

PRATAP SINGH

v.

UNION TERRITORY OF CHANDIGARH AND ANR.

September 3, 1979

[S. MURTAZA FAZAL ALI, P. S. KAILASAM AND A. P. SEN, JJ.]

Punjab Police Rules—Rule 12.8(1)—Appointment on a temporary basis against a temporary vacancy—Services terminated after three years—Termination—Validity of.

The services of the appellant, who was appointed as an Assistant Sub-Inspector of Police on July 2, 1973 were terminated in September 1977. The High Court rejected his petition impugning the order of termination of his services.

In appeal to this Court it was contended that on completion of the three year period of probation in accordance with r. 12.8(1) of the Punjab Police Rules the appellant should be deemed to have been confirmed in the post and that the order terminating his services was illegal.

Dismissing the appeal,

HELD : There is no legal error in the order passed by the Senior Superintendent of Police terminating the appellant's services. [490C]

1. It is well settled that a person is appointed on probation only when he is appointed against a substantive post. The appellant, having been appointed against a temporary vacancy, was not on probation. Rule 12.8, which deals with officials appointed on probation, does not apply to this case. [489 F-G]

2. Assuming that r. 12.8 was applicable, the officer could not be deemed to be confirmed unless there is any rule providing that, in the absence of an order of confirmation at the end of the probation, the employee must be presumed to be confirmed. There is no such provision in the present rules and hence the period of probation must be presumed to have been extended.

[489G]

3. In the *State of Punjab v. Dharam Singh*, [1968] 3 SCR 1 this Court held that when a first appointment is made on probation 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 continue in his post as a probationer only in the absence of any indication to the contrary in the original order of appointment 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. [489B-C]

In the instant case since no order of confirmation had been passed after the appellant completed three years, it must be presumed that his probation had been extended.

- A** *State of Punjab v. Dharam Singh* [1968] 3 SCR applied.
Supdt. of Police Ludhiana and Anr. v. Dwarka Das etc. etc. A.I.R. 1979 S.C. 336 over-ruled.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 924 of 1970.

- B** Appeal by special leave from the Judgment and Order dated 19-10-1977 of the Punjab and Haryana High Court in Civil Writ Petition No. 3219/77.

Appellant *in person*.

H. S. Marwah, R. N. Sachthey and A. Sachthey for the Respondent.

- C** The Judgment of the Court was delivered by

- D** FAZAL ALI, J. This appeal by special leave is directed against the judgment of the Punjab & Haryana High Court dismissing the Writ Petition filed by the appellant against the order of his termination passed by the Senior Superintendent of Police. The appellant was appointed on 2-7-1973 as a temporary Assistant Sub-Inspector of Police. On 26-9-1977, his services were terminated by the Senior Superintendent of Police. Against this order, the appellant moved the High Court of Punjab & Haryana but his petition was rejected. Thereafter, he came to this Court and after obtaining special leave from this Court, the appeal has been placed before us for hearing.

- E** The short point taken by the appellant in this appeal is that under Rule 12.8(1) of Punjab Police Rules, the petitioner must be considered to be on probation for a period of three years and as the appellant has crossed this period of three years, he must be deemed to have been confirmed and, therefore, his services could not be terminated. In support of this submission, reliance is placed by the appellant on a Division Bench Judgment of this Court in case of *The Superintendent of Police, Ludhiana and Anr. etc. etc. v. Dwarka Das etc. etc.*(1) Where Shinghal J. speaking for the Court observed as follows :—

- G** “So if Rules 12.2(3) and 12.21 are read together, it will appear that the maximum period of probation in the case of a police officer of the rank of constable is three years, for the Superintendent of Police concerned has the power to discharge him within that period. It follows that the power of discharge cannot be exercised under Rule 12.21 after the expiry of the period of three years.”

- H** It is true that the observations made by this Court support the contention of the appellant to an extent. But in our opinion, the

(1) A.I.R. 1979 S.C. 336.

Division Bench decision was not correctly decided as it has not considered the Five Bench decision of this Court in case of *State of Punjab v. Dharam Singh*⁽¹⁾ where after considering the number of cases, the Court observed thus :

“This Court has consistently held that when a first appointment or promotion is made on probation 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 continue in his post as a probationer only, in the absence of any indication to the contrary in the original order 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.

The reason for this conclusion is that where on the completion of the specified period of probation the employee is allowed to continue in the post without an order of confirmation, the only possible view to take in the absence of anything to the contrary in the original order of appointment or promotion or the service rules, is that the initial period of probation has been extended by necessary implication.”

In the instant case, the appellant was appointed purely on a temporary basis and not on probation and, therefore, Rule 12.8 which deals with officials who are appointed on probation does not apply to this case at all. It is well settled that a person is appointed on probation only if he is appointed against a substantive vacancy. In the instant case, it is not disputed that the appellant was appointed only against a temporary vacancy. Assuming, however, that Rule 12.8 of the Punjab Police Rules applies to the appellant's case and he is governed by Rule 12.8 even after the probation of three years is over, the police officer shall not be deemed to be confirmed unless there is any rule which provides that in absence of an order of confirmation at the end of the probation, the employee must be presumed to be confirmed. There is no such provision in the present rules. In these circumstances, therefore, as held by this Court in the case of *Dharam Singh*, it must be held that if no express order of confirmation was

(1) [1968] 3 S.C.R. 1, 4-5.

A passed after the appellant completed three years, it must be presumed that his probation was extended.

In this view of the matter, as the appellant was a temporary hand, the services could be terminated at any time. It appears that the attention of this Court in *Dwarka Das's case* was not drawn to the case of *State of Punjab v. Dharam Singh* (supra) which has been decided by a larger Bench and therefore, the later decision rendered by this Court in *Dwarka Das* is directly opposed to the view taken by the larger Bench and must, therefore, be overruled. For these reasons, therefore, we are unable to find any legal error in the order passed by the Senior Superintendent of Police in terminating the services of the appellant.

C The appeal is accordingly dismissed.

A request has been made by the appellant that he may be allowed to retain the Govt. quarter which has been allotted to him for some time so as to enable him to find alternative accommodation. Mr. Marwah, Counsel for the State, has no objection if a reasonable time is given to the appellant for this purpose. We, therefore, give three months' time to the appellant to vacate the government quarter allotted to him on his furnishing an undertaking to the Sr. Supdt. of Police.

D P.B.R.

Appeal dismissed