No. 4183-2GS-I-71/34032

From

The Chief Secretary to Government, Haryana.

To

(1) All Heads of Departments; the Commissioner, Ambala, Division; all Deputy Commissioners; and Sub-Divisional Officers in Haryana;

(2) The Registrar, Punjab & Haryana High Court, and all District and Sessions Judges in Haryana.

Dated, Chandigarh, the 15th December, 1971.

Subject :—**Probation**

Sir,

I am directed to refer to the provisions contained in the Modal Service Rules and in the Service Rules of different Services about probation, which provisions are to the effect that a person will, on appointment to service, ramain on probation for a specified period which can be extended in special cases provided the total period of probation including extension, if any, does not exceed three years, There is also the provision in certain Service Rules that the confirmation of an employee will be made only after he has passed the departmental examinations prescribed under the rules or has been exempted from ihe requirement of passing the departmental examinations.

2. It has come to the notice that it in many instances the department do not take up at the appropriate time the question as to whether a Government employee has or has not completed his probation satisfactorily, and consequently the question of his confirmation is also not examined in time. The Accountant General has drawn attention to the fact that difsiculty is also being experienced in allowing increments because intimation about satisfactory completion of probation and about passing deparimental examinations is not received In his office in time or is receved with heavy delay.

3. In order to overcome these diffi culties it has been decided that as soon as an officer/official, placed on probation in accordance with the service rules applicable to him has completed the period of his probation, and in any case within 3 months thercof, a decision should be taken whether the probation was completed satisfactorily or not, and if the probation was not completed satisfactorily, whether the original period should be extended or whether Government employee concerned should be discharged from service/reverted to his substantive post, Where it is decided to extend the period of probation, a similar decision should be taken directly after the completion of extended period and in any case within 3 months thereof. If more than 3 months lapse after the expiry of the maximum period of probation permissible under Service Rules, then it can result in a presumption being drawn in favour of Government employee concerned that he has completed his probation satisfactorily; and if a permanent vacancy is available, then it will be presumed (subject to the exception indicated in para 4 below) that he has been confirmed against that vacancy even though a formal order of confirmation has not been issued. In this context a copy of the judgement of the Supreme Court in "State of Punjab *versus* Shri Dharam Singh" (Civil Appeal No. 1017 of 1966) is enclosed for reference.

4. The exception referred to in para 3 above arises if there is a provision in the relevant Service Rules that a Government employee will not be confirmed unless he has passed the prescribed departmental examinations, or has been exempted from passing them. In that case a Government employee who has completed the period of probation/extended period of probation/maximum period of provation without a decision having been taken within the specified period as to whether the probation was completed satisfactorily or otherwise, but has not passed the prescribed departmental examinations, then his confirmation will not be presumed (although the presumption will have to be drawn that he has completed the probation satisfactorily). In such cases confirmation can take place only after the departmental examination have been passed, or exempted from passing them has been allowed and not otherwise. Further more, if there is failure to pass the departmental examinations (and there is no exemption from passing them) action by way of discharge from service or reversion to substantive rank can also be taken on that ground provided that that is permissible under the relevant Service Rules.

5. It has also been decided that the Accountant Generals ofiffice should release any increment

office has verified that the relevant increment is not required to be with-held because the Government empol loyee concerned has not passed the departmental examinations.

6. It may be noted in this connection that cases have occured in which confidential reports pertaining to periods after the completion of the probationary period were taken into account in examining the question of confirmation which came up at a later stage. It has to be observed that the correct position in this regard is that only those confidential reports which relate to any part of the probationery period should be considered for that purpose and not any subsequent report or reports.

7. It is requested that the above instructions may be brought to the notice of all concerned for strict compliance. It may also be made clear that any lapse in regard to following them will be viewed seriously.

8. The receipt of this communication may please be acknowledged.

Yours faithfully,

Sd./-
Deputy Secretary Political & Services,
for Chief Secretary to Government, Haryana.

No. 4183-2GS-I-71/34033, dated Chandigarh, the 15th December, 1971.

A copy is forwarded to the Accountant General, Haryana., with reference to his letter No. TM/ 2 2/69-70/1812, dated the 23rd December, 1969. All Financial Commissioners. All Administrative Secretaries in Haryana.

SUPREME COURT OF INDIA

Before : K.K. Manchoo C.J.R.S. Bachawat J.J.M.

Shelat J.G.K. Mitter J. and C.A. Vaidialingam J.
Civil Appeal No. 787 of 1966.
Decided on 2-1-1968.

THE STATE OF PUNJAB (appellant)

Versus

DHARAM ffINGH (respondant)

Civil Appeal No. 1017 of 1966
Decided on 2-1-1963.

Director of Public Instructions—(*Appellant*)

Punjab

Dev Raj *Versus* (Respondent)

Punjab Educational (Provincialised Cadre) III Rules 1961 Rule 6(3)—Constitution of India, Article 311-Automatic confirmation of probationers—Confirmation by implication—Formal order of confirmation not necessary on expiry of maximum period of probation prescribed under rules.

Period of three years prescribed as maximum period of probation under rule 6(3) Respondents appointed as teachers on the year probation against permanent posts—No orders with regrds to their confirmation or extension of probation period passed by Government. Their services, however, terminated on expiry of 3 years treating them as temporary employees—Termination order quashed Held :

(i) Though appointing authority did not pass formal orders of confirmation in writing , it should be presumed to have passed orders of confirmation by allowing them to continue in service after three years:

(ii) After such confirmation the authority had no power to dispense with their services on the ground that their work or conduct during period of probation was unsatisfactory—The impugned orders amounted to removal from service by was of punishment.

In the present case, Rule No. 6(3) forbid 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 probationery period cannot be extended, and an employee appointed or promoted to a post on probation is allowed to continue in that post after compeletion of the maximum period of probation with out an express order of confirmation, he cannot be deemed to continue in that post as a probationer by implication. The reason forbidding extension of the probationery period beyond the maximum period fixed by it. 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 confiermed in the post by implieation.

Though the appointing authority did not pass formal order of confirmation in writing it should be presumed to have passed orders of confirmation by so allowing them to continue in their post after October, 1960. After such confirmation, the authority had to 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 respondent had the right to hold their to the impugned orders deprived them of this right and mounted to removal from service by way of punishment. The remova.l from service could not be made without following the procedure laid down in the Punjab Civil Service (Punishment and Appeal) Rules, 1952 and without confirming to the Constitutional requirement 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.

Cases referred.

(1) Sukhbans Singh *Versus* the State of Punjab, 1962 (1) S.C.R.416, 424-426.

(3) The Accountant General Madhya Pradesh, Gwalior *Versus* Beni Prasad Bhatnagar, C.A. No. 548 of 1962 decided by Supreme Court on 22-1-1964.

(4) D.A. Iyall *Versus* the Chief Conservator of Forests, U.P. and other, C.A. No. 259 of 1963 decided by Supreme Court on 24-2-1965.

(5) The State of U.P. *Versus* Akbar Ali, 1966 (3) S.C.R. 821, 825-826.

(6) Narain Singh Ahluwalia *Versus* State of Punjab and another C.A. No. 492 of 1963 decided by Supreme Court on 29-1-1964.

JUDGEMENT

Bachawa T.J.

These two connected appeals raise a common question of construction of Rule 6 of the Punjab Educational Service (Provincialised Cadre) Class III Rules, 1961. Before October 1, 1957 Dharam Singh and Dev Raj, the respondents to these appeals, were junior teachers in District Board Schools. The District Board Schools were provincialised , and the service of the reasospondents were taken over by the Punjab State , with effect from October, 1957 in pursuance of scheme of provincialisation of Local Bodies schools in the State. On Februaly, 13, 1961 the Governor of Punjab in exercise of the powers conferred by the proviso to Article 309 of the Constitution framed the Punjab Educational Service (Provincialised Cadre) Class III, Rules 1961 regulating the conditions of service of the teaching staff taken over by the State Government from the local authorities, Rules I provides that the rules will be deemed to have come into force with effect from October, 1, 1957. Rules 3 created the Punjab Educational (Provincialised Cadre) Class III Service consisting of the posts shown in Appendix A. It is common case that the posts held by the respondents are included in Appendix A and carry time scales of pay. Rule 6 is in these terms :—

"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 this 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 extension, if any, shall not exceed three years.

(4) Service spent on deputation to a corresponding on 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 Rules—(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 held their posts after October, 1960, but formal orders confirming them in their posts were not passed. Under Rule 7 the Director 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 in matters relating to discipline punishment and appeals, members of the service shall be governed by the Punjab Civil Service (Punishment and Apeal) Rules 1952. The orders deated February 10, 1963 were passed without holding any departmental enquiry and without giving the respondents any opportunity of making represnetation against the action taken against them. The respondents filed sepa rate writ petitions in the Punjab high Court challenging the foresaid or ders on the ground that they had acquired substantive rights to their posts and that the orders amounting to removal from service, and were passed in violation. Articles 311 of the Constitution. The appellant pleaded that the respondents were temporary employees that their services 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 Articles 311. Learned Single Judges of the High Court refused the respondents contention and dismissed the writ petitions. The respondents filed separate letters patent appeals against these judgement. The appellate

dents 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 rights of 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.

2. The High Court found that the respondent were officiating in permanent posts against permanent vacancies as contemplated by Rule 6(1), and that on the coming into force of the rules, they must be deemed to have held their posts under rule 6(a) on probation in the first instance for one year from October, 1957. The correctness of these findings is not disputences of these case, on the completion of three years, period of probation on October 1, 1960, the respondent must be deemed to have been confirmed in their appointments. The appellants attack this findings. They submit that in the absence of formal orders of cionfirmation the respondents must be deemed to have continued in their posts as probationers. In the alternative, they submit that on completion of three year's period of probation the respondents must be deemed to have been discharged from service and re-employed as temporary employees. We are unable to accept these contentions.

3. This court has consistently held that when a first appointment or promotion is made on orobation for a specific period and the employee is allowed to continue in the post after the expiry of the period without any specific order of confirmation, he should be deemed to continued in his post as a probationer only, in the absence of any indication to the contrary in the original orders of appointment or promotion or the service rules. In such a case an express order of confirmation is necessary to give the employee a substantive right to the post, and from the mere fact that he is allowed to continue in the post after the expiry of the specified period of probation it is not possible to hold that he should be deemed to have been confirmed. This view was taken in 1, Sukhbans Singh *Versus* The State of Punjab, 2 G.S. Ramaswamy *Versus*. The Inspector General of Police Mysore State, Banglore, 2, The Accountant General, Madhya Pradesh Gawalior V. Beni Prasad Bhatnagar, 4 D.A. Lyall V. the Chief Conservator of Forests, U.P. and others and 5. State U.P. V. Akbarali. The reason for this conclusion is that where on the completion of the specific period of probation the employee is allowed to continue in the p. st without an order of confirmation, the only possible view to taken in absence of any thing to the contrary in the original order of appointment or promotion or the service rules, is that the initial period of cases. the conditions of service of the employees permitted extention of the probationery period for an indefinite time and there was no service rule forbidding its extension beyond a certain maximum period.

4. The same view was taken in 6 Narain Singh Ahluwalia V. State of Punjab and another. It was suggested before us that the service rules in that case provided for a maximum period of probation of two years beyond which the probationery period could not be extended. The Judgement in that case does not refer to such a rule, nor does it appear from the judgement thtat before the appeallant was reverted to his substantive post, the maximum period of probation in the post to which he had been promoted had expired. A references to the paper book in that case shows that in November, 1957, the appellant was promoted as Superintendent and on June 26, 1959 before the expiry of the maximum period of probation he was reverted to his substantive post. He thus continued to hold the post of superintendent as a probationer he was reverted to his substantive post. He thus continued to hold the post of superintendent as a probation when the order of reversion was passed.

5. In the present case, Rule No. 6(3) forbids estension of the prerіod of probotion beyond three years. Where as in the present case, the service rules fix certain period of time beyond which the probationery 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 ca nnot be deemed to continue in that post as probationer by implication. The reasons is that such in implication is negatived by the service rule forbidding extension of the probationery 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 under rule 6(3). The authority could either (a) extend the period of probation perovided the total period of probtion including extension 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) confirm him in his appointment. It could pass one of these orders in respect of the respondeots 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 and rule 6(3). In the absence

7. The respondents were not prompted from lower posts and there was no question of their revertion to such posts at any time under rule 6(2).

8. The initial period of probation of the respondents ended on Ocober 1, 1958. By allowing the respondents to continue in their posts their after 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 October 1, 1960. In view of the proviso to rule 6(3), it is not possible to presume that the competent authority extended the probationery 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 therein increments of salary including the increment which fall due on October 1, 1962. The rules did not required 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, 1969, 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 erespondents 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 confiramation 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 had the right to hold their posts. The impugned orders deprived them of this right and amounted to of probation was unsatisfactory. It follows that on the dates of the impugned orders, the respondents removal from service by way of punishment. The removal from service would not be made without following the procedures laid down in the Punjab Civil Services (Punishment and appeal) Rules, 1952 and without confirming to the constitutional requirement of Article 311 of the constitution. The procedure laid down in the Punjab Civil Services (Punishment and Appeal) Rules, 1952 was not foollowed and the constitutional protection of Article 311 was violated, the impugned orders were rightly set aside by the High Court.

In the result, the appeal are dismissed with costs. There will be one hearing.

Appeal dismissed.