2025:BHC-OS:7969-DB

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1238 OF 2024

Reshu Singh,
Age: 36 years, Occ: Asst. Professor,
Residing at C/o. Abhay Kumar,
A/1-43, Nabard Nagar, Thakur Complex,
Kandivali (E), Mumbai – 400 101 … Petitioner

Versus

1. Union of India,
Through Ministry of Education,
Shastri Bhavan, New Delhi.
2. Vice Chancellor,
Central Sanskrit University,
56-57, Institutional Area,
Janakpuri, New Delhi – 110 058
3. The Chairman,
Managing Committee,
Mumbadevi Adarsh Sanskrit Mahavidyalay,
Kulapati Munshi Marg, Mumbai- 400 007.
4. The Principal,
Mumbadevi Adarsh Sanskrit Mahavidyalay,
Kulapati Munshi Marg, Mumbai- 400 007. … Respondents

Mr.J.P. Cama, Senior Advocate with Mr.Aseem Naphade, Mr.Arsh Misra, Ms. Khushboo Agarwal, Ms.Ruchika and Ms.Mrunmayi for the Petitioner.

Mr. Niranjan Shimpi with Mrs.Shehnaz V. Bharucha for Respondent Nos. 1 and 2 (UOI).

Mr.Vivek Khemka for Respondent Nos. 3 and 4- Management/ Employer.

CORAM : RAVINDRA V. GHUGE AND
ASHWIN D. BHOBE, JJ.

DATE : 6TH MAY, 2025

ORAL JUDGMENT *(Per: Ravindra V. Ghuge,J.)*

1. Rule. Rule made returnable forthwith and heard finally with the consent of the parties.

2. It is often remarked in the Courts, in a given case, that it is like an "open and shut case". This is one case wherein we can say that this case is an open and shut case.

3. अमृतम तू विद्या is the motto of the Employer of the Petitioner, i.e., Bhartiya Vidya Bhavan. On its letterhead, it is mentioned as "founded with the blessings of Mahatma Gandhi".

There is no debate that Mohandas Karamchand Gandhi is the father of the nation, 'Mahatma Gandhi'. If this college is to function, inspired by the teachings of the 'Mahatma', we would expect every employee to be treated fairly and there ought not to be any exploitation.

4. The learned Senior Advocate for the Petitioner has taken us through the sequence of dates and events which can be summarized as

under:

(a) On 18th April, 2018, the Petitioner was issued with the appointment order as a Probationer for a period of 2 years from the date of joining duties and the service conditions were directed to be governed by the Rules framed by the Rashtriya Sanskrit Sansthan, MHRD, Government of India, New Delhi. Her superannuation was supposed to be as per the Rules. This is set out in clause 2 of the appointment order.

(b) The Petitioner joined duties as an Assistant Professor in English in the Bhartiya Vidya Bhavan, Mumbadevi Adarsh Sanskrit Mahavidyalay on 20 June, 2018. On 20th April, 2020, the Petitioner completed her probation of two years. Since she was not issued with an order of confirmation, she addressed an email dated 17th April, 2021 to the Management praying for issuance of an order of confirmation. One more email was addressed on 03rd October, 2021. This was followed by another email dated 23rd October, 2021.

(c) The In-charge Principal of the college addressed a letter dated 27th October, 2021 to the Petitioner calling upon her to submit a hard copy of the representation duly signed by

her and address to the Chairman, Managing Committee, Mumbadevi Adarsh Sanskrit Mahavidyalay for necessary action. A reference to her three emails is set out in the said complaint. In view of the above, the Petitioner issued a letter (hard copy) dated 30th October, 2021 addressed to the Chairman of the Managing Committee, duly signed by her. There is no dispute on the receipt of this letter.

(d) The In-charge Principal, Dr. Ganapati V.Hegade, addressed a communication dated 4th December, 2021 to Professor Ch.L.N.Sharma drawing his attention to the communication dated 30th October, 2021 and praying for guidance/ instructions.

(e) By a communication dated 5th December, 2021 via email, Mr.Ch.L.N.Sharma, Chairman addressed the Principal that "*after studying the report of high level committee, with the approval of CSU, the confirmation letter may be issued*". This was with reference to the Petitioner. Since nothing progressed thereafter, the Petitioner addressed one more letter to Professor Sudesh K. Sharma, Chairman of the Managing

Committee praying for issuance of a confirmation letter. This was followed by one more reminder dated 31st July, 2023. However, nothing progressed thereafter.

5. The learned Senior Advocate for the Petitioner, has drawn our attention to the specific clauses of the appointment order dated 18th April, 2018. He points out that the appointment order or the service conditions do not provide for an extension of the probation period. There is no communication to the Petitioner by the Management that her services are deficient or that she is not suitable for the organization. He then points out the University Grants Commission (UGC) Regulations prescribed by the UGC vide notification dated 18th July, 2018, more particularly clause 11.0 pertaining to the manner in which a probationer can be confirmed in employment. For the sake of clarity, we are reproducing clause 11.1, 11.2 and 11.3, hereunder:

> *"11.0* ***Period of Probation and Confirmation.***
>
> *11.1 The minimum period of probation of a teacher shall be one year, extendable by a maximum period of one more year in case of unsatisfactory performance.*
>
> *11.2 The teacher on probation shall be confirmed at the end of one year, unless extended by another year through a specific order, before expiry of the first year.*

> *11.3 Subject to Clause 11 of this Regulation, it is obligatory on the part of the university/the concerned institution to issue an order of confirmation to the incumbents within 45 days of completion of the probation period after following the due process of verification of satisfactory performance.".*

6. The learned Senior Advocate further submits that the minimum period of probation of a Teacher prescribed by the UGC, is one year and extendable by a maximum period of one more year, in case the performance is unsatisfactory. Per contra, the appointment order of the Petitioner begins with the period of probation being fixed at two years.

7. Be that as it may, after two years, neither the UGC Regulations permit extension of probation, nor does the appointment order issued to the Petitioner. Clause 11.3 casts an obligation on the part of the concerned institution to issue an order of confirmation to the incumbent within 45 days of completion of the probation period after following the due process of verification of satisfactory performance.

8. In the above backdrop, the learned Senior Advocate points out that the Petitioner has now been working as a Probationer for a

period of 6 years and 10 months. On 20th June, 2025, she would be completing 7 years. Shri Cama has placed reliance upon the law laid down by the Hon'ble Supreme Court (Five Judges Bench) in ***State of Punjab Versus Dharam Singh***[1] and refers to Rule 6 (1) to (3), which reads as under :

> *"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.*

He then refers to paragraph Nos. 5, 6 and 8 of the said judgment which read as under :

> *"5. 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*

1 AIR 1968 SC 1210

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 negatived 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.

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 provided the total period of probation including extensions 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 respondents 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 under Rule 6(3). 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.

….

> *8. The initial period of probation of the respondents ended on October 1, 1958. By allowing the respondents to continue in their posts thereafter 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 to Rule 6(3), the probationary period could not extend beyond October 1, 1960. In view of the proviso to Rule 6(3), it is not possible to presume that the competent authority extended the probationary period after October 1, 1960, or that thereafter the respondents continued to hold their posts as probationers".*

9. The learned Advocate Mr. Khemka representing the Management, Respondent Nos. 3 and 4, submits that the Petitioner is an employee of this institution. He also acknowledges that the Chairman of the Managing Committee has communicated to the Principal as long ago as on 5th December, 2021 by his email communication, that the High Level Committee has submitted its report and the Central Sanskrit University (CSU) has granted its approval for issuance of the confirmation letter. He, however, is clueless as to why the confirmation letter was not issued.

10. Mr. Khemka, submits that because the approval from CSU was not received, the Management did not issue the confirmation letter.

11. We do not approve such a contention on behalf of the

Management. This contention runs counter to the communication of the Chairman which categorically records that the High Level Committee report has been studied and the CSU has granted its approval and the confirmation letter can be issued. A submission by the Management against the records can neither be countenanced, nor can be appreciated. In fact, this submission astonishes us.

12. In view of the above, Mr.Shimpi, the learned Advocate for the Respondent- UOI, relies upon the affidavit-in-reply dated 10th July, 2024 filed by Professor R.G.Murli Krishna, In-charge Registrar of the Central Sanskrit University, Delhi and submits that the Petitioner was appointed by the Management and it is for the Management to issue the confirmation letter.

13. Considering the above, we are intrigued that the Petitioner, who is a lady teacher, has been made to work as a Probationer for 6 years and 10 months. This also shocks our judicial conscience. A teacher cannot be treated in this way. The manner in which the Petitioner has been treated amounts to exploitation, to say the least.

14. In view of the above, **this Writ Petition is allowed in terms**

of prayer clauses (a) and (b), which read as under :

> *"a. That tis Hon'ble Court be pleased to issue Writ of Mandamus or writ in the nature of Mandamus or any other appropriate writ, order or direction thereby directing the Respondent no. 2 to 4 to issue confirmation orders in respect of the Petitioner with effect from 20.06.2020.*
>
> *b. That this Hon'ble be pleased to issue the writ of mandamus or writ in the nature of mandamus, or any other appropriate writ, order or direction thereby directing the Respondents to provide the Petitioner all the consequential benefits of confirmation including but not limited to promotion and Non-compoundable advance increments and other benefits within such time as this Hon'ble Court deems fit".*

15. Since the Petitioner was a Ph.D. on the date she joined employment, she would be entitled to five increments and normal scale promotions, in view of the order of confirmation as directed by this Court, in the light of Rule 19.1 of the University Grants Commission Regulations.

16. Rule is made absolute in the above terms.

(ASHWIN D. BHOBE, J.) (RAVINDRA V. GHUGE, J.)