specific provision of Rule 21 of 1980 Rules and Rule 4 of 1991 Rules, meaningless and otiose as both these rules convey for positive act of

confirmation. If there is delay in undertaking exercise for confirmation by the authority in question, who is obligated to take positive decision, then request could be made to the said authority for taking decision, as confirmation cannot be left to be one of the inglorious certainties of government service. Even if after making request no action is taken then complaining inaction, writ of mandamus could be prayed for, against the said authority, wherein time frame could be set up to take decision on confirmation. It is difficult to comprehend that when there is material on record to show that work was unsatisfactory during probation period, and merely because instead of passing of order of termination incumbent was given an opportunity to further work it would be deemed confirmation. For his unsatisfactory work dated 24.03.2003, petitioner was put to show cause, and order of censor for said unsatisfactory work was awarded on 02.02.2004, by the Director General Jail Administration. During his continuance without confirmation there has been no much improvement as he was again censored for laxity in duties, when inspection was carried out in Jail on 25.12.2004 vide order dated 27.05.2005 of Director General, Jail Administration. Petitioner has accepted that these orders have been permitted to become final. In the facts of present case, deemed confirmation is completely ruled out, and case in hand would fall in the third category of case, where though under the rules, maximum period of probation is provided for, but same requires a specific act on the part of employer by issuing an order of confirmation. Consequently even if maximum period of probation has expired, and neither any order of confirmation has been passed, then he cannot be deemed to be confirmed merely because said period has expired.

22. Now coming to the second question, as to whether provision of U.P. Temporary Government Servants (Termination of Service) Rules 1975 could have been invoked or not is being looked into. Rule 2 of the said Rules clearly and categorically mentions that temporary service means officiating or substantive service on a temporary post, or officiating service on a permanent post under the U.P. Government. Petitioner's appointment was clearly covered under the said definition inasmuch as petitioner's appointment was against substantive vacancy, but till he was not confirmed, his status continued to be of temporary employee. Officiating service means services rendered as non permanent holder of the office whereas substantive service connotes permanent holder of the office. Temporary service connotes existing or continuing for limited time. Once petitioner's service had not been confirmed then as per term and condition the appointment, petitioner continued to be temporary employee and in this background provision of U.P. Temporary Government Servants (Termination of Service) Rules 1975 could have been invoked and consequently in the present case as per term and condition of the appointment action has been taken.

23. Lastly it has been contended that in the present case impugned order is stigmatic/punitive in nature as counter filed on behalf of respondents clearly reflects that petitioner remained absent unauthorisedly and was absconding from duties

and in this background action has been taken.

24. Impugned order in question has been perused. Impugned order mentions that in exercise of authority vested under U.P. Temporary Government Servants (Termination of Service) Rules 1975 notice is being given to the petitioner, that his services were no longer required, and his service shall be dispensed with from the date of receipt of notice and would be entitled for one months pay in lieu of notice. This dispensation of service has been done as per term and condition of the appointment order.

25. In the present case merely because in the counter affidavit it has been mentioned that petitioner absented himself and his conduct was not satisfactory will not make order of termination ipso facto punitive and stigmatic. Admittedly order of confirmation has not been passed petitioner continued to function as temporary employee and merely because something has been mentioned in the counter affidavit that would not indicate that same has acted as foundation for action in question, specially when action has been taken as per the term and condition of appointment.

26. Two judgments of Hon"ble Apex Court on this aspect of the matter [Krishnadevaraya Education Trust and Another Vs. L.A. Balakrishna](#), would negate the arguments advanced. Relevant paragraphs 5 and 6 is being quoted below:

5. There can be no manner of doubt that the employer is entitled to engage the services of a person on probation. During the period of probation, the suitability of the recruit/appointee has to be seen. If his services are not satisfactory which means that he is not suitable for the job, then the employer has a right to terminate the services as a reason thereof. If the termination during probationary period is without any reason, perhaps such an order would be sought to be challenged on the ground of being arbitrary. Therefore, normally services of an employee on probation would be terminated, when he is found not to be suitable for the job for which he was engaged, without assigning any reason. If the order on the face of it states that his services are being terminated because his performance is not satisfactory, the employer runs the risk of the allegation being made that the order itself casts a stigma. We do not say that such a contention will succeed. Normally, therefore, it is preferred that the order itself does not mention the reason why the services are being terminated.

6. If such an order is challenged, the employer will have to indicate the grounds on which the services of a probationer were terminated. Mere fact that in response to the challenge the employer states that the services were not satisfactory would not ipso facto mean that the services of the probationer were being terminated by way of punishment. The probationer is on test and if the services are found not to be satisfactory, the employer has, in terms of the letter of appointment, the right to terminate the services.

27. [State of Punjab and Others Vs. Sukhwinder Singh](#), Relevant paragraph-19 is being quoted below

19. In the present case neither any formal departmental inquiry nor any preliminary fact-finding inquiry had been held and a simple order of discharge had been passed. The High Court has built an edifice on the basis of a statement made in the written statement that the respondent was habitual absentee during his short period of service and has concluded therefrom that it was his absence from duty that weighed in the mind of Senior Superintendent of Police as absence from duty is a misconduct. The High Court has further gone on to hold that there is direct nexus between the order of discharge of the respondent from service and his absence from duty and, therefore, the order discharging him from service will be viewed as punitive in nature calling for a regular inquiry under Rule 16.24 of the Rules. We are of the opinion that the High Court has gone completely wrong in drawing the inference that the order of discharge dated 16-3-1990 was, in fact, based upon the misconduct and was, therefore, punitive in nature, which should have been preceded by a regular departmental inquiry. There cannot be any doubt that the respondent was on probation having been appointed about eight months back. As observed in *Ajit Singh and Ors. etc. v. State of Punjab and Anr.* (supra) the period of probation gives time and opportunity to the employer to watch the work ability, efficiency, sincerity and competence of the servant and if he is found not suitable for the post, the master reserves a right to dispense with his service without anything more during or at the end of the prescribed period, which is styled as period of probation. The mere holding of preliminary inquiry where explanation is called from an employee would not make an otherwise innocuous order of discharge or termination of service punitive in nature. Therefore, the High Court was clearly in error in holding that the respondent's absence from duty was the foundation of the order, which necessitated an inquiry as envisaged under Rule 16.24 (ix) of the Rules.

28. Ratio of the aforesaid two judgments quoted above fully applies to the fact of the present case also and once petitioner was temporary employee and his service have been dispensed with as per the terms and condition of appointment then there is hardly any scope of interference.

29. In terms of observations made above, present writ petition is dismissed.

30. No order as to cost.