

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on: August 26, 2015

% *Judgment Delivered on: August 31, 2015*

+ **LPA 1966-69/2006**

P.S. DABAS AND THREE ORS. Appellant
Represented by: Mr. Sanjiv Joshi, Advocate.

versus

LT. GOVERNOR AND ORS. Respondent
Represented by: None.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. The Appellant Pratap Singh Dabas, Chet Ram Yadav, Jai Prakash Shokeen (since deceased through LRs) and Har Mohan Singh filed a writ petition with three others being W.P.(C) No.1510/1985 inter-alia seeking quashing of the order dated May 31, 1985 and declaring that the services of the appellants and three others were not liable to be terminated and they were entitled to continue in service till the age of superannuation with all consequential benefits.

2. In the writ petition, it was pleaded that the appellants here were holders of Diploma in Junior Basic Course in Cooperation from Delhi State Cooperative Training Centre, Nangloi (in short the Centre). Their names being sponsored by the Centre and having requisite qualifications the appellants were appointed as Managers/Secretaries in various societies in the scale of ₹295-920/-. The selections were made after the interviews were

taken by the Cadre Committee constituted by the Lt.Governor under the Delhi Rural Primary Cooperative Societies Service Rules, 1979 (in short the Rules) on January 22, 1982 and the appellants joined on February 1, 1982. Though the order of appointment did not mention, however as per Rule 10 the petitioners were on probation for a period of two years. On December 05, 1983 the Cadre Committee resolved that the services of the appellants may not be required after December 31, 1983 on the ground that the society was not “viable”. However in January 1984 when the two years probation period came to an end no termination order was issued. Further no adverse remarks or memos were issued against the appellants. On July 19, 1984 the respondent issued an order that the services of the appellant were no longer required after August 31, 1984 as the Primary Agricultural Credit societies (in short the PACs) had not become ‘Viable’. However still the respondents on August 31, 1984 extended the period of probation for a further two months i.e. till October 31, 1984 by virtue of the Cadre Committee Resolution No.1 dated August 25, 1984. Efforts were made by the Registrar Cooperative Societies by writing to various departments for absorption of the appellants on the ground that the order of termination of appellants was not due to their faults but on the ground of internal problems of the society. In the meantime a circular was also issued wherein the Chairman NABARD explained that PACs were not being closed and efforts will be made to get the Secretary/Managers appointed in other departments. Further NABARD decided to ascertain the reasons of non-viability of the PACs. Despite efforts made by NABARD, on May 31, 1985 the services of the appellants were terminated with effect from June 30, 1985.

3. Challenging the order dated May 31, 1985 the appellants with three

others filed a writ petition being W.P.(C) No.1510/1985 as noted above wherein the operation of the order dated May 31, 1985 was stayed till the next date of hearing which order continued till the writ petition was dismissed vide the impugned order dated June 01, 2006.

4. The learned Single Judge vide the impugned order held that the appellants were never confirmed in the service and continued functioning as probationers and thus their services could be terminated for valid reasons. As per the Rules in 1979 the period of probation was two years further extendable which could not exceed twice the period of probation and the order of termination was issued on May 31, 1985 i.e. before expiry of the maximum four years period. There was nothing in the Rules to show that the appellants were deemed to be confirmed. The challenge of the appellants to discontinue their services on the ground of economic viability of the societies was held to be justified and as regards the action being arbitrary and malafide the learned Single Judge noted that there were no pleadings and documents to justify a conclusion of mala-fide against the respondents. While concluding the impugned order the learned Single Judge made the following observations:

“29. The Court had stayed the impugned order but the interim order was issued much after the termination itself became effective, namely, on 31.5.1985. It is no doubt true that no act of Court should prejudice any one. In that sense if the petitioners have indeed been working with the Rural Primary Co-operative Societies, and their services have been found satisfactory, nothing said in this judgment should disturb that position. However, this cannot be construed as clothing the petitioners with the right to claim continuity of services or assert any right against the respondents on account of the impugned order, which is otherwise legal and valid. The

question as to whether the Primary Co-operatives Banks are de-funct or are not functioning is not a subject matter of these proceedings. If the petitioners indeed have any grievance about services with such bank for the period after 31.5.1985, it is for them to assert it and claim the relief in appropriate proceedings.

30. In view of the above findings it is held that the impugned order is valid. The writ petition is dismissed granting liberty to the petitioners to assert such rights as are available to them in law for the services claimed to have been rendered by them with the Primary Co-operative Societies against such PACs for the period after 31.5.1985.

Rule discharged. No costs."

5. Before this Court learned counsel for the appellant urges that the appellants having gone through the regular selection process their services could not be terminated by the order dated May 31, 1985 when admittedly there was no fault of the appellants and there is nothing on record to show that the respondents found the appellants unsuitable during the period of probation. On the one hand the Bank was not granting loan as was enjoined upon them under the Statutory Rules of 1979 and for no fault of the appellants they were punished for the non-action of the Banks. Further the appointment of appellants was made under mandatory statutory provisions, and having completed the period of probation, the appellants were deemed to be confirmed.

6. The issues that call for consideration before this Court are whether the services of the appellants were deemed to be confirmed and the consequences thereof and in case it is held that they were not deemed to be confirmed whether without any objection as to the suitability of the

appellants their services could be terminated for the reason that the societies were not viable.

7. As regards the issue of confirmation the appellants joined as Manager/Secretary on February 01, 1982 under the Rules. Rule 10 provides for the probation of the employees and is reproduced as under:

10. Period of probation/trial – (i) every person appointed to the service shall be on probation/trial for a period of two years.

(2) the Cadre Controlling Committee, may, in the case of any person extend the period of probation but the total period of extension of probation/trial shall not have where it is necessary by reasons of departmental or legal proceedings pending against the officer, exceed twice the period specified as probation/ trial period.

(3) A person on probation/ trial shall be liable to be discharged from the grade of the service at any time without assigning any reason, provided that if he holds a lien on any permanent post of the service under the Delhi Administration or lower grade of the service he shall be liable to be reverted to that post/grade.

8. As per Rule 10 though the initial period of probation was for two years, however the same was extendable for a further period of two years. The services of the appellants were terminated by the order dated May 31, 1985 i.e. within a period of four years during the extended period after the initial period of two years. Thus neither had the stage of deemed confirmation reached nor did Rule 10 provide for deemed confirmation on expiry of the period of two years. It is well-settled as laid down in a catena of decisions that even in a case where the officer is allowed to continue beyond the prescribed period of probation he cannot be deemed to be confirmed and there is no bar on the power of termination of the officer after

expiry of the initial or extended period of probation unless the Rules specifically provide that on conclusion of the period the services of the officer would be deemed to be confirmed.

9. In State of Punjab Vs. Dharam Singh (1968) 3 SCR 1 the Constitution Bench held that where on the completion of the specified period of probation an employee is allowed to continue in the post without an order of confirmation, in the absence of anything to the contrary in the original order of appointment or promotion or the service rules, the initial period of probation is deemed to be extended by necessary implication.

10. The Constitution Bench in the decision reported as AIR 1966 SC 1842 State of Uttar Pradesh Vs. Akbar Ali Khan held:

6. *The scheme of the Rules is clear: confirmation in the post which a probationer is holding does not result merely from the expiry of the period of probation, and so long as the order of confirmation is not made, the holder of the post remains a probationer. It has been held by this Court that when a first appointment or promotion is made on probation for a specified period and the employee is allowed to continue in the post, after the expiry of the said period without any specific order of confirmation he continues as a probationer only and acquires no substantive right to hold the post. If the order of appointment itself states that at the end of the period of probation, the appointee will stand confirmed in the absence of any order to the contrary, the appointee will acquire a substantive right to the post even without an order of confirmation. In all other case, in the absence of such an order or in the absence of such a service Rule, an express order of confirmation is necessary to give him such a right. Where after the period of probation an appointee is allowed to continue in the post without an order of confirmation, the only possible view to take is that by implication the period of probation has been extended, and it is not a correct proposition to state that an appointee should be deemed to be confirmed from the mere*

fact that he is allowed to continue after the end of the period of probation. See Chief Conservator of Forests, U.P. National v.D.A. Lyall [CA 259 of 1963 decided on Feb 24, 1965] ; Sukhbans Singh v. State of Punjab [AIR 1962 SC 1711] and Accountant General, Madhya Pradesh, Gwalior v. Beni Prasad Bhatnagar. [CA 548 of 1962, decided on Jan 23, 1964]

11. As regards the issue that the services of the appellants could not be terminated for the reason that there is no finding that they were unsuitable, Rule 10 as noted above provides that a person who is on probation is liable to be discharged from the grade of service at any time without assigning any reason provided that if he holds lien on any post he shall be liable to be reverted to that post. It is trite law that in case of an appointment to a permanent post in a Government service on probation or on officiating basis, the servant so appointed does not acquire any substantive right to the post and consequently cannot complain any more than a private servant employed on probation or on an officiating basis can do, if his service is terminated at any time. Likewise an appointment to a temporary post in a Government service may be substantive or on probation or on an officiating basis. Here also in the absence of any special stipulation or any specific service rule, the servant so appointed acquires no right to the post and his service can be terminated at any time except in one case namely, when the appointment to a temporary post is for a definite period. (*See AIR 1958 sc 36 Parshotam Lal Dhingra Vs. Union of India*). The societies not being viable and thus not being funded, the posts to which the appellants appointed came to an end and thus they can have no lien on the posts. Thus, there is no merit in this contention as well that since there is no finding that the appellants were unsuitable their services could not be terminated. The

respondents cannot be forced to continue with the non-viable projects. Affirming the findings of the learned Single Judge including the observations made in Paras 29 and 30 the appeal is dismissed.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

AUGUST 31, 2015
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