



NO AUTOMATIC PERMANENCY OF PROBATIONERS

The Bombay High Court (HC), in the case of *Dhanraj R. Mahale*¹ dismissed a Letters Patent Appeal (LPA) filed by former employees (Appellants) of Kirloskar Oil Engines Limited (KOEL) challenging their termination. The HC reaffirmed that confirmation in service is not automatic upon the completion of probationary period, even if that period exceeds the timeframe prescribed by the Model Standing Orders (MSO), provided the appointment terms require a positive act of confirmation by the employer.

Brief Facts.

- The Appellants were initially appointed as trainees, then moved to temporary appointments, and finally placed on probation for a period of six months. KOEL's appointment letters stipulated that confirmation of service would be issued in writing only if their overall performance was found satisfactory. At the end of the six-month probation, their services were terminated *via* letters stating their services were discontinued upon completion of the probationary period.
- Appellants filed individual complaints under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (Act), alleging unfair labour practices before the Labour Court (LC). The LC passed a common order, partly in favour of the Appellants and KOEL.
- Parties filed Revision Applications under Section 44 of the Act. The Industrial Court (IC) allowed KOEL's revisions in totality and dismissed the Appellants' applications.
- Appellants challenged the IC's order *via* Writ Petition before the HC, which was dismissed by the Single Judge, leading to this LPA.

Questions of Law.

- Does the completion of the probationary period result in "deemed confirmation" or automatic permanency if the employer does not issue a formal confirmation letter?
- Does Clause 4A of Schedule I of the MSO, which prescribes a three-month probation period, override a contract of service that mandates a written order for permanency?

¹ *Dhanraj R. Mahale & Ors. v. Kirloskar Oil Engines Ltd. & Ors.* Letters Patent Appeal No. 151 of 2009 in Writ Petition No. 1727 of 2007 Bombay High Court.

Appellants' Contentions.

- The MSO is a beneficial legislation and should override private contracts that are less favorable to the worker.
- The probationary period prescribed under Clause 4A of the MSO must prevail over any contradictory private contract of service, especially if the contract imposes a longer or disadvantageous probationary route

KOEL's Contentions.

- Appellants unconditionally accepted the terms of their traineeship, temporary employment, and probation without any protest.
- Rule 32 of the MSO protects rights under a contract of service and ensures that standing orders do not operate in derogation of such agreements.
- Confirmation is a management function requiring an independent assessment of suitability; hence, no automatic permanency can be claimed.

HC's Decision & Reasoning.

HC:

- Noted that the Appellants were not initially hired as probationers but followed a sequence beginning with a one-year "master and pupil" traineeship (earning a stipend and explicitly designated as non-regular employees). Because probation was a sequential status reached only after settling prior roles, Rule 32 of the MSO operated to protect the specific terms of these service contracts.
- At every transition (trainee to temporary onward to probationer), KOEL issued fresh appointment letters defining the fixed-term nature of the roles. The Appellants' accepted these terms and received full and final financial settlements at each milestone without recording any protest.
- Reiterated that once an employee knowingly and unconditionally accepts a fresh appointment without objection, they are legally barred from "reneging on their conduct" to retroactively challenge the hiring structure once the contract expires.
- While 'retrenchment' under the Industrial Disputes Act, 1947 (**ID Act**) generally covers most terminations, Section 2(oo)(bb) of the Act provides an exception. Termination is not retrenchment if it results from the non-renewal of a contract or happens under a specific contractual stipulation.
- Highlighted that the probation letters explicitly stated that employment would end upon the completion of the probationary timeline at KOEL's discretion.
- Consequently, the termination was a natural "efflux of time" that fell squarely under the Section 2(oo)(bb) exception, rather than being an unfair labor practice.
- Therefore, rejected the appeals.

This *Counselence Connect* contains information in a nutshell on a recent change in law.

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