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THE CHIEF GENERAL MANAGER,
STATE BANK OF INDIA AND ANR.

v.

SHRI BIJOY KUMAR MISHRA

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SEPTEMBER 24, 1997

[J.S. VERMA, CJ. AND B.N. KIRPAL, J.]

Service law—Probationer—Termination of Service—Continuation of
C *probationer in service beyond the maximum period of probation fixed by the rules without any express order of confirmation—Whether amounts to deemed confirmation—Held, deemed confirmation is permissible only when it follows from positive act of the employers permitting employee to continue to work even after completion of maximum period of probation—Probationer remaining absent from duty for a long time during the period of probation as also*
D *thereafter—There was no occasion for the employer-Bank to allow him to continue to work after completion of his probation period—Hence, termination of his service held valid—State Bank of India Officers (Determination of Terms and Conditions of Services) Order, 1979—Paras 15 and 16.*

E **The respondent was appointed as a Probationery Officer in a Bank on 24-10-1980. He joined duty on 15-12-1980 and his period of probation commenced from that date. The respondent unauthorisedly remained absent from duty from 2-4-1981 for a long period and the last date of his presence on duty was in the first week of August 1983. Thereafter, he was absent till the year 1988.**

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The maximum period of probation under the Service Rules was three years, which expired in his case on 14-12-1983, when he was admittedly absent from duty. From May 1984 to 1988 he was not even in touch with the Bank. Hence, on 4-10-1988, the Bank issued an order of termination of his service.

G **The respondent filed a Writ Petition, challenging the order of termination. The High Court quashed the termination order on the ground that on the expiry of the maximum permissible period of probation, the respondent was deemed to have been confirmed on the post. Hence, this appeal.**

Allowing the appeal, this Court

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HELD : 1.1 The deemed confirmation is inferred from the employer's conduct and is permissible only when it follows from the positive act of the employer permitting the employee to continue to work on the post even after completion of the maximum period of probation permitted under the Service Rules. [221-B]

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State of Punjab v. _Dharam Singh,_ [1968] 3 SCR 1, explained and distinguished and _Municipal Corporation, Raipur_ v. _Ashok Kumar Mishra,_ [1991] 3 SCC 325, distinguished.

Samsher Singh v. _State of Punjab and Anr.,_ [1974] 2 SCC 831, relied on.

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Kedar Nath Bahl v. _State of Punjab,_ [1974] SCC 21; _Jai Kishan_ v. _Commissioner of Police and Anr.,_ [1995] Supp. 3 SCC 364 and _State of Punjab_ v. _Baldev Singh Khosla,_ [1996] 9 SCC 190, referred to.

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1.2. The continuance in employment after the maximum period of probation is consistent only with confirmation, and that follows from the employer's conduct of permitting the employee to continue to work on that post after the maximum period of probation. The employee in the present case was absent from duty from a date much prior to the expiry of the maximum period of probation and remained absent even thereafter for a long time. There was no occasion for the employer to allow the employee/respondent to continue to work on the post after the expiry of the maximum period of the probation because he was absent and was not working on the post at the time of the expiry of the period of probation. There was no such conduct of the employer, permitting respondent to continue in service and as such there is no foundation for argument of deemed confirmation. [220-C-E]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2633 of 1992.

From the Judgment and Order dated 19.11.91 of the Orissa High Court in O.J.C. No. 4075 of 1988.

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H.N. Salve, Sanjay Kapur, Rajiv Kapur, Nikhil Sakhardande and M.K. Michael for the Appellants.

K.K. Venugopal, Sanjay Moni Tripathi and Ms. Rani Jethmalani for the

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A Respondent.

The Judgement of the Court was delivered by

VERMA, CJI. The respondent, Bijoy Kumar Mishra was appointed as a probationary Officer in the State Bank of India and posted at Jharsuguda B Branch in Bhubaneswar circle by an order dated 24.10.1980. The respondent joined duty on 15.12.1980 and his period of probation commenced from that date. The respondent remained unauthorisedly absent from duty from 2.4.1981 for a long period and the last date of his presence on duty was in the first week of August 1983. Thereafter, he was absent till the year 1988. The C maximum permissible period of probation under the Service Rules was three years which expired in his case on 14.12.1983, when he was admittedly absent from duty. From May 1984 to 1988, he was not even in touch with the Bank. The respondent submitted a medical certificate dated 26.5.1984 that he was suffering from viral infection from 6.2.1984 to 26.5.1984 and that he was fit to resume his duties on the date of his certificate. Even then he did not report D for duty. The respondent joined M. Phil. Course in Punjab University at Chandigarh in 1986-87 without permission. In these circumstances, the Bank issued an order dated 4.10.1988 terminating his service.

The respondent filed a writ petition under Article 226 of the Constitution E of India in the Orissa High Court challenging the termination order. The High Court has taken the view that it shall be presumed that the competent authority had confirmed the petitioner after 24.10.1983 as no action contemplated by paragraph 16(3) of the relevant Service Rules had been taken. In short, the High Court has held that on expiry of the maximum permissible period of probation, the respondent was deemed to have been confirmed on the post. F On this basis, by the impugned order dated 19.11.1991, the termination order dated 4.10.1988 has been quashed and a direction given to reinstate the respondent in service with all consequential benefits with permission to the Bank to proceed against the petitioner in accordance with law. Hence this appeal by special leave.

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The only question for consideration is whether in the facts and circumstances of the case, the respondent can be deemed to have been confirmed without any order of confirmation during his unauthorised absence from duty under the relevant Service Rules. The relevant provisions are Paragraphs 15 & 16 of the State Bank of India officers (Determination of Terms H & Conditions of Service) order 1979, which are as under :

"Probation

15 (1) A person appointed as a probationary Officer or a Trainee Officer shall be on probation for a period of two years.

(2) Any other employee of the Bank promoted as an officer to the Junior Management Grade shall be on probation for a period of one year.

(3) Any other person appointed to any grade including junior management grade shall be on probation for such period as may be decided by the competent authority.

Provided that the competent authority may, in the case of any officer, reduce or dispense with the period of probation. "

"Confirmation

16 (1) An officer referred in paragraph 15 shall be confirmed in the service of the Bank, if, in the opinion of the competent authority, the officer has satisfactorily completed the training in any institution to which the officer may have been deputed for training, and the in-service training in the Bank.

Provided that an officer directly recruited to the junior management grade may be required also to pass a test in a language other than his mother tongue.

(2) If, in the opinion of the competent authority, an officer has not satisfactorily completed either or both the trainings referred to in sub-paragraph (1) or if the officer has not passed the test referred to therein or an officer's service is not satisfactory, the officer's probation may be extended by a further period not exceeding one year.

(3) where during the period of probation, including the period of extension, if any, the competent authority is of the opinion that the officer is not fit for confirmation :

(a) in the case of a direct appointee, his services may be terminated by one month's notice or payment of one month's emoluments in lieu thereof, and

(b) in the case of a promotee from the Bank's service, he may be reverted to the grade or cadre from which he was promoted."

A The respondent being directly appointed as Probationary Officer, the period of his probation was two years according to sub-paragraph (1) of Paragraph 15. The confirmation is provided in paragraph 16. Sub-Paragraph (1) of Paragraph 16 requires the satisfaction of the competent authority and also the passing of the specified tests for confirmation in the service of the Bank. Sub-Paragraph (2) of Paragraph 16 provides for the officer's probation B to be extended by a further period not exceeding one year. If in the opinion of the competent authority, the officer does not fulfil the requirement, he cannot be confirmed. According to Paragraph 16 (2), the maximum period of probation, read with Paragraph 15(1) cannot exceed 2+1 years, i.e., 3 years. Sub-paragraph (3) provides for termination of the service of a direct appointee C during the period of probation by one month's notice or payment of one month's emoluments in lieu thereof and in the case of a promotee, his reversion to the grade or cadre from which he was promoted. Thus, the combined effect of Paragraphs 15 & 16 particularly sub-paragraph (1) of paragraph 15 and sub Paragraph (2) of paragraph 16 is that the total period of probation of a direct appointee cannot exceed three years.

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The contention of the respondent which has been accepted by the High Court is that on the expiry of the period of three years on 14.12.1983, in the absence of the termination order being issued before that date, the respondent is deemed to have been confirmed. The question is whether this is a correct E reading of these provisions?

The point for decision has to be answered on the basis of the earlier decisions of this Court. The High Court has placed reliance on the decision of this Court in *State of Punjab* v. *Dharam Singh,* [1968] 3 SCR 1 at p. 4, in support of its conclusion. We would presently show that this is not a correct F reading of the decisions of this Court including *Dharam Singh.*

The Constitution Bench held in *Dharam Singh* as under :

> "This Court has consistently held that when a first appointment or promotion is made on probation for a specific period and the employee G is allowed to continue in the post after the expiry of the period without any specific order of confirmation, he should be deemed to continue in his post as a probationer only, in the absence of any indication to the contrary in the original order of appointment or promotion or the service rules. In such a case, an express order of confirmation is necessary to give the employee a substantive right to H the post, and from the mere fact that he is allowed to continue in the

post after the expiry of the specified period of probation it is not possible to hold that he should be deemed to have been confirmed...In all these cases, the conditions of service of the employee permitted extension of the probationary period for an indefinite time and there was no service rule forbidding its extension beyond a certain maximum period.

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In the present case, r. 6 (3) forbids extension of the period of probation beyond three years. Where, as in the present case, the service rules fix a certain period of time beyond which the probationary period cannot be extended, *and an employee appointed or promoted to a post on probation is allowed to continue in that post after completion of the maximum period of probation without an express order of confirmation,* he cannot be deemed to continue in that post as a probationer by implication. The reason is that such an implication is negatived by the service rule forbidding extension of the probationary period beyond the maximum period fixed by it.

In such a case, it is permissible to draw the inference that the employee allowed to continue in the post on completion of the maximum period of probation has been confirmed in the post by implication."

(Emphasis Supplied)

The above quoted last extract on which reliance was placed by the High Court and on which emphasis was laid by Shri K.K. Venugopal, learned counsel for the respondent has to be read in the context and not divorced therefrom. In substance, *Dharam Singh* held that where the Service Rules permitted continuance in service as a probationer beyond a certain period, an express order of confirmation is necessary to give the employee a substantive right to post, and the mere fact that he is allowed to continue in the post after the specified period of probation is not sufficient to hold that he should be deemed to have been confirmed; but where the maximum period of probation is provided in the Service Rules and the employee is allowed to continue in that post after completion of the maximum period of probation without an express order of confirmation, he must be deemed to have been confirmed in the post by implication. It is significant that the effect of permitting the employee to continue in the post even on completion of the maximum period

A of probation without an express order of confirmation results in the only logical inference that he has been confirmed in the post by implication. In other words, for drawing such inference, it is necessary that the employer should allow the employee to continue on the post even after expiry of the maximum period of probation which is consistent only with the fact of his confirmation on the post. This inference is drawn from the conduct of the B employer which is consistent only with the fact of confirmation employee. In short, it is a rule of evidence applied to the facts of the case because the continuance in employment after the maximum period of probation is consistent only with the confirmation, and that follows from the employer's conduct of permitting the employee to continue to work on that post after the maximum C period of probation.

It is obvious that the decision in *Dharam Singh* can have no application in a case where the employee was absent from duty from a date much prior to the expiry of the maximum period of probation and remained absent even thereafter for a long time. There was no occasion in such a case for the D employer to allow the employee (respondent) to continue to work on the post after the expiry of the maximum period of probation because he was absent and was not working on the post at the time of the expiry of the period of probation. Deemed confirmation results from the conduct of the employer in permitting continuance in service after the expiry of the maximum period of E probation fixed by the rules. When there is no such conduct of the employer, the very foundation for the argument of deemed confirmation and reliance on *Dharam Singh* is not existent. In our opinion, this discussion alone is sufficient to indicate that the High Court has misread *Dharam Singh* to grant relief to the respondent. However, we may refer to some later decisions also to indicate that this is the correct position in law.

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In *Kedar Nath Bahl* v. *State of Punjab,* [1974] SCC 21, there was no maximum period of probation prescribed in the rules and, therefore, it was held that there could be no automatic confirmation. A Seven-Judge Bench in *Samsher Singh* v. *State of Punjab & Anr.*, [1974] 2 SCC 831 at p. 853, held G that the provision regarding the maximum period of probation was directory and not mandatory and the decision in *Dharam Singh* was construed as under :

> "In Dharam Singh's case he was allowed to continue without an order of confirmation and therefore the only possible view in the absence H of anything to the contrary in the Service Rules was that by necessary

implication he must be regarded as having been confirmed." A

There can thus be no doubt that the deemed confirmation which is inferred from the employer's conduct is permissible only when it follows from the positive act of the employer permitting the employee to continue to work on the post even after completion of the maximum period of probation permitted under the Service Rules since no other inference is possible in such a B situation from the employer's conduct of continuing to take work from the employee after that period.

The decision by Two-Judge Bench in *Municipal Corporation, Raipur* v. *Ashok Kumar Misra,* [1991] 3 SCC 325, is distinguishable. In that case, the note under Clause (2) of Rule 8 permitted continuance in service without C extension of the probationary period or confirmation or discharge from service at the end of the period of probation.

No separate discussion of *Jai Kishan* v. *Commissioner of Police & Anr.,* [1995] Supp. 3 SCC 364 and *State of Punjab* v. *Baldev Singh Khosla,* D [1996] 9 SCC 190, is called for. In view of the clear law laid down in the Constitution Bench decision of this Court in *Dharam Singh* and *Samsher Singh* as indicated above, those decisions cannot be treated as authorities for a proposition in consistent with that laid down by the Constitution Bench. It must be mentioned that Shri K.K. Venugopal, learned counsel for the respondent, made no attempt to rely on any of these decisions and he E confined the respondent's case to the reading of the Constitution Bench decision in *Dharam Singh.* As we have already indicated *Dharam Singh* does not support the respondent's contention.

Consequently, this appeal is allowed and the impugned judgment of the High Court is set aside. F

B.K.S. Appeal allowed.