2019 INSC 937

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No. 5926 of 2019
(@SLP (C) No. 4016 of 2019)

Durgabai Deshmukh Memorial Sr. Sec. School & Anr. **…Appellants**

Versus

J.A.J Vasu Sena & Anr. **…Respondents**

J U D G M E N T

Dr Dhananjaya Y Chandrachud, J

1 The present appeal arises from a judgment of a Division Bench of the Delhi High Court dated 7 May 2018 setting aside the judgment of a learned Single Judge in a Letters Patent Appeal.[1] The Division Bench accepted the deemed confirmation of the services of the first respondent who was a probationer in the school of the appellants.

[1] LPA No. 86/2018

2 Allowing the appeal filed by the first respondent, the Division Bench held that under Rule 105(1) read with the first proviso of the Delhi School Education Rules 1973,[2] the maximum period of probation permissible is two years. The High Court held that there is a deemed confirmation of the services of a probationer who is continued in service beyond the maximum period of probation, even without the issuance of an order of confirmation by the appointing authority. Aggrieved, the appellant school and the Andhra Education Society[3] are in appeal before this Court.

3 The appellant is a Delhi administration aided school and a linguistic minority institution. Pursuant to an advertisement for the filling of various posts in the appellant school, the first respondent was appointed on probation to the post of PGT (English General) on 18 June 2008 for a duration of one year. The period of probation was extended belatedly on 11 February, 2010 for another year on the ground that the services of the first respondent were unsatisfactory. On 30 November 2011, the period of probation was extended by another year. On 22 May 2013, the Managing Committee of the society which conducts the school discharged the first respondent from service with effect from 30 June 2013.

4 The first respondent filed an appeal[4] before the Delhi School Tribunal[5] challenging her discharge with a prayer for reinstatement with consequential benefits and back wages. By its order dated 23 July 2015, the Tribunal allowed the appeal and set aside the order of discharge with a direction to the appellants

[2] 1973 Rules
[3] Education society
[4] Appeal No. 54/2013
[5] Tribunal

to reinstate the first respondent with consequential benefits. Assailing the order of the Tribunal, the appellants filed a Writ Petition[6] before the Delhi High Court.

5 The learned Single Judge of the Delhi High Court allowed the petition and held that no maximum period of probation was spelt out in the letter of appointment or the 1973 Rules. Any confirmation of service is subject to the work and conduct of the probationer being satisfactory. Hence, the continuation of the services of the first respondent beyond the period of probation was held not to result in a deemed confirmation of service without the issuance of an order of confirmation by the appointing authority.

6 The Division Bench of the High Court allowed the Letters Patent Appeal filed by the first respondent and restored the order of the Tribunal. The High Court took the view that:

(i) Rule 105 of the 1973 Rules fixes a maximum probationary period of two years and the continuation of service beyond the maximum period would amount to a deemed confirmation of service by implication, even without the issuance of an order of confirmation; and

(ii) The appointment letter dated 18 June 2008 stipulated a probation period of one year. The conduct of the management in allowing the first respondent to continue in service for nearly five years evidenced the satisfactory conduct of the first respondent, and resulted in a deemed confirmation of service.

[6] WP (C) No. 10310/2015

Relying on the judgment of a Constitution Bench of this Court in **State of Punjab** v **Dharam Singh**[7] ("**Dharam Singh**"), the High Court held thus:

> "We are, therefore, of the view that where the letter of appointment, read in conjunction with the above Rules, fixes a maximum period of two years of probation and where the appellant was permitted to continue in the same post, beyond the maximum period, the same would amount to a deemed confirmation by implication, without the requirement of an express order of confirmation on behalf of the Society"

The High Court concluded that the case of the first respondent fell in the second category of cases enumerated by a three judge Bench of this Court in **High Court of MP** v **Satya Narayan Jhavar**[8] ("**Satya Narayan Jhavar**"), to which we shall advert in the course of the judgment.

7 Assailing the judgment of the High Court, Mr Yashobant Das, learned Senior Counsel appearing on behalf of the appellants urged that:

(i) Rule 105 of the 1973 Rules does not envisage a deemed confirmation of the services of a probationer. Sub-rule (2) of Rule 105 provides that if the services of the probationer are satisfactory, a confirmation will be issued upon the expiry of the period of probation or the extended period of probation;

(ii) Rule 105(1) does not stipulate a maximum period of probation. The continuation of the services of the first respondent on probation without an order of confirmation implies an extended period of probation. Under Rule 105(1), the termination of service without notice during the period of probation is legally permissible;

[7] AIR 1968 SC 1210
[8] (2001) 7 SCC 161

(iii) The proviso to Rule 105(1) merely exempts a minority institution from seeking the prior approval of the Director[9] for extending the period of probation by "another year". This cannot be read as limiting the permissible extension of the probationary period to only one year over and above the mandatory period of probation. Any extension of the period of probation beyond the mandatory year of probation shall require the prior approval of the Director; and

(iv) The High Court failed to consider a binding precedent of a Division Bench of the Delhi High Court in **Dy. Director of Education** v **Veena Sharma**[10] holding that there is no fixed period of probation under Rule 105 of the 1973 Rules and that no question of a deemed confirmation of service arises.

8 On the other hand, Mr D Rama Krishna, learned counsel appearing on behalf of the first respondent urged, in support of the impugned judgment of the High Court, that:

(i) The proviso to Rule 105, in so far as a minority institution is concerned, stipulates that the approval of the Director shall not be required where the probation period has been extended "by another year". Rule 105 of the 1973 Rules fixes a maximum probationary period of two years and the continuation of service beyond the maximum period would amount to a deemed confirmation of service by implication;

(ii) There is no requirement for the issuance of an order of confirmation under Rule 105 of the 1973 Rules. There is a deemed confirmation of

[9] As defined under the Delhi Education Act 1973
[10] (2010) 175 DLT 311 (DB)

the services of a probationer upon the expiry of the maximum prescribed period for probation. The absence of a stipulation requiring an order of confirmation in the Rules as well as the appointment letter leads to the inevitable conclusion that there was a deemed confirmation of service when the first respondent was continued in service beyond two years, even without an order of confirmation. Reliance was placed in this regard on the judgment of this Court in **Dharam Singh**; and

(iii) The appointment letter of the first respondent dated 18 June 2008 stipulated a probationary period of one year. There was neither a stipulation for the extension in the probationary period nor a requirement of the issuance of an order of confirmation.

9 The rival submissions now fall for our consideration.

10 At the outset, it must be noted that Rule 105 of the 1973 Rules as submitted before this Court and the High Court by the contesting parties reads thus:

> "105. Probation (1) Every employee shall, on initial appointment, be on probation for a period of one year which may be extended by the appointing authority [with the prior approval of the Director] and the services of an employee may be terminated without notice during the period of probation if the work and conduct of the employee, during the said period, is not, in the opinion of the appointing authority, satisfactory:
>
> [Provided that the provisions of this sub-rule relating to the prior approval of the Director in regard to the extension of the period of probation by another year shall not apply in the case of an employee of a minority school:
> …]

> (2) If the work and conduct of an employee during the period of probation is found to be satisfactory, he shall be on the expiry of the period of probation or the extended period of probation, as the case may be confirmed with effect from the date of expiry of the said period."

11 It is on the basis of the above provision that the High Court, in the impugned judgment and in judgments prior to the present case, has concluded that there is a limitation on the extension of the probationary period stipulated in Rule 105(1) of the 1973 Rules. On the record before this Court, the words "by another year" appear only in the first proviso to Rule 105 and not in the principal provision. The High Court, in the present case and in cases prior to the present one, has failed to note the amending history of Rule 105 of the 1973 Rules and has proceeded to analyse an incorrect provision of law. It is pertinent here to advert to the legislative and drafting history of the provision.

12 In exercise of the powers conferred by Section 28 of the Delhi School Education Act 1973, the Administrator, with the previous approval of the Central Government, enacted the 1973 Rules. The 1973 Rules were published in the Delhi Gazette[11] on 31 December 1973 on which date, they also came into force. Rule 105, as originally enacted, read thus:

> "105. Probation (1) Every employee shall, on initial appointment, be on probation for a period of one year which may be extended by the appointing authority **by another year** and the services of an employee may be terminated without notice during the period of probation if the work, and conduct of the employee, during the said period, is not, in the opinion of the appointing authority, satisfactory:

[11] Delhi Gazette – PT 2 – Jan – Dec 1973 at p. 685

> Provided that no termination from the service of an employee on probation shall be made by a school, other than a minority school, except with the previous approval of the Director.
>
> (2) If the work and conduct of an employee during the period of probation is found to be satisfactory, he shall be on the expiry of the period of probation or the extended period of probation as the case may be, confirmed with effect from the date of expiry of the said period.
>
> (3) Nothing in this rule shall apply to an employee who has been appointed to fill a temporary vacancy or any vacancy for a limited period."
>
> (Emphasis supplied)

13 Rule 105 of the 1973 Rules, as originally enacted, stipulated that an employee shall be appointed on initial probation for a period of one year which may be extended by the appointing authority "by another year". No separate provision was stipulated for minority institutions. Two amendments were subsequently incorporated to the 1973 Rules. On 30 January 1985, the Delhi School Education (Amendment) Rules 1984 were notified.[12] By this amendment, Rule 110 of the 1973 Rules was substituted.

14 On 23 February 1990, the Delhi School Education (Amendment) Rules 1990[13] were notified.[14] Clause 24 of the Amendment Rules 1990 amended Rule 105 of the 1973 Rules. Clause 24 Reads thus:

> "24. amendment of rule 105. – In rule 105 of the principal rules,-
>
> (a) in sub-rule (1), **after the words "another year"**, the words "with the prior approval of the Director" **shall be inserted**;
> (b) for the proviso to sub-rule (1), the following proviso shall be substituted, namely:-

[12] No. F. 5/15/72-Edn./573. in Delhi Gazette (Extraordinary – Part – IV) – Jan-Dec 1985 at p. 2
[13] Amendment Rules 1990
[14] DSE (A) R, 1990; No. 1339/Act. in Delhi Gazette – Jan-Dec 1990 at p. 60

> "Provided that the provisions of this sub-rule relating to the approval of the Director in regard to the extension of the period of probation by another year, shall not apply in the case of an employee of a minority school:
>
> Provided further that no termination from the service of an employee on probation shall be made by a school, other than a minority school, except with the previous approval of the Director."
>
> (Emphasis supplied)

15 By virtue of the Amendment Rules 1990:

(i) The words "with the prior approval of the Director" were inserted after the words "by another year" in the principal part of Rule 105. The prior approval of the Director was made mandatory where the period of probation is extended "by another year"; and

(ii) The first proviso granted an exemption to the appointing authority of minority institutions from seeking the prior approval of the Director for extending the period of probation "by another year".

The amending history of the 1973 Rules shows that the words "by another year" appearing in the principal part of Rule 105 has not been omitted. The High Court has, in the present case and prior cases failed to take note of the correct provision as amended from time to time.

16 Rule 105 of the 1973 Rules, as on date, reads thus:

> "105. Probation (1) Every employee shall, on initial appointment, be on probation for a period of one year which may be extended by the appointing authority **by another year** [with the prior approval of the Director] and the services of an employee may be terminated without notice during the period of probation if the work and conduct of the employee, during

> the said period, is not, in the opinion of the appointing authority, satisfactory:
>
> [Provided that the provisions of this sub-rule relating to the prior approval of the Director in regard to the extension of the period of probation **by another year** shall not apply in the case of an employee of a minority school:
> …]
>
> (2) If the work and conduct of an employee during the period of probation is found to be satisfactory, he shall be on the expiry of the period of probation or the extended period of probation, as the case may be confirmed with effect from the date of expiry of the said period."
>
> (Emphasis supplied)

It is on the basis of the above provision that we proceed to the task of interpretation relevant to the present dispute.

17 It is appropriate to note the view of a three judge Bench of this Court in **Satya Narayan Jhavar**. Surveying the precedent, the Court held thus:

> "11. The question of deemed confirmation in service jurisprudence, which is dependent upon the language of the relevant service rules, has been the subject-matter of consideration before this Court, times without number in various decisions and there are three lines of cases on this point.
>
> One line of cases is where in the service rules or in the letter of appointment a period of probation is specified and power to extend the same is also conferred upon the authority without prescribing any maximum period of probation and if the officer is continued beyond the prescribed or extended period, he cannot be deemed to be confirmed. In such cases there is no bar against termination at any point of time after expiry of the period of probation.
>
> The other line of cases is that where while there is a provision in the rules for initial probation and extension thereof, a maximum period for such extension is also provided beyond which it is not permissible to extend probation. The inference in such cases is that the officer concerned is deemed to have been confirmed upon expiry of the maximum period of

> probation in case before its expiry the order of termination has not been passed.
>
> The last line of cases is where, though under the rules maximum period of probation is prescribed, but the same requires a specific act on the part of the employer by issuing an order of confirmation and of passing a test for the purposes of confirmation. In such cases, even if the maximum period of probation has expired and neither any order of confirmation has been passed nor has the person concerned passed the requisite test, he cannot be deemed to have been confirmed merely because the said period has expired."

The High Court was of the view that the case of the first respondent fell in the second category of cases enumerated in **Satya Narayan Jhavar**, while the appellant contended that the case of the first respondent falls within the first category of cases.

18 The points of law that arise for determination in the present appeal are: (i) whether the words "by another year" appearing in the principal part of Rule 105(1) and in the first proviso to Rule 105 (1) limit the total duration of permissible probation to two years; and (ii) whether the 1973 Rules require the issuance of an order of confirmation for a probationer to be confirmed in service.

19 The appointment letter of the first respondent dated 18 June 2008, in so far as it is relevant, reads thus:

"ANDHRA EDUCATION SOCIETY
Smt. Durgabai Deshmukh Memorial Senior Secondary School
1, Deen Dayal Upadhaya Marg, New Delhi- 110002
I.D. No. 2127081

Ref. No. AESSSS/2008-09/DR/112 Date: 18th June, 2008

MEMORANDUM

> With reference to her interview held on Dt. 24.5.2008 for the post of P.G.T. English (General) in the Andhra Education Society Smt. Durgabai Deshmukh Memorial Senior Secondary School, 1, D.D.U. Marg, New Delhi-110002, Smt. J.A.J. Vasu Sena is hereby informed that the she has been selected for the post of P.G.T. English under the following terms and conditions:-
>
> 1. …
> 2. She will be on probation for a period of one year from the date of joining.
> 3. During the period of probation her services are liable for termination with one month's notice on either side.
> 4. …
> 5. …
> 6. …
> 7. If the offer of appointment is acceptable she must report to duty on 1st July 2008.
> 8. …
> 9. …"

20 Rule 105(1) of the 1973 Rules mandates that every employee shall be appointed on probation for a period of one year. The appointing authority may extend the period of probation "by another year" with the prior approval of the Director. Rule 105(1) also stipulates that if the work and conduct of the probationer during the probationary period is found unsatisfactory, the appointing authority may, without notice, discharge the probationer from service. The first proviso to Rule 105(1) stipulates that where the appointing authority of a minority institution extends the probationary period "by another year", the prior approval of the Director shall not be required. This Court is required to construe whether the words "by another year" appearing in Rule 105(1) and the first proviso of Rule 105 imply one additional year, or one year at a time without any limit.

21 According to the **Cambridge English Dictionary**, the word "another" means "one more person or thing or an extra amount." **Webster's Dictionary**

defines the word “another” as “an additional one of the same kind: one more”.[15] According to **Collins Dictionary of the English Language**, the word “another” implies “one more”.[16] Similarly, according to **Lexico Dictionary**, the word “another” is “used to refer to an additional person or thing of the same type as one already mentioned or known about; one more.”[17]

22 The consistent meaning imparted to the word “another” is a single addition or one more. The ordinary and literal construction of the words “another” read with the words “for a period of one year” in Rule 105(1) implies that the appointing authority may extend the period of probation by one additional year. The contention that the words “by another year” imply that the appointing authority can extend the period of probation by one year at a time without any limit cannot be accepted as this would amount to rewriting the provision by substituting the words “by another year” with the words “by one year at a time”, which is impermissible in law. Further, had the delegate of the legislature intended that there is no limit on the permissible probationary period, the words “by another year” would have been omitted.

23 The words of a statute should be understood in the sense in which they best harmonise with the subject of the enactment and the object which the legislature has in view.[18] This principle should be a useful guide in interpreting the provisions of delegated legislation in this case, namely Rule 105. The purpose of probation is to enable an assessment to be made of the performance of an

[15] Webster’s Third New International Dictionary (1976), p. 89
[16] Collins Dictionary of the English Language (1983), p. 58
[17] Lexico Dictionary Online (Oxford University Press)
[18] **State of UP** v **C Tobit** 1958 SCR 1275; **Santasingh** v **State of Punjab** (1976) 4 SCC 190; **Mukesh Tripathi** v **Senior Divisional Manager** (2004) 8 SCC 387.

employee. It serves as an opportunity for probationers to establish by the dint of their work which is rendered during the period of probation, that they are suitable for being retained in service. On the part of the employer, probation enables the appointing authority to determine the suitability of the probationer for retention in service.

24 The limit placed on the permissible extension of the probationary period draws a balance between the opportunity that must be afforded to a probationer to modify and improve the quality of service and a mandate that the appointing authority of an educational institute hires qualified teachers. To impart a meaning to the words "by another year" that the appointing authority may extend the probationary period one year at a time without a limit will allow an appointing authority to extend the probationary period, with the prior approval of the Director, of a probationer *ad nauseum*. This would allow an appointing authority to convert a period of probation, which serves the limited and time bound purpose of ascertaining suitability, into a temporary appointment and defeat the purpose of probationary service in educational institutions. Though the legislature or the delegated authority is empowered in a given case to stipulate that there is no bar on the period of probation, the interpretation that we have adopted is supported by the words of Rule 105(1) and the ordinary meaning imparted to the word "another".

25 The plain reading of the words "by another year" implies that the appointing authority of an institution may extend the period of probation by one additional year over and above the mandatory year of probation with the prior

approval of the Director. Rule 105(1) of the 1973 Rules therefore stipulates a limitation on the total probationary period to two years. The first proviso stipulates that the prior approval of the Director shall not be required in the case of a minority institution.

26 The principle which we have adopted accords with a consistent line of precedent of this Court. It is a settled position of law that where the words of a statute are clear and unambiguous, they must be interpreted in their ordinary grammatical sense, unless the interpretation leads to an absurd result. It is only where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction, or to some inconvenience or absurdity, hardship or injustice, that a construction may be put upon it which modifies the meaning of the words.

27 **Justice G P Singh**, in his seminal book *Principles of Statutory Interpretation*[19], states thus:

> "The words of a statute are first understood in their natural, ordinary or popular sense and phrases and sentences are construed according to their grammatical meaning, unless that leads to some absurdity or unless there is something in the context, or in the object of the statute to suggest the contrary."

Craies in his *Treatise on Statute Law*,[20] states thus:

> "The cardinal rule for the construction of Acts of Parliament is that they should be construed according to the intention expressed in the Acts themselves. If the words of the statute are themselves precise and unambiguous, then no more can be necessary than to expound those words in their ordinary

[19] Justice G P Singh, Principles of Statutory Interpretation, 14th Ed., at p. 91
[20] Craies on Statute Law, 7th Ed., at p. 64

> and natural sense. The words themselves alone do in such a case best declare the intention of the lawgiver."

28 In **Maharashtra State Financial Corporation** v **Jaycee Drugs and Pharmaceuticals Pvt. Ltd**[21], the appellant sought to proceed against the sureties upon the failure of the respondent to repay a loan. Section 31(1) of the State Financial Corporations Act 1951 stipulated that a suit may be instituted before the District Judge within whose jurisdiction the concern carries on business. Section 32(11) stipulated that the functions of a District Judge under the said section shall be exercisable, in a Presidency town, where there is a city civil court "having jurisdiction", by a judge of that court and "in the absence of such court, by the High Court". The appellant contended that the words "having jurisdiction" read with the pecuniary jurisdiction of the Bombay City Civil Court as contained in Section 3 of the Bombay City Civil Court Act 1948 required that where the liability sought to be enforced was above INR 50,000 the petition by the appellant was maintainable in the High Court alone. Accepting this contention, a three judge Bench of this Court held thus:

> "15. In our opinion, the extent of the liability stated in the application as contemplated by sub-section (2) of Section 31 of the Act would represent the value of the claim of the Corporation and if such value is up to Rs 50,000 the application would lie in the city civil court and if it is more than that amount it would lie in the High Court. This interpretation would give meaning and relevance to the words "having jurisdiction" used in sub-section (11) of Section 32. A different interpretation would render superfluous or otiose not only the words "having jurisdiction" but also the words "and in the absence of such court, by the High Court"….
>
> 16. **It is a settled rule of interpretation of statutes that if the language and words used are plain and**

[21] (1991) 2 SCC 637

> **unambiguous, full effect must be given to them as they stand and in the garb of finding out the intention of the legislature no words should be added thereto or substracted therefrom. Likewise, it is again a settled rule of interpretation that statutory provisions should be construed in a manner which subserves the purpose of the enactment and does not defeat it and that no part thereof is rendered surplus or otiose**."
>
> (Emphasis supplied)

In **State of HP** v **Pawan Kumar**,[22] it was contended that the safeguards provided in Section 50[23] of the Narcotics Drugs and Psychotropic Substances Act 1985 regarding search of any "person" would also apply to any bag, briefcase or any such article or container, which is being carried by him. The word "person" was not defined in the Act. A three judge Bench of this Court, having regard to the scheme of the Act and the context in which the word "person" has been used, rejected the contention and held thus:

> "8. One of the basic principles of interpretation of statutes is to construe them according to plain, literal and grammatical meaning of the words. If that is contrary to, or inconsistent with, any express intention or declared purpose of the statute, or if it would involve any absurdity, repugnancy or inconsistency, the grammatical sense must then be modified, extended or abridged, so far as to avoid such an inconvenience, but no further. The onus of showing that the words do not mean what they say lies heavily on the party who alleges it. He must advance something which clearly shows that the grammatical construction would be repugnant to the intention of the Act or lead to some manifest absurdity."

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[22] (2005) 4 SCC 550

[23] "50. *Conditions under which search of persons shall be conducted*.—(1) When any officer duly authorised under Section 42 is about to search any person under the provisions of Section 41, Section 42 or Section 43, he shall, if such person so requires, take such person without unnecessary delay to the nearest gazetted officer of any of the departments mentioned in Section 42 or to the nearest Magistrate.

(2) If such requisition is made, the officer may detain the person until he can bring him before the gazetted officer or the Magistrate referred to in sub-section (1).

(3) The gazetted officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.

(4) No female shall be searched by anyone excepting a female."

The above principles have been consistently followed by this Court including in the decisions in **State of Rajasthan** v **Babu Ram**[24] and **Commissioner of Customs (Import), Mumbai** v **Dilip Kumar and Company**.[25]

29 The appellant contended that the words "by another year" in the first proviso to Rule 105(1) cannot be read as limiting the total period of probation to two years. The contention urged by the appellants cannot be accepted. The words "by another year" appearing in the principal part of Rule 105(1) must be given their plain and literal meaning to imply one additional year. The appointing authority of an institution may extend the period of probation by one additional year over and above the initial period of one year. This equally applies to minority institutions. The first proviso stipulates that the provisions of the sub-rule "relating to the prior approval of the Director" in respect of an extension of the probationary period by another year by a minority institution shall not apply. The proviso merely carves out an exception from the principal provision to the effect that in the case of a minority institution, the approval of the Director for the extension of probation period by an additional year shall not be required.

30 Keeping in view the special status conferred on minority institutions, the first proviso to Rule 105(1) grants an exemption to the appointing authority from seeking the prior approval of the Director to extend the period of probation by an additional year over and above the mandatory period of probation. This grants the final say in determining the first extension of the probationary period by another year to the appointing authority itself. The interpretation that we have

[24] (2007) 6 SCC 55
[25] (2018) 9 SCC 1

adopted of the words “by another year” in the principal provision of Rule 105(1) equally applies to the words “by another year” in the first proviso to Rule 105(1). To accept the position that no limit is placed on the extension of the probationary period in the proviso would allow the proviso to be read as a separate provision and impart a meaning to the words “by another year” that is not in accordance with its plain grammatical meaning.

31 It is a settled position of law that the objective of a proviso is to carve out from the main section a class or category to which the main section does not apply. A proviso must prima facie be read and considered in relation to the principal matter to which it is a proviso. It is not a separate or independent enactment.

In **Tahsildar Singh** v **The State Of Uttar Pradesh**,[26] a six judge Bench of this Court was required to interpret the proviso to Section 162 of the Code of Criminal Procedure 1973. Section 162(1)[27] provided that where the statement of a person to a police officer during investigation is taken in writing, the person shall not be required to sign the document nor shall the writing be used as evidence. The proviso empowered the court, in its discretion and on the request of the accused, to refer to the written statement and direct that the accused be furnished with a

[26] 1959 Supp (2) SCR 875

[27] 162. (1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872(1of 1872); and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.]

copy. The proviso provided that the statement may be used to "contradict" the witness "in the manner provided by Section 145 of the Indian Evidence Act, 1872." The Court rejected the argument that the proviso could be read isolated from the principal provision to confer a right of cross-examination other than by way of contradiction and allow through a back door, the inference of oral statements made by the witness to the officer that were not reduced in writing. Construing the proviso in light of the bar on the evidentiary value of statements recorded in writing in the principal provision, the Court laid down the principle on interpreting a proviso in the following terms:

> "14. This leads us to the main question in the case i.e. the interpretation of Section 162 of the Code of Criminal Procedure. The cardinal rule of construction of the provisions of a section with a proviso is succinctly stated in *Maxwell's Interpretation of Statutes*, 10th Edn., at p. 162 thus:
>
> > "The proper course is to apply the broad general rule of construction, which is that a section or enactment must be construed as a whole, each portion throwing light if need be on the rest.
> >
> > The true principle undoubtedly is, that the sound interpretation and meaning of the statute, on a view of the enacting clause, saving clause, and proviso, taken and construed together is to prevail."
>
> **Unless the words are clear, the court should not so construe the proviso as to attribute an intention to the legislature to give with one hand and take away with another. To put it in other words, a sincere attempt should be made to reconcile the enacting clause and the proviso and to avoid repugnancy between the two**."
>
> (Emphasis Supplied)

32 Similarly, in **CIT** v **Indo-Mercantile Bank Ltd.**,[28] a three judge Bench of this Court, interpreting the meaning of the proviso to Section 24 of the Indian Income Tax Act 1922 held thus:

> "The territory of a proviso therefore is to carve out an exception to the main enactment and exclude something which otherwise would have been within the section. It has to operate in the same field and if the language of the main enactment is clear it cannot be used for the purpose of interpreting the main enactment or to exclude by implication what the enactment clearly says unless the words of the proviso are such that that is its necessary effect."

In **Dwarka Prasad** v **Dwarka Das Saraf**,[29] a four Judge Bench of this Court, interpreting the scope and extent of the word "accommodation" in a proviso added by an amending act to the UP (Temporary) Control of Rent and Eviction Act 1947 held thus:

> "…if, on a fair construction, the principal provision is clear, a proviso cannot expand or limit it…It is a settled rule of construction that a proviso must prima facie be read and considered in relation to the principal matter to which it is a proviso. It is not a separate or independent enactment…A proviso ordinarily is but a proviso, although the golden rule is to read the whole section, inclusive of the proviso, in such manner that they mutually throw light on each other and result in a harmonious construction."

The above principles have been consistently followed by subsequent benches of this Court in **S Sundaram Pillai** v **VR Pattabiraman**,[30] **JK Industries Ltd.** v

[28] 1959 SCR Supp (2) 256
[29] 1976 SCR (1) 277
[30] (1985) 1 SCC 591

Chief Inspector of Factories and Boilers,[31] and **Holani Auto Links (P) Ltd.** v **State of MP**.[32]

33 In the view that we have taken, the words "by another year" in Rule 105(1) of the 1973 Rules restrict the maximum permissible period of probation to two years. This equally applies to minority institutions covered by the first proviso to Rule 105. The proviso merely exempts the appointing authority of minority institutions from seeking the prior approval of the Director where an extension of the probationary period is effected within the maximum permissible extension of two years. Though the High Court concluded that the maximum permissible period of probation under Rule 105(1) is two years, it proceeded to record its finding upon an incorrect provision of law. For the reasons that we have recorded above, the total period of probation under Rule 105 of the 1973 Rules cannot extend beyond two years.

34 The High Court concluded that Rule 105 fixes a maximum probationary period of two years and that consequently, the continuation of the services of the probationer beyond the period of probation would amount to a deemed confirmation of service even without an order of confirmation. Consequently, the case of the first respondent was according to the High Court within the second category of cases enumerated in **Satya Narayan Jhavar**. This Court in **Satya Narayan Jhavar** enumerated three lines of cases. The third stipulates those cases where the rules prescribe a maximum period of probation but also require a specific act on the part of the employer of issuing an order of confirmation for

[31] (1996) 6 SCC 665
[32] (2008) 13 SCC 185

the purposes of confirmation. In such cases, there is no deemed confirmation of the services of a probationer on their continuation in service beyond the maximum period of probation.

35 Admittedly, the appointment letter does not stipulate that the first respondent shall be confirmed upon the expiry of the probationary period. Rule 105(2) stipulates that an order of confirmation may be issued "if the work and conduct of an employee during the period of probation is found to be satisfactory". Rule 105(2) lays down a condition precedent to the issuance of an order of confirmation. It is only if the appointing authority is satisfied with the performance of the probationer that an order of confirmation may be issued. Rule 105(2) contains an explicit stipulation requiring the issuance of an order of confirmation by the appointing authority upon its assessment that the performance of the probationer has been satisfactory. The mere continuation of the services of a probationer beyond the period of probation does not lead to a deemed confirmation in service. It is only upon the issuance of an order of confirmation by the appointing authority that probationer is granted substantive appointment in the post.

36 In **GS Ramaswamy** v **Inspector General of Police**[33], a Constitution Bench of this Court considered the promotions of Sub-Inspectors of Police under Rule 486 of the Hyderabad District Police Manual which stipulated that all officers who are promoted will be on probation for a period of two years and that they may be reverted during the aforesaid period if their work and conduct is not found

[33] (1964) 6 SCR 279

satisfactory. Noting that the Rule stipulated that "promoted officers will be confirmed at the end of their probationary period if they have given satisfaction", this Court held thus:

> "8… Therefore even though a probationer may have continued to act in the post to which he is appointed on probation for more than the initial period of probation, **he cannot become a permanent servant merely because of efflux of time, unless the Rules of service which govern him specifically lay down that the probationer will be automatically confirmed after the initial period of probation is over**…It is true that the words used in the sentence set out above are not that promoted officers will be eligible or qualified for promotion at the end of their probationary period which are the words to be often found in the Rules in such cases; **even so, though this part of Rule 486 says that "promoted officers will be confirmed at the end of their probationary period", it is qualified by the words "if they have given satisfaction". Clearly therefore the Rule does not contemplate automatic confirmation after the probationary period of two years, for a promoted officer can only be confirmed under this Rule if he has given satisfaction. This condition of giving satisfaction must be fulfilled before a promoted officer can be confirmed under this Rule and this condition obviously means that the authority competent to confirm him must pass an order to the effect that the probationary officer has given satisfaction and is therefore confirmed**."
>
> (Emphasis supplied)

In **Kedar Nath Bahl** v **State of Punjab**[34], the appellant was appointed to a post in the Punjab Provincial Service Class I. The appointment letter stipulated that the period of probation shall be six months. The appellant continued on probation beyond the stipulated period of six months and was eventually reverted back to his previous post. He instituted proceedings challenging his order of reversion. The appellant contended that upon the expiry of the period of probation, he was

[34] (1974) 3 SCC 21

deemed to be confirmed in service. Rejecting this contention, a three judge Bench of this Court held thus:

> "9. …The law on the point is now well settled. Where a person is appointed as a probationer in any post and a period of probation is specified, it does not follow that at the end of the said specified period of probation he obtains confirmation automatically even if no order is passed in that behalf. **Unless the terms of appointment clearly indicate that confirmation would automatically follow at the end of the specified period, or there is a specific service rule to that effect, the expiration of the probationary period does not necessarily lead to confirmation. At the end of the period of probation an order confirming the officer is required to be passed and if no such order is passed and he is not reverted to his substantive post, the result merely is that he continues in his post as a probationer**…The terms of appointment do not show that the appellant would be automatically confirmed on the expiry of the first six months of probation nor is any rule brought to our notice which has the effect of confirming him in the post after six months of probation."
>
> (Emphasis supplied)

This view is also affirmed by the judgments of this Court in **Municipal Corporation, Raipur** v **Ashok Kumar Misra**[35], **Jai Kishan** v **Commissioner of Police**[36], **State of Punjab** v **Baldev Singh Khosla**[37] and **Chief GM, State Bank of India** v **Bijoy Kumar Mishra**[38].

37 Recently, in **Head Master, Lawrence School, Lovedale** v **Jayanthi Raghu**[39], a two judge Bench of this Court held that even where the relevant rule prescribes a maximum period of probation, the use of the words "if confirmed"

[35] (1991) 3 SCC 325
[36] 1995 Supp (3) SCC 364
[37] (1996) 9 SCC 190
[38] (1997) 7 SCC 550
[39] (2012) 4 SCC 793

denote a condition precedent and that there is no deemed confirmation of service unless a specific order of confirmation is issued. The Court held thus:

> "38. Had the rule-making authority intended that there would be automatic confirmation, Rule 4.9 would have been couched in a different language. That being not so, 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 as that would defeat the basic purpose and intent of the Rule which clearly postulates "if confirmed". **A confirmation, as is demonstrable from the language employed in the Rule, does not occur with efflux of time. As it is hedged by a condition, an affirmative or positive act is the requisite by the employer. In our considered opinion, an order of confirmation is required to be passed**."
>
> (Emphasis supplied)

38 It emerges from the consistent line of precedent of this Court that where the relevant rule or the appointment letter stipulates a condition precedent to the confirmation of service, there is no deemed confirmation of service merely because the services of a probationer are continued beyond the period of probation. It is only upon the issuance of an order of confirmation that the probationer is granted substantive appointment in that post. Rule 105(2) stipulates the satisfaction of the appointing authority as a condition precedent to the issuance of an order of confirmation. The argument advanced by the learned counsel for the first respondent that there is a deemed confirmation upon the continuation of service beyond the expiry of the period of probation is negatived by the express language of Rule 105(2). In this view, the continuation of services beyond the period of probation will not entitle the probationer to a deemed confirmation of service. The High Court has erred in holding that there is a deemed confirmation where the services of a probationer are continued beyond the expiry of the probationary period.

39 It was briefly urged by Mr Yashobant Das, learned Senior Counsel appearing on behalf of the appellants that the Division Bench of the High Court failed to follow a judgment of a coordinate Bench of the High Court in **Veena Sharma**. In that case, a termination order was issued to an Upper Division Clerk during the period of her probation. Contending that her termination was not in accordance with the letter of appointment and that her services were deemed to be confirmed, the case of the employee reached the High Court. The appointment letter expressly stated that a letter of confirmation shall be issued upon the expiry of the probationary period. Justice Dipak Misra (as he then was) rejected the contention that Rule 105 of the 1973 Rules stipulated a deemed confirmation of service on the grounds that there is no fixed period of probation and that the work and conduct of the employee must be proved to be satisfactory.

40 In the present case, the Division Bench of the High Court adverted to the decision in **Veena Sharma** and distinguished it on the ground that the appointment letter stipulated the requirement of an express letter of confirmation. Further, the argument urged on behalf of the appellant cannot be accepted as the facts of that case are distinguishable for the principal reason that no interpretation of the exemption stipulated for minority institutions in the proviso was involved.

41 The High Court relied on the Constitution Bench judgment of this Court in **Dharam Singh** to hold that upon the expiry of the probationary period, the first respondent is deemed to be confirmed in service. In **Dharam Singh** this Court interpreted Rule 6[40] of the Punjab Educational Service (Provincialised Cadre)

[40] "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.

Class III Rules, 1961. The Rules stipulated that the period of probation shall be one year and the total period of probation shall not exceed three years. The Court granted relief to the claimants as their services were continued beyond three years and the relevant rules and the appointment letter did not stipulate the issuance of any order of confirmation. The Court held thus:

> "9. 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 re-employing 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. **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.**"
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> (Emphasis supplied)

In **Dharam Singh**, the Constitution Bench held that the continuation of the services of a probationer beyond the maximum period of probation would amount

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(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.
…"

to a deemed confirmation of service **only in** the absence of a stipulation in the relevant rule requiring the probationer to pass a test or fulfill any other condition. In the present case, Rule 105(2) stipulates the satisfaction of the appointing authority as a condition precedent to the issuance of an order of confirmation. The High Court has thus failed to notice the distinguishing features which emerge from the judgment of this Court in **Dharam Singh**.

42 In the view that we have taken, the High Court has erred in concluding that the case of the first respondent falls within the second category of cases enumerated in **Satya Narayan Jhavar**. Rule 105(2) stipulates the satisfaction of the appointing authority as a condition precedent to the issuance of an order of confirmation. Admittedly, no order of confirmation was issued by the appointing authority. The case of the first respondent falls squarely within the third category of cases enumerated in **Satya Narayan Jhavar** wherein though the rules prescribe a maximum period of probation and the probationer is continued beyond the expiry of the probationary period, the substantive appointment of the probationer is subject to a specific act on the part of the appointing authority of issuing an order of confirmation. In the absence of an order of confirmation, the first respondent did not acquire the status of a confirmed employee.

43 In the present case, the first respondent served as a probationer for nearly five years. Rule 105(1) permits the appointing authority to extend the period of probation with the prior permission of the Director. The proviso stipulates that no prior approval of the Director is required for the extension of the probationary period by the appointing authority of a minority institution. The amending history

of the provision shows that prior to the amendment in 1990, no prior approval of the Director was required. By virtue of the Amending Rules 1990 the prior approval of the Director was made mandatory, save and except for extensions in the case of minority institutions, for the grant of any extension in the probationary period. The absolute discretion vested with the appointing authority of an institution was made subject to the prior approval of the Director.

44 The power vested in the Director serves as a check on the absolute discretion of the appointing authority to extend the probationary period. The power vested in the Director, however, to approve a request of the appointing authority is not unbridled. Rule 105(1) stipulates that the services of a probationer may be terminated without notice during the period of probation where the services of the probationer are not "in the opinion of the appointing authority, satisfactory". Rule 105(2) stipulates that an order of confirmation may be issued if, in the opinion of the appointing authority, the performance of the probationer is satisfactory. The discretion of the Director must be exercised objectively on the basis of the material produced by the appointing authority bearing on the performance of a probationer.

45 The prior approval of the Director, save and except for minority institutions, is mandatory and must be complied with as a condition precedent for the valid exercise of the power to extend the period of probation. The Director is required to assess the determination of the appointment authority and based on that assessment, to decide whether to approve an extension of the probationary period. The provision which mandates that the prior approval of the Director shall

be sought before extending the period of probation ensures that the appointing authority may not extend the probationary period without legitimate reason. The extension of the probationary period by the appointing authority, save and except for minority institutions, without the prior approval of the Director is impermissible in law.

46 Rule 105(1) of the 1973 Rules, by stipulating a maximum permissible period of probation of two years, draws a balance between the interests of the appointing authority in extending the period of probation to ensure the quality of education and the interests of probationers in their services not being extended on probation *ad nauseum*. The continuation of the services of a probationer beyond the period permissible under the 1973 Rules defeats the salutary purpose underlying the limit stipulated on the period of extension that may be effected in the probationary period. Upon the expiry of the period of probation, the appointing authority is required by law to either confirm the services of the probationer or terminate their services. The continuation of the services of a probationer by the appointing authority under Rule 105 of the 1973 Rules beyond the maximum permissible period of probation, constitutes a violation of law. Though as we have held, there is no provision for deemed confirmation, the conduct of the management may result in other consequences, including a decision in regard to whether the recognition of a school which consistently violates the law should be withdrawn.

47 In the present case, the appointment letter of the first respondent dated 18 June 2008 clearly stipulated that the period of probation shall be “one year from

the date of joining." Rule 105 provides for the extension of the probationary period by another year. The first respondent joined service on probation for a period of one year on 1 July 2008. The period of probation was to come to an end on 1 July 2009, which could be extended by one year under Rule 105. The period of probation was extended belatedly on 11 February, 2010 for another year on the ground that the services of the first respondent were unsatisfactory. On 30 November, 2011, the period of probation was extended by another year. On 22 May, 2013, the Managing Committee of the Education society discharged the first respondent from service with effect from 30 June 2013.

48 The first respondent was continued as a probationer for nearly five years in contravention of Rule 105 of the 1973 Rules as well as the appointment letter dated 18 June 2008. There was no order of confirmation. Though the first respondent cannot claim a deemed confirmation of service without the issuance of an order of confirmation, the power of this Court to do complete justice under Article 142 of the Constitution must be invoked in an appropriate manner. While there can be no deemed confirmation in the favour of the first respondent, the relief can be suitably moulded by an award of ex-gratia compensation. A teacher who has spent five valuable years of her life and may now be overaged to get suitable employment elsewhere must not be left in the lurch. A management which has defied the law must be put to terms, which we propose to do under Article 142.

49 We hold and declare that:

(i) The words “by another year” in Rule 105(1) of the 1973 Rules stipulate that the maximum period of probation permissible is two years. The limit equally applies to minority institutions covered by the first proviso to Rule 105; and

(ii) Rule 105(2) stipulates a condition precedent to the issuance of an order of confirmation. The continuation of the services of a probationer beyond the period of probation does not amount to a deemed confirmation of service. It is only upon the issuance of an order of confirmation by the appointing authority that a probationer is confirmed in service.

50 We direct, in the exercise of the jurisdiction of this Court under Article 142 of the Constitution, that the appellants shall pay over to the first respondent a sum of INR 5,00,000 within a period of four weeks from the date of receipt of a certified copy of this order, failing which the amount shall carry an interest of 9% per annum till the date of realisation.

51 We affirm the view of the Delhi High Court to the extent that the maximum permissible period of probation under Rule 105 of the 1973 Rules is two years, although for the reasons that we have indicated above. The High Court, in the present case and in prior cases, has failed to take note of the amending history of Rule 105 of the 1973 Rules and has relied on an incorrect provision of law. We clarify that previous litigation under Rule 105 of the 1973 Rules which has attained finality shall not be reopened. The judgment of the Delhi High Court, in

so far as it confirmed the services of the first respondent is set aside. The appeal is partly allowed in the above terms.

52 We direct the Registry to forward a copy of this judgment to the Chief Librarian, Supreme Court of India, the Registrar General, Delhi High Court and the Department of Education, National Capital Territory of Delhi for recording the correct provisions of Rule 105 of the 1973 Rules in their records.

53 There shall be no order as to costs.

54 Pending application(s), if any, shall stand disposed of.

…….…….....J.
[Dr Dhananjaya Y Chandrachud]

…….……..J.
[Aniruddha Bose]

New Delhi
August 21, 2019