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Date: 18/10/2025

Jiban Lal Basu Vs West Bengal Surface Transport Corporation Ltd.

Civil Order No. 14265 (W) of 1995

Court: Calcutta High Court

Date of Decision: Sept. 5, 1996

Acts Referred:
Constitution of India, 1950 â€" Article 311(2)

Citation: (1997) 2 ILR (Cal) 429

Hon'ble Judges: Altamas Kabir, J

Bench: Single Bench

Advocate: Manas Kumar Ghosh, for the Appellant;Pranab Chatterjee and Satyabrata Majumder, for the Respondent

Final Decision: Dismissed

Judgement

Altamas Kabir, J.
The Petitioner was appointed as trainee Driver (Bus) by the West Bengal Surface Transport Corporation Ltd., the

Respondent No. 1 herein, on and from August 12, 1992. Thereafter, he was appointed on probation in the temporary post of bus driver with

effect from January 1, 1994, on the terms and conditions set out in his appointment letter dated January 24, 1994, issued by the Managing

Director of the Corporation, being Annexure "A" to the writ petition.

2. As will be apparent from the Petitioner"s said letter, such appointment was on probation for a period of one year with effect from January 1,

1994, subject to extension from time to time at the discretion of the management. Clause (d) of the said letter provides further that during the

probationary period the Petitioner"s services would be terminable with 48 hours notice from the side of the Corporation.

3. It appears that the said period of probation was extended for a further period of three months, with effect from January 1, 1995, and, thereafter,

without extension of such period, the Petitioner was served with notice of termination of his services on May 24, 1995.

4. The subject matter of challenge in the writ petition is the said order of termination of the Petitioner''s services, being Annexure ''E'' to the writ

petition.

5. Appearing in support of the writ petition, Mr. Manas Kumar Ghosh urged that on completion of the period of probation, the Petitioner must be

deemed to have been confirmed in the post against which he had been appointed and the impugned order terminating his services was, therefore, in

violation of the relevant provisions of the West Bengal Surface Transport Corporation (Classification, Control and Appeal) Rules, 1994. Mr.

Ghosh urged that the Respondents acted illegally in terminating the Petitioner''s services without resorting to departmental proceedings and without

giving the Petitioner an opportunity of being heard.

6. In support of his contention that on the completion of his period of probation the Petitioner became automatically confirmed in the post in which

he had been appointed, Mr. Ghosh referred to the decision of the Supreme Court in State of Haryana and Others Vs. Rajindra Sareen, wherein,

while considering the provisions of the proviso to Rules 10(3) of the Punjab Public Relations Department (Gazetted) Service Rules, 1958, the

Hon''ble Supreme Court was of the view that if an officer had been appointed in a permanent post against a substantive vacancy and if he had

completed the initial period of probation from the period of probation upto the maximum of three years, the inference is that he became a

permanent member of the service. The Hon''ble Supreme Court also observed that when the appointment of a person was co-terminus with the

continuance of the post to which he had been appointed, the State had no power to terminate the services of that officer when the post itself was

continuing. If any action by way of disciplinary proceedings were being taken, then the State was required to comply with the provisions of Article

311(2) of the Constitution.

7. In support of his other contention that before terminating the Petitioner''s services the Respondents ought to have initiated disciplinary

proceedings against him, Mr. Ghosh firstly referred to the decision of the Supreme Court in the celebrated case of Samsher Singh Vs. State of

Punjab and Another, In the said case the Hon''ble Supreme Court observed that no abstract proposition can be laid down that where the services

of a probationary are terminated, it can never amount to a punishment. The Hon''ble Supreme Court observed further that before a probationary is

confirmed, the authority concerned is under an obligation to consider whether the work of the probationary is satisfactory or whether he was

suitable for the post. The Supreme Court also held that in the absence of any rules governing a probationer, the authority may come to the

conclusion that on account of inadequacy for the job or for any temperament or other object not involving moral turpitude, the probationary is

unsuitable for the job and hence must be discharged, the same-would not involve any punishment, but in some cases the authority may be of the

view that the conduct of the probationary may result in dismissal or removal on an enquiry and in those cases the authority may without holding an

enquiry simply discharge the probationer without attaching any stigma at the time of termination of probation. If, on the other hand, the probationer

is faced with an enquiry on charges of misconduct or inefficiency or corruption and if his services are terminated without following the provision of

Article 311(2) of the Constitution, he can always claim protection. The Supreme Court was of the view that what is decisive is whether the order is

really by way of punishment, and, if that be so, then a probationer is entitled to the protection of Article 311(2) of the Constitution.

8. In this regard, reference was also made to two other decisions of the Supreme Court, namely, Anoop Jaiswal Vs. Government of India and

Another, and Babu Lal Vs. The State of Haryana and others, The ratio of the decisions in the said two cases is that where an order of termination

is merely a camouflage for an order of dismissal for misconduct, it is always open to the Court, before which the order is challenged, to lift the veil

and/or to go behind the form in order to ascertain the character of the order.

9. Mr. Ghosh urged that in the instant case, since the Petitioner''s services must be deemed to have been confirmed upon his completion of the

period of probation, the Respondents were not entitled to pass an order of termination of the Petitioner''s services simpliciter, without drawing up

departmental proceedings against him and without giving him an opportunity of hearing in that regard.

10. Mr. Ghosh urged that the impugned order of termination of the Petitioner''s services was, therefore, liable to be quashed on the aforesaid

grounds.

11. Opposing the writ application, Mr. Pranab Chattopadhyay firstly urged that since the decision in Rajendra Sareen''s case(Supra) cited by Mr.

Ghosh, the Supreme Court in several subsequent decisions has held that completion of the period of probation did not automatically result in

confirmation of the service of the probationer. On the other hand, the Petitioner would continue to be on probation until his services were either

confirmed or he was discharged from the service.

12. Mr. Chattopadhyay submitted that since the Petitioner''s services had not been confirmed and he continued to be probation, the Respondents

were entitled in law to terminate his services, without assigning any reason and without attaching any stigma in the order of termination.

13. In fact, Mr. Chattopadhyay also relied on the decision of the Supreme Court in Shamsher Singh''s case (Supra), where similar views have been

expressed.

14. In this connection Mr. Chattopadhyay also referred to the decision of the Hon''ble Supreme Court in the case of State of Maharashtra v.

Veerappa R. Saboji AIR 1980 S.C. 42 wherein, while considering the provisions of the Bombay Judicial Service Recruitments Rules, 1956, the

Hon''ble Supreme Court observed that there is no automatic confirmation on the expiry of the probationary period of two years at the first

instance. However, the Supreme Court was also of the view that even in the case of a temporary or officiating Government Servant, his services

cannot be terminated by way of punishment, casting a stigma on him, in violation of the requirements of Article 311(2) of the Constitution.

15. Mr. Chattopadhyay then referred to another decision of the Supreme Court in the case of Dhanjibhai Ramjibhai Vs. State of Gujarat, wherein

a Division Bench of three Judges observed that there is no right in the probationer to be confirmed merely because he had completed the period of

probation and had passed the requisite test and completed the prescribed training. The function of confirmation implies the exercise of judgment by

the confirming authority on the overall suitability of the employee for permanent absorption in service. It was also observed that in a given case a

candidate may be allowed to continue beyond the initial period of probation, in order to allow the confirming authority to arrive at a definite

opinion, and a candidate does not gain any greater right to confirmation if he is allowed to continue beyond the initial period of probation.

16. Mr. Chattopadhyay then referred to and relied upon a Bench decision of this Court in the case of Indian Iron and Steel Company Ltd. v.

Lieutenant Colonel Dipankar Bhattacharjee (1990) 6 S.L.R. 743 wherein all the aforesaid principles were considered and it was held that the

expiry of the period of probation did not result in automatic confirmation, unless the rules provided for the same, and that the probationer would

continue to be on probation until confirmation of his service or till he was discharged.

17. In the instant case, Mr. Chattopadhyay urged that the Petitioner had suppressed the fact that after he was asked to show cause in connection

with an incident which was said to have taken place on October 26, 1994, and after he had shown cause, the authorities had on consideration of

his explanation, let off the Petitioner with a caution. Mr. Chattopadhyay urged that the termination of the Petitioner''s services was in no way linked

with the notice to show cause in connection with the aforesaid incident. On the other hand, the Respondents were constrained to take such a

decision, inasmuch as, the Petitioner''s performance was found to be unsuitable for permanent appointment to the post of driver (Bus) under the

Corporation.

18. Mr. Chattopadhyay urged that the Petitioner was also involved in an accident on April 6, 1995, which resulted in the death of a rickshaw van

puller, Nemai Chandra Mondal.

19. Mr. Chattopadhyay produced the records relating to the said incidents in support of his aforesaid contention.

20. Mr. Chattopadhyay concluded his submissions by urging that the services of the Petitioner had been terminated on an assessment made by the

Respondent as to the Petitioner''s competence for being appointed as a permanent driver under the Corporation.

21. Mr. Chattopadhyay urged that in the circumstances, the writ Petitioner was not entitled to the reliefÃ¯Â¿Â½s prayer for in the writ petition and the

same was liable to be dismissed.

22. From the submissions made on behalf of the respective parties and the materials on record, the principle question which emerges for decision is

whether the services of the writ Petitioner stood confirmed on completion of the period of probation, particularly when he was allowed to continue

in service thereafter without extension of the period of probation.

23. The other question as to whether the Petitioner''s services were illegally terminated will be dependent on the outcome of the decision to the first

question.

24. The law relating to probation and confirmation of the services of a probationer is now more or less crystallised and the uniform view taken by

the Courts is that a probationer''s services do not become confirmed automatically on completion of the. period of probation even if the stipulated

period of probation is not formally extended. Upon an assessment of his performance during the period of probation, the authorities are free either

to confirm or terminate the services of the probationer. Such termination may be effected by an order of termination simpliciter, without any reason

being given and without attaching any stigma.

25. The special feature of this case is that the Petitioner was allowed to continue in service beyond the stipulated period of probation without such

period being extended. The question is whether that makes any difference in the legal situation. In my view, it does not.

26. The views expressed by the Hon''ble Supreme Court in Rajendra Sareen''s case (Supra) relied upon by Mr. Ghosh, was firstly in respect of an

appointment in a permanent post against a substantive vacancy, and, secondly, such appointment was co-terminus with the continuance of the post.

In those circumstances, which are absent in the present case, the Hon''ble Supreme Court was of the view that the services of the Officer would be

deemed to have been confirmed on completion of the period of probation and the State was not entitled to terminate his services when the post

itself was continuing.

27. In Veerappa R. Saboji''s case (Supra), although, the Hon''ble Supreme Court was considering the question of probation in the context of the

Bombay Judicial Service Recruitment Rules, 1956, their Lordships, inter alia, observed that the rule in question, therefore, comes under the

ordinary and normal rule that without an express order of confirmation the Government servant will not be taken to have been confirmed in the

post to which he had been appointed temporarily and/or on probation. In the context of the said case, the Supreme Court observed further that an

officer cannot be deemed to have been confirmed in service merely because, after completion of his probationary period, he was appointed as

officiating Civil Judge.

28. The said principle was reiterated in Dhanjibhai Ramjibhai''s case (Supra) as indicated hereinbefore, and was also explained with great clarity

by a Division Bench of this Court in the Indian Iron & Steel Co. Ltd. case (Supra). In the latter case it was explained that unless the Rules

expressly provided, the mere expiry of the period of probation does not result in automatic confirmation, but the probationer continues to be on

probation until he is confirmed or discharged from service.

29. It must, therefore, be held that the Petitioner''s services did not stand automatically confirmed on the expiry of the stipulated period of

probation, more so since the unextended period was not beyond the maximum period for which the Petitioner could have been kept on probation.

30. As far as the second question is concerned, since, in my view, the Petitioner''s period of probation was continuing at the relevant time, the

authorities were entitled to terminate the Petitioner''s services without taking recourse to any departmental and/or disciplinary proceedings, by

issuing a letter of termination simpliciter.

31. Inasmuch as, the Petitioner was not faced with any disciplinary enquiry and his services were terminated without attaching any stigma

thereupon, the Respondents appear to have acted within their authority.

32. The writ application, accordingly, fails and is dismissed.

33. There will, however, be no order as to costs.