

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 1197/94  
T.A. No.

198

DATE OF DECISION 2.6.1995

Shri Baljit Singh

Applicant (s)

Shri D.N. Vohra

Advocate for the Applicant (s)

Versus

Union of India

Respondent (s)

Shri M.K. Gupta

Advocat for the Respondent (s)

CORAM :

The Hon'ble Mr. N.V. Krishnan, Vice Chairman(A).

The Hon'ble Mr. Dr. A. Vedavalli, Member(J).

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? ✓

(DR. A. VEDAVALLI)  
MEMBER(J)

(N.V. KRISHNAN)  
VICE CHAIRMAN(A)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA No. 1197/94

New Delhi this the 2nd day of June, 1995.

Hon'ble Shri N.V. Krishnan, Vice Chairman(A)

Hon'ble Dr. A. Vedavalli, Member(J)

Shri Baljit Singh  
S/o Ram Chander  
R/o House No.88 Village Kamrudin Nagar,  
Nangloi, Delhi.

...Applicant

By Advocate Shri D.N. Vohra.

Vs

Union of India  
Through Secretary  
Cabinet Secretariat  
Govt. of India  
South Block, New Delhi

...Respondent

By Advocate Shri M.K. Gupta.

ORDER

Hon'ble Shri N.V. Krishnan, Vice Chairman(A)

The services of the applicant were terminated forthwith by the order dated 26.5.94 of the Joint Secretary, PRS in the Cabinet Secretariat, Government of India, under the proviso to sub rule (1) (b) of Rule 5 of the Central Civil Services (Temporary Services) Rules, 1965, after ordering payment of one month's pay. Aggrieved by this order the applicant has filed this OA.

2. The applicant was appointed as Senior Field Assistant on 19.10.89 on probation for a period of three years. The period of probation was extended by one year upto 18.10.93, by an order issued on 16.11.93.

3. The applicant was given a memo dated 24.4.94 which communicated to him the following adverse remarks in the annual confidential report for the period 1.4.93 to 31.3.94:

"The official is not punctual in his work and remains absent for a long period. He is not a willing worker too"

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This was received by him on 26.5.94 along with the impugned order dated 26.5.94 terminating his services.

4. He assails the impugned order on the following two important grounds:

- i) The applicant has completed the maximum period of his probation under the Rules. He should, therefore, be treated as a confirmed employee. He cannot be treated as a temporary employee to terminate his services under Rule 5 of the CCS (Temporary Services) Rules, 1965.
- ii) The order is a camouflage for an order of dismissal for misconduct, without holding an enquiry.

5. The respondent has filed a reply resisting these claims. It is stated that the applicant was appointed as Senior Field Assistant CRF in a temporary capacity from 10.10.89 and was put on probation for three years under Rule 140 of the Research and Analysis Wing (Recruitment Cadre and Service) Rules, 1975 - Rules for short. He completed his three years of probation on 18.10.92. His case for clearance of probation was taken up in October, 1993. On the basis of his performance, the DPC recommended extension of his probation period by one year, as permitted by the Rules. Accordingly, the period of probation was extended by one year by the Annexure R-1 order issued on 16.11.93 indicating that the probation was extended upto 18.10.93.

6. It is further stated that the applicant was absenting himself from duty by taking leave at frequent intervals. In addition, he used to proceed on frequent casual leave. Further, he absented himself unauthorisedly from 1.2.94. He did not send any information about his absence. Communications sent to him were returned by the postal authorities undelivered

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with the remarks 'Not available during frequent visits' and 'Refused, returned to sender.' Subsequently, he submitted medical certificates for the absence of 1.2.94 to 29.4.94 from the Medical Officer Incharge, Municipal Corporation Dispensary which stated that he was suffering from Jaundice. Adverse remarks were also communicated to him for the year 1993-94. In the performance report of the applicant, the initiating officer remarked that the applicant was not fit for job requirements and he be discharged. The Director CRF also remarked 'Not recommended for retention in service', after expressing agreement with the initiating officer. He was not declared to have successfully completed his probation and was not confirmed in his post. He was deemed to be a temporary official. Keeping his overall performance in view his services were terminated under the CCS (Temporary Services) Rules, 1965.

7. When the case came up for final hearing the main issue pressed for consideration was that, in terms of the judgement of the Constitution Bench of the Supreme Court in State of Punjab vs. Dharam Singh (AIR 1968 SC 1210), the applicant should be deemed to have been confirmed on the expiry of the extended period of probation, which could not be further extended. It was contended that, in a situation where the service rules provide for a maximum period of probation, the Supreme Court has laid down that, if, on or before the expiry of such probation period, the employee is not discharged, he cannot be treated to be a probationer thereafter and that he should be deemed to have been confirmed in service, on the expiry of the period of probation. On the contrary, the learned counsel for the respondents submitted that the Supreme Court has not laid down such a rule of automatic confirmation in Dharam Singh's case, as found by another Bench of this Tribunal in

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Smt. Nandita Bakshi vs. Union of India & Others - BA-482/93 disposed of on 2.9.94. He has produced a copy of that order.

8. At this stage we may have a look at the relevant provisions of the Rules. They are reproduced below:

"Rule 140. PROBATION: (1) Every direct recruit to a grade in any Service/Cadre of the Research and Analysis Wing shall initially be appointed on probation, the period of probation being 3 years from the date of appointment.

(2) Every person other than a direct recruit shall, when first appointed to a grade in any Service/Cadre of the Research and Analysis Wing, be on a trial for a period of one year from the date of such appointment.

(3) The period of probation or trial specified in sub rules (1) and (2) may, if the Head of the Organisation or the Appointing Authority deems fit, be extended or curtailed in any case, but the total period of extension of the period of probation or trial shall not, save where it is necessary by reason of any departmental or legal proceedings pending against the officer, exceed one year.

(4) During the period of probation or trial, an officer may be required to undergo such training and to pass such tests as the Controlling Authority may from time to time prescribe.

Rule 142. DISCHARGE OF A PROBATIONER:

A probationer shall be liable to be discharged from service at any time without notice if:

i) he fails to obey any order which he may receive from the Appointing Authority or such other authority as is empowered to issue such orders to him, or if in the opinion of the Appointing Authority, he has wilfully neglected his probationary studies or duties or is guilty of conduct unbecoming of an officer of the Service/Cadre to which he has been appointed;

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- ii) he fails to pass such examination or examinations as may be prescribed from time to time;
- iii) the Appointing Authority is satisfied that he was not eligible for recruitment to the Service/Cadre concerned or
- iv) he is found lacking in qualities of mind and character needed for the Service/Cadre to which he has been appointed:-

Provided that where a probationer has a lien on any post under the Central Government or any State Government, he shall on such discharge be reverted to such post.

**Rule 143. REVERSION OF AN OFFICER ON TRIAL**

A person on trial in any grade who is not considered suitable for continuance in that grade during or at the end of the period of trial as prescribed in sub rule (2) or the extended period, if any, under sub rule (3) of the rule 140 shall be reverted to the grade in which he holds a lien or in which he was regularly officiating at the time of his appointment on trial.

**Rule 144. CONFIRMATION**

Where a probationer has completed his period of probation to the satisfaction of the Head of the Organisation or the Appointing Authority as the case may be, he shall, subject to the other provisions of these rules, be confirmed at the end of the probation in the grade to which he was appointed on probation.

**Rule 145. SALARY DURING PERIOD OF PROBATION:**

During the first, second and third year of probation, a probationer shall receive pay at the lowest, the second and the third stage respectively of the scale applicable to the post or grade to which he is appointed on probation.

(2) No further increment shall be admissible to him until he is declared to have successfully completed his probation by the Appointing Authority."

It is clear that the maximum period of probation can be only 4 years which cannot be extended further except if,

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it is necessary on account of any departmental or legal proceedings. A probationer can be discharged at any time. An order of confirmation is specifically required to be passed. No increment may be given after the completion of the normal period of probation of three years, unless the probationer is declared to have completed his probation satisfactorily. Persons other than direct recruits - which can mean only promotees - ~~on probation~~ are kept 'on trial' for one year which too can be extended only by 'one year'. If not found suitable after trial, they can be reverted. It is significant to note that they are not required to be confirmed and there is no restriction regarding drawal of increments.

9. Before considering the contentions of the parties on the above issue it is to be observed that the respondents have stated in their reply that the applicant was appointed "in a temporary capacity" from 10.10.89. This is not strictly correct. No doubt, the order No.260 Pers-13/89 dated 6.11.89 (Page 8) shows his appointment in a 'temporary capacity' on the conditions mentioned in the memo dated 27.9.89, which is not produced. It is further stated that he will be "on trial" for 3 years. If there had been nothing else to it, one could have held that he was appointed only in a temporary capacity albeit the Rules. That is not the case. The subsequent office order dated 10.11.93 (Page 18) makes it clear that he was appointed on probation for 3 years under Rule 140(1) and that the period of probation was extended by one year under Rule 140(3). Hence, we are of the view that he was appointed only as a probationer. The expressions 'temporary capacity' and 'on trial' would have been appropriate, if a person was being appointed on promotion.

10. The question is whether, if no order is passed, either discharging a probationer or confirming him, on or before the

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expiry of the maximum period upto which alone he could be kept on probation, he should be deemed to have been confirmed or, whether he can be treated to be on temporary service. The main contention of the learned counsel for the applicant is that we should not rely on the judgement of this Tribunal in Nandita Bakshi's case. He submits that the interpretation placed by that Bench on the decision of the Supreme Court in Dharam Singh's case, is unwarranted. For, this same decision has already been interpreted in various other decisions of the Supreme Court to mean that confirmation at the end of the probation period should necessarily be implied. In other words, we should not attempt to interpret the decision of the Supreme Court in Dharam Singh's case independently, because it already stands interpreted by other decisions of the Supreme Court.

11. It is needless to say that one has to see from every judgement of the Supreme Court what principle of law has been laid down therein, which alone is binding on other courts under Article 141 of the Constitution (IT vs. M/s San Engineering Works (P) Ltd. AIR 1993 SC.43 refers) and for this purpose we cannot merely pick one word or sentence. The judgement has to be understood in the context in which it was delivered. Therefore, we find it necessary to first cull out those principles from the judgement in Dharam Singh's case and then test whether we have culled out those principles correctly, by reference to the subsequent judgements which have relied upon Dharam Singh's case.

12. Dharam Singh, the respondent in State of Punjab vs. Dharam Singh (AIR 1968 SC 1210) was governed by the Punjab Education Service (Provincialised Cadre) Class III Rules, 1961. These rules regulate the conditions of service of teaching staff taken over by the State Government from the

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local authorities and are deemed to have come into force from 1.10.57. The relevant provisions of rule-6 read as follows:

"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."

Dharam Singh was on probation for one year from 1.10.57. The maximum permissible period of probation expired on 1.10.60. He continued to hold his post after 1.10.60, but formal order confirming him was not passed. He and another person, Desraj, similarly situated, were allowed to continue. The services of Dharam Singh and Desraj were terminated on 10.2.63 and 4.4.63. The order in his case stated that the services "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".

13. Dharam Singh and another successfully challenged this order in the Punjab High Court (AIR 1966 (Punjab) 468). An appeal was filed by the State of Punjab. It is in this background that the above issue was considered by the Supreme Court. The Court referred to the view

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consistently taken, in the following terms, as to the effect of non-confirmation:

"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 all these cases, the conditions of service of the employee permitted extension of the probationary period for an indefinite time and there was no service rule forbidding its extension beyond a certain maximum period." (emphasis given)

14. Dealing with the case on hand, the Supreme Court laid down the law in para-5 as follows:

"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." (emphasis given)

15. The contrast in the language used in para-3 and para-5 of the judgement (extracted above) cannot be missed. In a case where the rules provide for extension of the period of probation but do not set a maximum limit of probation, the Court held that the "only possible view" that can be taken

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is that the probation has been extended by necessary implication. In other words, all possibilities are ruled out. That is not the language of para-5. The only definite principle laid in para-5 is that the employee cannot be treated as a probationer after the expiry of the maximum period, upto which alone the probation could be continued under the rules. The second principle laid down is that if the employee is allowed to continue after the expiry of such maximum period of probation, it is "permissible" to draw an inference that he was confirmed. The Court does not either hold that such an inference has necessarily to be drawn or that it follows by necessary implication. Indeed, if that was the view taken, the Court would, obviously, have used a different language and would have declared in unambiguous terms that the "only possible view" to take and which should be taken by "necessary implication" is that the employee stands confirmed in that post. Further, if that was the intention, the judgement would have ended with para-5 giving such a declaration followed by the further declaration given in para-9 that Dharam Singh and another respondent had a right to continue on their post, and the termination of their services was a punishment. Instead, 4 more paras were added.

16. In the subsequent paragraphs, the Court considered what inference should be drawn. This itself shows that no principle has been laid down that any particular conclusion has to be drawn by necessary implication. After referring to the provisions of sub rule (3) of rule 6, it was noted that no order in terms of that sub rule had been passed. The following question was then posed for consideration:

"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". (emphasis given)

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17. The answers to this question are then set out in paras 7 to 9 of the judgement.

18. In para 7, it was noted that an order of reversion could not be passed because they were not promoted from lower posts. Hence, this alternative is ruled out.

19. In para 8, it was held that, as the rules provided for an extension in the period of probation such that the total probation period shall not, however, exceed three years, an extension in probation has to be presumed, even when an order to that effect was not passed, when the initial period ended on 1.10.58. But there cannot be any such presumption in respect of the continuance after 1.10.60 because, the Rules lay down that the maximum period of probation including extension is only 3 years.

20. The answer is finally given in para-9. The first part of that para sets out the reasons which weighed with the Court in giving its answer to the question posed in para-6 of the judgement. Those reasons are as follows:

"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 reemploying 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". (emphasis given)

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21. Thereafter, the Court held as follows:

"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 confirmations the authority had no power to dispense with their service 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."  
(emphasis given)

22. Thus the Supreme Court took pains to ascertain from the provisions of the Rules and the surrounding circumstances, including the acts of omission and commission of Govt, what order should be "presumed" to have been passed.

23. It is thus clear from a careful reading of the judgement in Dharam Singh's case that the Supreme Court did not lay down any law that confirmation has necessarily to be presumed, as contended by the learned counsel for the applicant. In our view, the following principles of law emerge from the judgement in that case. They will apply where the Rules prescribe, a maximum limit for probation and the probationer is allowed to continue after the expiry of such maximum period, without any order:

- i) The employee ceases to be a probationer on the expiry of such period and if he is allowed to continue thereafter, he cannot be treated as a probationer.
- ii) Nevertheless, "immediately upon the completion" of the maximum period of probation, the competent authority can dispense with the services of the employee, "if his work or conduct during the period of probation was, in the opinion of the authority, unsatisfactory". How soon after the end of probation such an order has to be passed will depend on the facts of each case.
- iii) If no order is passed upon the completion of probation, "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", but not mandatory."

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iv) No order of confirmation shall be presumed to have been passed by necessary implication.

v) In every such case, it has to be examined by reference to the rules and the surrounding circumstances, including the acts of omission and commission of Govt, to determine what order should be deemed to have been passed".

In the circumstances, we are in respectful agreement with the <sup>similar</sup> conclusions drawn by the Principal Bench of the Tribunal in DA 482/1993 Smt. Nandita Bakshi vs. Union of India & Others from the decision of the Supreme Court in Dharam Singh's case, as set out in para 20 of that judgement.

24. The learned counsel, however, submits that this is not the manner in which this judgement of the Supreme Court has been interpreted in subsequent decisions of that Court. He, therefore, contends that we cannot come to any such conclusion nor could such a decision be rendered in Nandita Bakshi's case (supra).

25. In this connection, he has drawn our attention to the following decisions of the Supreme Court, wherein, it is claimed, <sup>u</sup>the Court has "interpreted" the decision in Dharam Singh's case for application in that case:

- (a) Paramjit Singh vs. Ram Rakha & others, 1979(2) SLJ 88.SC.
- (b) Om Prakash Maurya vs. U.P. Cooperative Society, Sugar Factory, 1986(1) LLJ 145. SC.
- (c) M.K. Agarwal vs. Gurgaon Gramin Bank, AIR 1988 SC.286.

It has only to be mentioned that the decisions at (a) and (b) above, along with certain others, were also considered by the Tribunal in Nandita Bakshi's case, as these were relied upon for the theory of automatic confirmation.

26. We have seen all these decisions. It is true that in all these cases reliance has been placed on Dharam Singh's case to hold that the employee stood confirmed by implication. But it cannot be said that, in any of these cases, the Apex Court 'interpreted' the decision of the Constitution Bench in

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Dharam Singh's case. This is because no dispute was raised about the nature of the law laid down in that judgement and therefore, there was no occasion to 'interpret' that judgement. In the circumstances, the Supreme Court has given an oversimplified version of the conclusion reached in Dharam Singh's case, without intending to interpret it in that manner. On the basis of the facts in each case, the Court felt justified to apply the ratio of that judgement to hold that the employee stood confirmed. We are, therefore, unable to hold either that Dharam Singh's judgement has been "interpreted" in any later judgement of the Apex Court or that the interpretation is that automatic confirmation is the law laid down in that judgement.

27. The learned counsel for the applicant also referred to the judgement of the Orissa High Court in Bhabani Prasad Dash vs. Arbitrator-cum-Director Textiles & Others (LLR-1994, 606) for the same purpose. We notice that the counsel for the applicant cited Dharam Singh's case to contend that there was implied confirmation. Without any discussion, this view was accepted by the Court. Therefore, there is no interpretation in this judgement also.

28. Shamsheer's case was referred to. It is being discussed later. The learned counsel for the applicant did not furnish a copy of the judgement in 1988(1) LLJ 379 SC. Hence we have not considered that decision.

29. To complete the discussion we take up the authorities cited by the respondents.

30. The learned counsel for the respondents relies on the decision of the Supreme Court in Shamsheer Singh vs. State of Punjab & others, 1974(2) SLR 701 decided by a Bench of seven Honourable Judges. We have seen that judgement. It is distinguishable both on facts and law from Dharam Singh's case. In that case, before the completion of the three years of probation the High Court found prima facie, that the work and conduct of the petitioner was not satisfactory. Therefore, notice was given to him on 4.10.68 to show cause why his service should not be terminated. It was also

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noticed that Rule 9 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952 provided that, where it was proposed to terminate the employment of a probationer for any specific fault or on account of unsatisfactory record or unfavourable reports implying unsuitability for service, the probationer shall be apprised of the grounds for such proposal and given an opportunity to show cause before orders are passed. It was held that by the issue of a notice to show cause, the period of probation got extended till the enquiry under Rule 9 came to an end. Further, rule 7 of the Punjab Civil Services Judicial Bench Rules, 1951 states that every subordinate Judge shall be appointed on probation for two years which may be extended such that the total period does not exceed three years. There is an explanation to Rule 7 (1) that the period of probation shall be deemed to have been extended if a subordinate Judge is not confirmed on the expiry of his probation period. Interpreting these two rules, the Court held in para 62 of the judgement as follows:

"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 October 4, 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 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 his 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 Dharam Singh's (21) case (supra). This

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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 (21) (supra) and that a probationer is not, in fact, confirmed till an order of confirmation is made".

Therefore, it is clear that the ratio of that judgement will be of no help to the respondents in the present case.

31. That is also true of the other decision relied upon by the learned counsel for the respondents viz. the Municipal Corporation Raipur Vs. Ashok Kumar Mishra 1991 (3) SCC 325. The Municipal Corporation had made applicable to the officers of the Corporation the Fundamental Rules, Civil Services Regulations, Govt. Servants Conduct Rules and the General Book Circular of the Government of Madhya Pradesh, as amended from time to time. Rule-8 of the Madhya Pradesh Government General Conditions of Service Rules, 1961 was, therefore, found to be applicable. That rule, to the extent relevant, is reproduced below:

"8. Probation:- (1) A person appointed to a service or post by direct recruitment shall ordinarily be placed on probation for such period as may be prescribed.

(2) The appointing authority may, for sufficient reasons, extend the period of probation by a further period not exceeding one year.

Note: - A probationer whose period of probation is not extended under this sub-rule, but who has neither been confirmed nor discharged from service at the end of the period of probation shall be deemed to have been continued in service, subject to the condition of his service being terminable on the expiry of a notice of one calendar month given in writing by either side.

(3) A probationer shall undergo such training and pass such departmental examinations during the period of his probation as may be prescribed.

(4) and (5) are not relevant, hence omitted.

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(6) On the successful completion of probation and the passing of the prescribed departmental examinations the probationer shall be confirmed in the services or post to which he has been appointed."

32, In that case the respondent was put on probation for two years from 22.9.66 which expired on 21.9.68. On 9.12.68 he was given one month's notice terminating his services from January 9, 1969. After briefly surveying the earlier decisions of the Supreme Court in the cases of Dharam Singh, Om Prakash Maurya, M.K. Aggarwal and State of Gujarat vs. Athilesh C. Bhargava (AIR 1987 SC 2135) the Court allowed the appeal of the Municipal Corporation. The relevant observations from para-6 are as follows:

"6. Exercise of the power to extend the probation is hedged with the existence of the rule in that regard followed by positive act of either confirmation of the probation or discharge from service or reversion to the substantive post within a reasonable time after the expiry of the period of probation. If the rules do not empower the appointing authority to extend the probation beyond the prescribed period, or where the rules are absent about confirmation or passing of the prescribed test for confirmation of probation, then inaction for a very long time may lead to an indication of the satisfactory completion of probation. But in this case, Rule 8 expressly postulates otherwise. The period of probation is subject to extension by order in writing for another period of one year. Passing the prescribed examinations and successful completion of probation and to make an order of confirmation are condition precedent. Mere expiry of the initial period of probation does not automatically have the effect of deemed confirmation and the status of a deemed confirmation of the probation. An express order in that regard only confers the status of an approved probationer. We are of the view that note to sub-rule (2) read with sub-rule (6) of Rule 8 manifests the legislative intent that confirmation of the probation of the respondent would be made only on successful completion of the probation and the passing of the prescribed examinations".

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33. In our view, the judgement interprets the decision in Dharam Singh's case because of the discussion on that issue, even though it is quite different from all other cases, because of the special provision in Rule 8 extracted in para 31. This is evident from the general observations which have been emphasized by us. They are quite significant. It is held that "inaction for a long time" may lead to an indication of the satisfactory completion of probation and, therefore, of fitness for confirmation. This will be the position in three circumstances viz. i) where rules do not permit extension of probation beyond the prescribed maximum period; ii) where there are no rules relating to confirmation and iii) where passing of test is not a pre-requisite for confirmation. In the instant case, there was no inaction "for a long time". The respondents took the decision to terminate the services in six months. Secondly, there is a provision for confirmation in Rule 144. There, accordingly to the only judgement, which appears to interpret the judgement in Dharam Singh's case, confirmation cannot be held to be automatic.

34. In all other cases, this issue was not debated before the Supreme Court. Hence, there was no interpretation. Hence, Dharam Singh's case itself has to be interpreted to get the ratio of that decision. This was done earlier in Nandita Bakshi's case and we have interpreted it again independently and given our conclusions in para 23. We do not find any need to change them after considering the judgements cited by the learned counsel for the applicant.

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35. That leads us to the next question as to what is the applicant's status after 18.10.93 when the extended period of probation expired. Admittedly, he has not been confirmed by a positive order required under Rule 144. He also ceased to be a probationer in terms of the judgement in Dharam Singh's case. In terms of that judgement, he cannot be presumed to have been automatically confirmed as held by us. Therefore, impliedly, his status can be only that of a temporary Government employee unless a different inference can be drawn from the circumstances of the case, i.e. long inaction, after completion of probation. This implication is made explicit in the note to Rule 8 of the Madhya Pradesh Govt. Servants General Conditions of Service Rules, 1974 (extracted in para 31) which was considered by the Supreme Court in the case of Municipal Corporation Raipur Vs. Ashok Kumar Mishra (1991(3)SCC 325). In our view, even if such a provision does not exist in the service rules, such an inference too can be drawn from the surrounding circumstances. That is not barred by the judgement in Dharam Singh's case. Even then, the basic question would still remain, as to what order should be presumed to have been passed in terms of Dharam Singh's case. If, on examination it is held that an order of confirmation is presumed to have been passed on the expiry of the extended period of confirmation, he cannot be treated as a temporary employee and the impugned order would be illegal and liable to be quashed.

36. Therefore, we should now consider what inference we can draw from the surrounding circumstances and what order can be presumed to have been passed because he was allowed to continue beyond 18.10.93. We have to see whether there was any inaction for a long time or any overt act of omission or commission by the respondents to presume confirmation. To our

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mind, there is one important circumstance which should clinch the issue. In terms of Rule 145 (reproduced in para 8 supra), the order dated 10.11.1993 (page 18) extending probation by one year upto 18.10.1993, directs that no increment beyond the third stage of his scale of pay can be granted. It is clear that the applicant must have been paid as follows in terms of this rule:

- 1st year of probation - 19.10.89 to 18.10.90 - Lowest stage in pay scale (minimum of pay scale)
- 2nd year of probation - 19.10.90 to 18.10.91 - Second stage of pay scale (i.e. minimum + one increment)
- 3rd year of probation - 19.10.91 to 18.10.92 - Third stage of pay scale (i.e. minimum + 2 increments)

In the normal course, from 19.10.92, i.e. the commencement of the fourth and last year of probation, he should have drawn his pay at the fourth stage of his pay scale i.e. minimum + 3 increments. This was not granted to him because of the above order dated 10.11.1993. The extended period of probation ended on 18.10.93 and the fifth year of service commenced. He ceased to be a probationer. He continued till 26.5.94 when his service was terminated. The applicant has no case that he has been given an increment on 19.10.92 to draw pay at the fourth stage and a further increment on 19.10.93 to draw pay at the fifth stage of the pay scale. Indeed, if such increments had been given on 19.10.92 or thereafter, the applicant would surely have been brought it to our notice as a strong circumstance to presume confirmation, as was done in Dharam

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Singh's case. In our view, this single circumstance would show that it has to be presumed that he was not confirmed on 19.10.93.

37. There was also no inaction for a long time by the respondents. His case was reviewed at the end of the financial year 1993-94. An adverse remark was communicated. The performance report on his work with the recommendations of the Director (CRF) was also seen. His service was terminated on 26.5.94.

38. For these reasons, we conclude that no order of confirmation can be presumed to have been passed on 19.10.93. The applicant continued in service <sup>but</sup> not as a probationer. It has, therefore, to be presumed that he continued as a temporary govt. servant, by necessary implication. Hence, the respondents were empowered to invoke the powers under Rule 5 of the LGS (Temporary Services) Rules, 1965 to terminate his services.

39. The learned counsel for the applicant has contended that the action taken is a colourable exercise of the power and it is a disguised penalty. We have considered this. The impugned order by itself, does not cast any stigma on the applicant. Therefore, prima facie, it cannot be termed to be an order imposing penalty. In reply to the C.A., the respondents have stated the reasons why such action was taken. We have referred to them in para 6 (supra). The learned counsel for the applicant states that as the leave of the applicant has been sanctioned, his being on leave cannot be held against him. <sup>has been sanctioned</sup> Merely because the leave/ it does

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not mean that the respondents cannot conclude that he is not fit for job requiremnts or for retention in service. It is seen that he has been frequently on leave, though sanctioned and finally, he has been on unauthorised leave from 1.2.94. These are good enough grounds for the authorities to be satisfied that he was not fit for retention in service. We, therefore, cannot either conclude that there were no reasons to justify termination or that it was by way of penalty.

39. For the aforesaid reasons, we do not find any merit in the OA. It is accordingly dismissed. No costs.

A Vedavalli  
2/6/95  
(Dr. A. Vedavalli)  
Member (J)

N.V. Krishnan  
2/6/95  
(N.V. Krishnan)  
Vice Chairman(A)

'SRD'