



सत्यमेव जयते

दीवानी न्यायालय कर्मचारी संघ उत्तर प्रदेश

मुख्यालय : 15 -A अभिषेक पुरम, जानकी पुरम विस्तार, लखनऊ (उ०प्र०) - 226021

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डॉ० नृपेन्द्र सिंह

प्रदेश अध्यक्ष

अध्यक्षीय कार्यालय: जनपद न्यायालय, बदायूँ

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प्रदेश महासचिव

महासचिव कार्यालय: जनपद न्यायालय, श्रावस्ती

☎ 9415572022, 7398372302

वरिष्ठ उपाध्यक्ष

अभिषेक सिंह (इलाहाबाद)

उपाध्यक्ष

हरि शंकर श्रीवास्तव (लखीमपुर)

सैय्यद मोहम्मद ताहा (बाराबंकी)

विवेक दत्त उपाध्याय (फर्रुखाबाद)

उपाध्यक्ष (मनोननीत)

अमरेश चन्द दुबे (मिर्जापुर)

जय शंकर त्रिवेदी (बाराबंकी)

संजीव विश्वकर्मा (गौतमबुद्धनगर)

प्रतिभा तोमर (हापुड़)

विवेक त्रिपाठी (चन्दौली)

धीरेन्द्र सिंह (कानपुर देहात)

अवनीश श्रीवास्तव (इलाहाबाद)

संयुक्त सचिव

अनिल कुमार श्रीवास्तव (अम्बेडकरनगर)

प्रिय रंजन किशोर (बागपत)

प्रेम नारायण (सीतापुर)

संदीप कुमार यादव (सहारनपुर)

संयुक्त सचिव (मनोननीत)

श्रीभागवत शुक्ल (बस्ती)

संगठन सचिव

देवराज सिंह (अलीगढ़)

अवधेश खरे (ललितपुर)

सुधीर कुमार श्रीवास्तव (श्रावस्ती)

सुधीर कुमार विश्नोई (बिजनौर)

संगठन सचिव (मनोनीत)

अजय गर्ग (मुजफ्फरनगर)

कोषाध्यक्ष

नीरज श्रीवास्तव (लखनऊ)

सांस्कृतिक सचिव

रतन कुमार श्रीवास्तव (इलाहाबाद)

पत्रांक : 48/2021

दिनांक : 22-06-2021

सेवा में,

समस्त जनपद न्यायाधीश

उत्तर प्रदेश।

विषय : परीवीक्षा अवधि पूर्ण कर चुके न्यायिक कर्मचारियों का स्थायीकरण किये जाने के संदर्भ में।

महोदय,

उपरोक्त विषय में संघ श्रीमान् जी को अवगत कराना चाहता है कि :-

संघ को प्राप्त सूचना के अनुसार कई जनपद न्यायालयों में कर्मचारियों की परीवीक्षा अवधि समाप्त होने के बाद उनके स्थायीकरण किये जाने के सम्बन्ध में कोई भी आदेश पारित नहीं किया जा रहा है। माननीय उच्च न्यायालय के पत्र संख्या: 3933 Dated 21-03-2014 (पत्र के साथ संलग्न है) में परीवीक्षा अवधि के बाद स्थायीकरण के सम्बन्ध में स्पष्ट निर्देश है एवं माननीय न्यायालय द्वारा रिट याचिका संख्या 2975 of 2007, 3049 of 2007 एवं 3050 of 2007 (पत्र के साथ संलग्न है) में आदेश पारित किया गया है कि “All the District Judges of State are directed to confirm the unconfirmed employees who have completed the period of probation and are eligible for confirmation under old Rules within three months. If any inaction is found on the part of any District Judge, it will be brought to the notice of the Court. Registrar will submit compliance report after three months.”

महोदय कर्मचारियों के लिये स्थायीकरण कई परिप्रेक्ष्य में अत्यन्त महत्वपूर्ण होता है। कर्मचारियों का समय से स्थायीकरण ना किया जाना गम्भीर समस्या के रूप में परिवर्तित होता जा रहा है। इस बाबत कर्मचारियों द्वारा बार-बार प्रार्थना पत्र देने के बावजूद कुछ जनपद न्यायालयों में कर्मचारियों का स्थायीकरण न किया जाना अत्यन्त निराशाजन है।

आपसे अनुरोध है कि उपरोक्त प्रकरण पर गम्भीरता से संज्ञान लेते हुए परीवीक्षा अवधि पूर्ण कर चुके कर्मचारियों का स्थायीकरण अतिशीघ्र करने की कृपा करें।

संघ आपका आभारी रहेगा

आपका

संलग्नक : यथोपरि

(नरेन्द्र विक्रम सिंह)

प्रान्तीय महासचिव

दीवानी न्यायालय कर्मचारी संघ उ०प्र०

From,

Anant Kumar, H.J.S.
Registrar General,
High Court Allahabad

REGISTERED

To,

All the District Judges
Subordinate Courts
Uttar Pradesh

Letter No. 3933 /VIB-104/Admin 'D' Section dated 21/03 /2014

Subject: For necessary compliance of the Judgement dated 23/10/2013, passed in Writ Petition No. 2975 (S/S) of 2007, Sunil Kumar Vs. D.J. Balrampur connected with (W.P. No. 3049 (S/S) 2007, Ajay Gera Vs. D.J. Balrampur, W.P. No. 3050 (S/S) 2007, Manoj Kumar Vs. D.J. Balrampur.

Sr/Mr/Ms,

While enclosing herewith a photo copy of the Judgement/ order dated 23/10/2013, passed by Hon'ble Court in Writ Petition No. 2975 (S/S) of 2007, Sunil Kumar Vs. D.J. Balrampur connected with (W.P. No. 3049 (S/S) 2007, Ajay Gera Vs. D.J. Balrampur, W.P. No. 3050 (S/S) 2007, Manoj Kumar Vs. D.J. Balrampur. I am directed to say that Hon'ble Court has been pleased to issue direction to all the District Judges to confirm the unconfirmed employees of the Subordinate Courts, who have completed the period of probation and are eligible for confirmation under the old Rules within three months.

Hon'ble Court has further directed that if any inaction is found on the part of any District Judge, it will be brought to the notice of the Court and Registrar will submit compliance report after three months.

You are, therefore, requested to comply the aforesaid direction of the Hon'ble Court and report within stipulated period, so the same may be placed before Hon'ble Court, as desired.

Encl-As above

Yours faithfully

Kumar
Registrar General
14.03.2014

A.F.R.
Reserved

Court No. - 23

Case :- SERVICE SINGLE No. - 2975 of 2007

Petitioner :- Sunil Kumar

Respondent :- District & Sessions Judge, Balrampur

Counsel for Petitioner :- Y.S. Lohit

Counsel for Respondent :- C.S.C.

Connected With

Case :- SERVICE SINGLE No. - 3049 of 2007

Petitioner :- Ajay Gera

Respondent :- D.J. Balrampur

Counsel for Petitioner :- Sameer Kalia, Vidhu Bhushan Kalia

Counsel for Respondent :- C.S.C.

AND

Case :- SERVICE SINGLE No. - 3050 of 2007

Petitioner :- Manoj Kumar

Respondent :- D.J. Balrampur

Counsel for Petitioner :- Sameer Kalia, Vidhu Bhushan Kalia

Counsel for Respondent :- C.S.C.

Hon'ble Sudhir Kumar Saxena, J.

1. These three writ petitions involved common questions of facts and law, as such, they are being decided by common judgment. Question involved in the writ petitions is whether order terminating the petitioners' service treating them Temporary Government Servant is valid in law.

2. I have heard Sri Y.S. Lohit and Sri Sameer Kalia, learned counsel for petitioners and learned standing counsel for the respondent.

3. Briefly stated facts are that in pursuance of advertisement dated 18.8.2004 for the post of Stenographer, all the petitioners were appointed as Stenographers in the Judgeship of District Balrampur vide appointment order dated 21.9.2004. All the petitioners joined on 22.9.2004/23.9.2004. Finding these petitioners unsuitable in the job, District Judge, Balrampur has terminated their service vide order dated 3.4.2007. Order dated 3.4.2007 has been impugned in all the writ petitions.

4. On 2nd March, 2006, District Judge, Balrampur constituted a Committee consisting of one Additional District Judge, Chief Judicial Magistrate and one Civil Judge (Junior Division) for taking test of the Stenography and typing of all the petitioners and to submit report within

three days. Petitioners' case further is that on 13.9.2006 Sri Shivanand Mishra, District Judge, Balrampur required petitioners to appear in the Chamber of Joint Registrar on 23.9.2006 along with all the certificates pertaining to the institute which has granted certificate of Shorthand and Typing and they were further directed to appear in a test to be held in the Chamber of Joint Registrar (Inspection), High Court, Allahabad. Thereafter, petitioners were issued a show cause notice requiring the petitioners to show cause as to why their services should not be terminated. Reply was given to this show cause notice. After considering the reply, impugned order of termination has been passed by the District Judge.

5. Contention of learned counsel for the petitioners is that they having been regularly appointed on 21.9.2004, their period of probation had at the most could be extended till 22.3.2005 whereafter they stood confirmed under Rule 18, as such, the District Judge could not terminate their service without following the procedure prescribed in the Punishment and Appeal Rules, 1976. The allegation of mala fide has also been made as the impugned order has been passed on the basis of instructions issued by the High Court. It is further submitted that report of the Joint Registrar (Inspection) dated 25.9.2006 was not supplied to the petitioners, as such, they have been deprived of effective opportunity to defend. It is further alleged that District Judge did not give them time to improve, to assess their suitability for retention. It is further submitted that petitioners having worked for more than two years and half, have taken dictation and typed hundreds of judgments; finding that they are unsuitable, is based on no evidence.

6. The case set up in the counter affidavit is that petitioners were appointed on 21.9.2004. On receiving complaints, District Judge, Balrampur constituted a Committee of three Judicial Officers to submit report for assessing their performance in Shorthand and Typing. It is observed in the report that Stenographers are not versed with Shorthand nor with Typing which is causing inconvenience to Presiding Officers. Committee reported that work and conduct of the petitioners was not satisfactory. The District Judge on 21.3.2006 informed the High Court that petitioner Sunil Kumar does not know Hindi Language Shorthand or Typing. Ajay Gera could not take dictation properly and does not have good knowledge of Shorthand and Typing. Manoj Kumar also does not know Shorthand and even one sentence, he could not type correctly. Thereafter, these three stenographers were directed to improve their work

according to the standard and Manoj Kumar was asked to learn shorthand. Their Presiding Officers were directed to submit report after 15 days. However, said reports did not show any improvement in the performance. District Judge found that appointments being not valid, their continuance would cause inconvenience to the Presiding Officers and they will not be able to give the requisite out turn, as such, High Court was requested to give proper instructions. It appears that Joint Registrar (Inspection) asked the District Judge Balrampur to direct the aforesaid three stenographers to appear in his Chamber for Shorthand and Typing Test on 23.9.2006. Petitioners appeared in the said test before the High Court in the Chamber of Sri D.K. Singh, Joint Registrar, High Court. Report was submitted on 25.9.2006. Report states that these three employees are neither versed with Shorthand nor with Typing. Court was of the view that these employees have been given two opportunities to prove their efficiency, even then they have failed to establish the same and they have not improved themselves. Judicial Officers have to face great difficulty in discharge of their judicial functions which are impaired due to incompetent, inefficient and unfit persons who have got employment on a post whose basic minimum qualification, they do not possess even after a substantial period of employment. Administrative Judge, Balrampur directed the District Judge, Balrampur to take appropriate action within one month in accordance with the rules and judgment of this Court reported in ALJ 2005 Page 1206 (District & Sessions Judge Baghpat Vs. Ratnesh Kumar Srivastava and another). In pursuance of order passed by Administrative Judge, District Judge, Balrampur after issuing show cause notice, passed the impugned order. Petitioners were found incapable and unfit and they were rightly terminated. It is further stated in para-26 of the counter affidavit that petitioners were temporary employees and have been rightly terminated. In the supplementary counter affidavit, it was stated that first time entry was given by Link Officer who did not have chance to see the work of petitioners Sunil Kumar etc..

7. From the pleadings, it is apparent that in a regularly held selection, petitioners were appointed as Stenographer on Temporary Basis on 21.9.2004. They joined in pursuance of appointment order and continued to work for over two years. It is also not disputed that a three members committee had required petitioners to appear in test. This test was taken on 3.3.2006. It is also apparent from the report that these three petitioners were given further time to improve the performance and

Manoj Kumar was directed to learn the shorthand. However, even after 15 days, no improvement was noticed. Report of the Committee mentioned in Para-6 of the counter affidavit, has not been disputed. It is also manifest that petitioners were required to appear in the test in the chamber of Joint Registrar (Inspection), High Court. This committee submitted report on 25.9.2006. According to the Committee, Sunil Kumar's answer-sheet indicates that he has noted down in shorthand but from the typed version, it appears that only a few words from the dictated passage find place therein. The sentences are absolutely incorrect which go to show that since he has typed his own version hence even shorthand dictation was incorrectly written by him and for this reason his shorthand notings also appear to be his own version of the dictated passage and the said version, which is not of the dictated passage, is contained in the typed version. So far as Ajay Gera is concerned, his answer-sheet indicated that he has taken down the dictated passage in shorthand and while typing the same he has committed 180 mistakes (full and half) in a passage of 400 words and his typing speed has been reported to be 44 words per minute as against the requirement of 80 words per minute. For Manoj Kumar, Committee reported that he has taken down in long hand and not in shorthand which indicates that he does not have any knowledge or skill in short hand at all. The typed version does not contain the substance of the passage as dictated and is full of mistakes thereby making the said typed version totally unintelligible.

8. On the basis of the aforesaid report of Committee, it was found by the High Court that these three employees were not capable of taking dictation and typing. These employees have been given two opportunities to prove themselves (one by a Committee constituted by the District Judge and the Second by a Committee constituted by the Registrar General). They have failed to prove their eligibility on both occasions. They have not improved themselves in spite of sufficient time available which they had after the first test. This is a grave situation where the judicial officers have to face great difficulty in discharge of their judicial functions which are impaired due to incompetent, inefficient and unfit persons who have got employment on a post whose basic minimum qualification they do not possess even after a substantial period of employment.

9. In the light of the observations made by the High Court, District Judge issued show cause notice on 20.3.2007 requiring petitioners to

show cause as to why their service should not be terminated as they do not possess the minimum eligibility and are absolutely incompetent and inefficient.

10. In reply to show cause notice, it was submitted that no time to make preparation for the test was given. There is no adverse entry against them. Petitioners have no other source of income and they would be rendered unemployed etc. Considering the explanation, District Judge in the light of report of Committee appointed by District Judge as well as report of Committee appointed by High Court, came to the conclusion that petitioners do not possess minimum qualification and they are ineligible, incompetent and inefficient. Consequently, finding their continuance not at all conducive for the Civil Courts, petitioners' services were terminated in exercise of the powers conferred under U.P. Temporary Government Servant (Termination of Service) Rules, 1975.

11. So far as merits are concerned, it is manifest from the two reports submitted by Committees appointed by District Judge and High Court (Registrar General) respectively that petitioners did not have any knowledge of shorthand and typing. They do not possess the requisite qualification and they are incompetent and inefficient. Stenographer's performance is one of the most important function in the Judgeship. They type the judgments and orders passed in various cases by the Presiding Officer. Any error on his part can bring hazardous results. Wrong typing would unnecessarily waste the time of the Presiding Officer. Stenographers are provided to the Presiding Officers so that in minimum time, maximum justice is given by the Judges. Incompetent or inefficient person would not only retard the pace of the justice but also adversely effect the efficiency of the Presiding Officer. Judicial System cannot afford to have ill-equipped or unequipped stenographers and no compromise on their quality can be permitted. Any person appointed without having knowledge on the subject, moreso, the specialized field of typing/stenography has no right to continue in the service. Retention of such incompetent and inefficient person not only brings bad name to the system but also sends wrong message about the functioning of Courts. In these circumstances, on merits termination of the petitioners cannot be faulted.

Alternative Remedy:-

12. Learned standing counsel raised preliminary objection that against the impugned order, appeal could have been filed under Rule 7

and petitioners having not availed statutory remedy, these petitions are not liable to be entertained. In reply, it was contended that power having been exercised under U.P. Temporary Government Servants (Termination of Service) Rules, 1975 wherein no appeal has been provided, petitions cannot be dismissed on the ground of alternative remedy. It is true that appeal is provided under Rule 7 of The Uttar Pradesh Subordinate Courts Staff (Punishment and Appeals) Rules, 1976 which provides that a person against whom, an order imposing the penalty specified in any of the Clause (a) to (h) of sub-rule 4 (1) have been passed by the District Judge, he may file appeal to the High Court. Since no order imposing penalty under Rule 4(1) has been passed, appeal is not maintainable. However, employee is not remedyless.

13. In Chapter-3 of the High Court Rules, Administrative Judges are appointed for one Sessions Division. Matters for Administrative Judges find mention in Rule 4(B) which is being reproduced below:-

"4.(B) MATTERS FOR [ADMINISTRATIVE] JUDGES

- 1. Review of judicial work of Subordinate Courts, Tribunals, District Consumer Forums and all other Special Courts and control of their working including inspection thereof, to record entries in the character rolls of the officers posted in the division assigned to the [Administrative] Judge.*
- 2. Perusal of returns, calendars, evaluation of inspection reports made by the Presiding Officers in respect of their won offices, audit reports received from those Courts, Tribunals etc., and to make orders thereon.*
- 3. Any adverse remarks or strictures made by an [Administrative] Judge about judicial work, conduct or integrity of any officer under his charge will be communicated to the officer concerned, who may make his representations, if any, within a month and the same shall be placed before the Administrative Committee for consideration and decision.*
- 4. Grant of earned leave to officers posted in the sessions division under the charge of the [Administrative] Judge.*
- 5. Grant of casual leave (including special casual leave) and permission to leave near a quarters to the District and Sessions Judge, Presiding Officers of the Tribunals and Special Courts etc. Howsoever designated.*
- 6. Disposal of appeals against the orders of punishment imposed on and **representations** etc. of the employees of the Subordinate Courts."*

14. Under Article 227 of the Constitution of India, High Court has power of superintendence and control over Subordinate Courts. The power of the High Court under Article 227 of the Constitution of India has come to be considered by Apex Court in the case of *Jasbir Singh Vs. State of Punjab* reported in [(2006) 8 SCC 294]. It was held by Apex

Court that power conferred under Article 226/227 of the Constitution is both **administrative** and judicial and it could be exercised **suo motu** also. Para-10 of the judgment is quoted hereunder:-

*"10. The power of superintendence over all the subordinate courts and tribunals is given to the High Court under Article 227 of the Constitution. So also, under Article 235 of the Constitution, the High Courts exercise control over all the district courts and courts subordinate thereto on all matters relating to posting, promotion and grant of leave to officers belonging to the judicial service of the State. The power of superintendence conferred on the High Court under Article 227 over all the courts and tribunals throughout the territory of the State is both of **administrative** and judicial nature and it could be exercised **suo motu** also. However, such power of superintendence does not imply that the High Courts can influence the subordinate judiciary to pass any order or judgment in a particular manner. The extraordinary power under Article 227 can only be used by the High Courts to ensure that the subordinate courts function within the limits of their authority."*

The Court further mentions in Para-14 that *"the power of superintendence exercised over the subordinate courts and tribunals does not imply that the High Court can intervene in the judicial functions of the lower judiciary."*

15. In the above case, Hon'ble Apex Court was considering the bail orders passed by Inspecting Judge during inspection. Reference was also made to Article 235 of the Constitution of India whereunder High Court exercised the control over subordinate courts and this power includes power of general superintendence over the working of the subordinate courts; disciplinary control over the Presiding Judges of the subordinate courts. In Para-16, Hon'ble Apex Court said that mostly the inspection is to be confined to the administrative functioning of the courts and its officers. If any member of the administrative staff is not doing the work assigned to him or is causing any delay in the process of administration of justice, the Inspecting Judge can give proper direction and see that the courts function smoothly.

16. It is thus evident that Administrative Judge has power to exercise control over the officers of the Sessions Division under his charge. Appeals/revisions are provided in the statute, as such, these powers can be exercised if specifically provided. There are many administrative matters which require the attention and intervention of Administrative Judge. It is trite to say since appeal is not provided under the Rules, Administrative Judge does not have any power to interfere in the

administrative matters of the Sessions Division under his charge. In order to ensure that officers of the subordinate judiciary worked within the bounds of law, power of superintendence and control has been given to the Administrative Judge and is traceable to Articles 227 and 235 of the Constitution of India. If no appeal is maintainable under 1975 Rules, employee can make representation to the Administrative Judge who will be fully competent to examine and pass appropriate order. Clause-6 of Rule 4(B) of the High Court Rules empowers Administrative Judge to dispose of appeal against the order of punishment imposed and representation etc. of the employees of the subordinate courts. Thus, if appeal is provided, appeal will be disposed of, where appeal is not provided, representation of the employees of the subordinate courts will be disposed of by the Administrative Judge under Clause 6 of the Rule 4(B) of Chapter 3 of the High Court Rules. Needless to say 'disposal' means 'consideration on merits'. These representations could be against the order of suspension, termination under U.P. Temporary Government Servants (Termination of Service) Rule, 1975, compulsory retirement under Rule 56 of the U.P. Fundamental Rules, seniority, promotion and other similar matters. Where rules do not provide for any appeal, if employee makes representation against any such order including punishment not provided in Punishment & Appeal Rules, 1976 and other adverse administrative orders, Administrative Judge is fully empowered and competent to examine and dispose of the representation on merits.

17. To hold that Administrative Judge has no power to interfere with the order affecting employees adversely where appeal is not provided, would run contrary to the mandate of Articles 227 & 235 of the Constitution and the powers conferred upon Administrative Judge under Rule 4(B)(6). If Administrative Judge would not be conceded this power of examining the administrative orders of District Judge in the matters of employees, what else control remains with the High Court on administrative side over the functioning of District Judge. Moreover, administrative orders can always be reviewed, modified or rescinded by the Administrative Superior. The High Court (Administrative Judge) will have full power to interfere with the orders passed by District Judge with regard to the employees working in Session Division. This power can be exercised on the representations or suo motu.

18. It is thus manifest that employees of the subordinate courts have statutory remedy of filing representation before the High Court on the administrative side (Administrative Judge) against the orders affecting

them adversely like the order of suspension, compulsory retirement and termination under Rule, 1975 etc. High Court has all the powers on administrative side to take on and remove injustice done to employees of subordinate courts, being patron thereof. Employees cannot go to State Service Tribunal and recourse to writ jurisdiction is not civil remedy, rather it is prerogative of High Court. Moreover, whenever there is injustice, remedy is there and no injustice can be left remedyless especially when High Court is in a controlling position either suo motu or on appeal or representations. The submission of learned counsel for the petitioners that no remedy is available before the Administrative Judge against the order not passed under The Uttar Pradesh Subordinate Courts Staff (Punishment and Appeals) Rules, 1976, is in contrast to Rule 4(B) (6) of Chapter 3 of the High Court Rules as well as Articles 227 and 235 of the Constitution of India and is hereby rejected.

19. Learned counsel further submits that since District Judge has passed order in pursuance of the directions issued by Administrative Judge, no purpose was going to be served by approaching High Court on the administrative side. It is apparent from the record that District Judge has passed the order exercising his powers but under the instructions from Administrative Judge, as such, these writ petitions cannot be dismissed on the ground of alternative remedy.

Confirmation :-

20. Submission of Sri Y.S. Lohit, learned counsel for the petitioner is that petitioners having been appointed in regular selection, their service will be governed by The Subordinate Civil Courts Ministerial Service Rules, 1947 (Rules, in short). Rule 11 prescribes that recruitment shall be based on the result of a competitive examination and on interview by the District Judge at the Headquarter of the Judgeship. Rule 15 provides for appointment and Rule 17 and 18 deal with probation and confirmation which are being reproduced below:-

*" 17. **Probation and confirmation.**-(1) All persons on first appointment to the ministerial establishment except when the appointment is only in temporary or officiating capacity and on probation to higher posts which fall substantively vacant shall be on probation for a period of three months:*

Provided that the District Judge in his discretion extend the period of probation for a further period not exceeding three months.

(2) The Period of probation shall count from the date of taking over charge of the post.

Explanation.- *A member of the ministerial establishment on his first appointment as a stenographer will also be put on probation.*

(3) If it appears to the District Judge at any time during or at the end of period of probation that any such person has not made sufficient use of his opportunities or if he has otherwise failed to give satisfaction, the District Judge may, without notice, revert him to his substantive post, if he holds one, or make any other suitable order.

18. **Confirmation.-** *Subject to the provisions of the preceding rule, a probationer shall be confirmed at the end of the period of probation."*

21. Submission of Sri Y.S. Lohit is that initially the appointment is made for a period of three months on probation and this period can be extended by District Judge for a further period of three months. Submission is that after expiry of six months, petitioners would be deemed to have been confirmed, as such, District Judge was not justified in terminating their service resorting to U.P. Temporary Government Servants (Termination of Service) Rules, 1975. Under Rule 3 of the 1975 Rules, Government servant in temporary service shall be liable to termination at any time by giving one month's notice in writing. Submission of Sri Y.S. Lohit is that since District Judge had not during six months or even thereafter passed any order, he was estopped from passing any order treating petitioners as temporary government servants. His submission is that after expiry of period of probation, petitioners will be deemed to have been confirmed under Rule 18. Submission is that if District Judge found that petitioners were incompetent or inefficient, he could have taken recourse to The Uttar Pradesh Subordinate Courts Staff (Punishment and Appeals) Rules, 1976 and after holding enquiry contemplated under Rule 5, termination order could have passed under Rule 4 thereof. This having been not done, the impugned orders cannot be sustained.

22. Learned standing counsel, however, disputes this position and contends that there has to be an order of confirmation and till that order is passed, petitioners cannot be deemed to be confirmed automatically on the expiry of probation period.

23. Petitioners' contention that petitioners stood automatically confirmed at the expiry of probation period, needs to be examined. It is submitted that the maximum period of probation which District Judge could extend, is three months and could continue only for a maximum period of six months as such retention thereafter would result in automatic confirmation. Rule 18 in this regard is specific. It says that the

probationer shall be confirmed at the end of period of probation.

24. Some decisions have been cited from both sides. In the case of *High Court of M.P. Vs. Satya Narayan Jhavar, (2001) 7 SCC 161 page 173*, the Supreme Court had occasion to consider the matter of confirmation. Rule 24 (1) of the Madhya Pradesh Judicial Servants (Classification Recruitment and Conditions of Service) Rules, 1955 was interpreted by the Apex Court. Relevant part of Rule 24(1) is being reproduced below:-

"24. (1) Every candidate appointed to the cadre shall undergo training for a period of six months before he is appointed on probation for a period of two years, which period may be extended for a further period not exceeding two years. The probationers may, at the end of period of their probation, be confirmed subject to their fitness for confirmation and to having passed, by the higher standard, all such departmental examinations as may be prescribed."

Court considered number of cases of Apex Court. In the case of *State of Punjab Vs. Dharam Singh* reported in *AIR 1968 Supreme Court 1210*, rule prescribed the maximum period of probation. Court came to the conclusion that employee allowed to continue for the post on completion of the maximum period of probation have been confirmed in the post by implication. Similar view has been taken in the cases of *Wasim Beg Vs. State of U.P. [(1998) 3 SCC 321]*, *Om Prakash Maurya Vs. U.P. Coop. Sugar Factories Federation [1986 Supp. SCC 95]*, *M.K. Agarwal Vs. Gurgaon Gramin Bank [1987 Supp. SCC 643]* and *State of Gujarat Vs. Akhilesh C. Bhargav [(1987) 4 SCC 482]*. In the case of *Jai Kishan Vs. Commissioner of Police [1995 Supp. (3) SCC 364]*, similar rule was considered. The relevant rule is being reproduced below:-

" 5. (e)(i) All direct appointments of employees shall be made initially on purely temporary basis. All employees appointed to the Delhi Police shall be on probation for a period of two years:

Provided that the competent authority may extend the period of probation but in no case shall be period of probation extend beyond three years in all.

(ii) The services of an employee appointed on probation are liable to be terminated without assigning any reason.

(iii) After successful completion of period of probation, the employee shall be confirmed in the Delhi Police by the competent authority, subject to the availability of permanent post."

It was held by the Court that after successful period of probation being completed, there will not be any deemed confirmation. Court came

to the conclusion that provision prescribing, maximum period was directory in nature. Apex Court after considering above judgments came to the conclusion that there would not be any deemed confirmation as confirmation was dependent upon his fitness for confirmation and to his having passed the departmental examination as prescribed.

25. In the case of *Mohd. Salman Vs. Committee of Management [(2011) 12 SCC 308]*, Rule 26 was interpreted and it was found that deeming provision would not apply. Although, period of probation shall be one year extendable by one more year. It was held that an order of confirmation was necessary.

26. In the case of *Lawrence School Vs. Jayanthi Raghu [(2012) 4 SCC 793]* in para 38, Court came to the conclusion that the wider interpretation cannot be placed on the Rule to infer that the probationer gets the status of a deemed confirmed employee after expiry of three years of probationary period.

27. In the case of *Pavanendra Narayan Verma Vs. Sanjay Gandhi PGI of Medical Sciences and another [(2002) 1 SCC 520]*, in para-32 it is held that an employer is entitled to satisfy itself as to the competence of a probationer to be confirmed in service. Para-32 is being reproduced below:-

"32. We are also not prepared to hold that the enquiry held prior to the order of termination turned this otherwise innocuous order into one of punishment. An employer is entitled to satisfy itself as to the competence of a probationer to be confirmed in service and for this purpose satisfy itself fairly as to the truth of any allegation that may have been made about the employee. A charge-sheet merely details the allegations so that the employee may deal with them effectively. The enquiry report in this case found nothing more against the appellant than an inability to meet the requirements for the post. None of the three factors catalogued above for holding that the termination was in substance punitive exists here."

From the above discussion, it is apparent that status of the employee will be determined by the Rules.

28. Rule 18 says that subject to the provision of the preceding rule, probationer shall be confirmed at the end of the probation. It is apparent that there has to be an order of confirmation which will be passed after the period of probation, rule does not talk of any automatic or deemed confirmation. It is further manifest that confirmation will be made

subject to the provision of the preceding rule. Preceding Rule 17(3) enables District Judge to extend the period of probation and it further enables the District Judge at any time during or at the end of probation to revert to the substantive post or make any other suitable order if employee has not made sufficient use of the opportunities or he has, otherwise, failed to give satisfaction. Therefore, what is required is the **satisfaction** of District Judge which is *sin qua non* for an order of confirmation. Therefore, in view of the law laid down by the Apex Court, it can be safely concluded that after the end of the probation period, if District Judge is satisfied, he will pass the order of confirmation at the end of probation period and the employee will not be deemed to have been confirmed automatically under Rule 18.

29. In view of this discussion, it is apparent that petitioners having not been confirmed, their services have been rightly terminated in exercise of the power conferred by The Uttar Pradesh Temporary Government Servants (Termination of Service) Rules, 1975 and the contention of the petitioners' counsel that an enquiry should be held under Rule 5 of The Uttar Pradesh Subordinate Courts Staff (Punishment and Appeals) Rules, 1976, is rejected. Appointing Authority having found petitioners incompetent and inefficient, consequently unsuitable for the job, terminated their service, as such, there is no illegality in the order of termination.

30. Moreover, petitioners claimed appointment as Stenographers in the Judgeship who are supposed to take dictation and type the orders/judgments dictated by Judges of District Judiciary. A writ cannot be issued to retain incompetent and inefficient staff. As such, even if the petitioners had made out any case, this Court would refuse to exercise jurisdiction under Article 226 of the Constitution of India.

31. Before parting with the case, it is appropriate to point out that under The Subordinate Civil Courts Ministerial Establishment Rules, 1947, probation period is three months extendable for further three months. Under Rule 14 of the Uttar Pradesh Subordinate Civil Courts Inferior Establishment Rules, 1955, period of probation is one year, extendable to further one year. Thus, employees who have completed maximum probation period of six months and two years respectively in the above rules, should have been considered for confirmation. Experience, however, shows that for many years, cases of the employee covered by Rules are not taken up for confirmation which leads to

uncertainly, resentment and litigation. Courts of law should set an example for other departments. It is unfortunate that those who are responsible for enforcement of law, do not adhere to the spirit of law. It is true that no time for passing order of confirmation has been provided but that does not mean that District Judge should not exercise statutory duty conferred under Rules 17 and 18 of the above Rules for long or indefinite period. **When no period is prescribed, three months will be reasonable period for discharging a statutory duty.** In the case of *Krishena Kumar Vs. S.P. Saxena [(1973) 3 SCC 775, at page 779]*, Apex Court directed the payment of salary within reasonable period and if possible, not exceeding three months. In the case of *State of U.P. Vs. Roadways Ministerial Staff Assn. [(1996) 9 SCC 479, at page 481]*, three months' period given under the Rules was found to be appropriate and reasonable cut-off period. In the case of *Syed Khadim Vs. State of Bihar [(2006) 9 SCC 195, at page 197]*, in para-6, Apex Court directed the respondent authorities to consider the application of the appellant and give him appropriate appointment within a reasonable time at least within a period of three months. In the case of *Dev Dutt Vs. Union of India [(2008) 8 SCC 725, at page 732]*, Apex Court directed that representation must be decided fairly and within a reasonable period. In the case of *Ashok Kumar Sahu Vs. Union of India [(2006) 6 SCC 704, at page 715]*, Hon'ble Apex Court observed as under:-

"32. We may observe that an appropriate order should be passed within a reasonable period. Normally, three months' notice is required to be given as the said period is considered to be reasonable and it is expected that a decision would be taken within the said period. But the rule is not an inflexible one. It would depend upon the facts and circumstances of each case." (emphasis supplied)

32. Under Rules 18 and 14 (supra) a duty is cast upon the appointing authority to pass an order of confirmation, this duty cannot be conveniently ignored for long in absence of any specific period, District Judge should pass the appropriate order regarding confirmation within three months from the expiry of the probation period. Inaction on the part of District Judges in discharging their statutory function amounts to dereliction of duty and has to be viewed seriously by the Court. All the District Judges should pass the confirmation order within three months from the expiry of the probation period.

33. For regulating the service condition of the employees of district judiciary, The Uttar Pradesh State District Court Service Rules, 2013

have been made by the Governor in exercise of the power conferred by Article 309 of the Constitution of India. Rule 19 deals with probation and confirmation which is being reproduced below:-

"19. Probation-

- (1) All appointments to the Service by direct recruitment shall be on probation for the period of two years.*
- (2) All appointments by promotion shall be on probation basis for a period of two years.*
- (3) The period of probation for reasons to be recorded in writing, may be extended by the appointing authority by such period not exceeding the period of probation specified in sub-rule (1) or (2).*
- (4) At the end of period of probation or the extended period of probation the appointing authority shall consider the suitability of the person so appointed or promoted to hold the post to which he was appointed or promoted, and*
 - (I) if it is decided that he is suitable to hold the post to which he was appointed or promoted and has passed the examinations or tests, if any, required to be passed during the period of probation, it shall, as soon as possible, issue an order declaring him to have satisfactorily completed the period of probation and such an order shall have effect from the date of expiry of the period of probation, including extended period, if any, as the case may be.*
 - (II) if the appointing authority considers that the person is not suitable to hold the post to which he was appointed or promoted, as the case may be, he shall by order-*
 - (a) If he is a promotee, revert him to the post which he held prior to his promotion.*
 - (b) If he is probationer, discharge him from service.*
- (5) A person shall not be considered to have satisfactorily completed the period of probation unless a specific order to that effect is passed. Any delay in passing such an order shall not entitle the person to be deemed to have satisfactorily completed the period of probation."*

34. From the above Rule, it is apparent that any delay in passing order shall not result in deemed confirmation. However, situation of the non-confirmation for years, has been taken note of, in Rule 19(4) which enjoins a duty upon appointing authority to **issue an order declaring employee to have satisfactorily completed the period of probation, as soon as possible**. This phrase shows that Court and Rule Makers intended that delay at this stage, has to be avoided. Moreover, noticing the delay on account of non-functioning of the appointing authority, a further provision has been made that order of successful completion of probation will take effect from the **date of the expiry of period of probation**. Phrase "as soon as possible" and "date of the expiry of period of probation" clearly manifests the intention of Rule Makers.

35. District Judges will notice above change in the Rules of Probation and respond positively. All the District Judges of State are directed to confirm the unconfirmed employees who have completed the period of probation and are eligible for confirmation under old Rules within three months. If any inaction is found on the part of any District Judge, it will be brought to the notice of the Court. Registrar will submit compliance report after three months.

36. As a result of above discussion, all the petitions are **dismissed**.

Order Date :-23.10.2013.

Anil