HIGH COURT OF DELHI
Bench: Chief Justice Satish Chandra Sharma And Justice Sanjeev Narula
Date of Decision: 01 November 2023

LPA 24/2023 and CAV 16/2023

SANDEEP GUPTA **..... Appellant**

Versus

HINDUSTAN ANTIBIOTICS LTD **..... Respondent**

Subject: Labour Law - Employment Contract - Termination during Training Period - Interpretation of Terms of Appointment and Service Agreement.

Headnotes:

Appointment and Termination - Interpretation of terms of appointment and service agreement - Appellant appointed as a Junior Medical Representative (Trainee) with a mandatory training period - Training period extendable for a further 12 months - Appellant claimed automatic confirmation after the initial 12 months - Respondent rejected claim and extended training - Appellant's performance deemed unsatisfactory - Training eventually terminated - Industrial dispute and conciliation process followed - Labour Court held termination illegal - Ld. Single Judge affirmed reinstatement but denied automatic confirmation. [Para 1-15]

Employment Contract – Termination during Training Period – Interpretation of terms of appointment and service agreement – Whether non-extension of training period before the lapse of 12 months led to automatic termination of training and automatic confirmation of the appellant as a regular Medical Representative on probation – Service agreement and terms of appointment clearly indicate that successful completion of the training period is a pre-requisite for consideration as a regular employee – No provision for automatic extension or automatic confirmation – Offer of regular appointment to follow satisfaction of the respondent during the training period – Appellant's contention of automatic confirmation rejected. [Para 16-23]

Principle of Deemed Confirmation – Deemed confirmation can only apply in exceptional cases where rules prescribe a maximum period of probation or training, and no overt or positive act for confirmation is stipulated – In this case, rules require a positive act for extension of training and confirmation – Maximum period of training had not expired, and training was extended by express order – No basis for automatic confirmation. [Para 27-28]

Literal Interpretation of Terms – Terms of an agreement or rules governing the parties must be construed in their simple and grammatical sense unless a different construction is warranted to prevent absurd consequences or protect constitutionality – No reason to deviate from the literal meaning of the terms of appointment and service agreement in this case. [Para 29]

Backwages – Appellant not eligible for backwages as he was gainfully employed during the period in question – Appellant did not provide evidence

to the contrary – Finding of the Ld. Single Judge on this issue upheld. [Para 31]

Appeal Dismissed – No infirmity in the order of the Ld. Single Judge – Appeal dismissed. [Para 32]

Referred Cases:

- Kazia Mohammed Muzzammil v. State of Karnataka (2010) 8 SCC 155
- High Court of Madhya Pradesh. v. Satya Narayan Jhavar (2001) 7 SCC 161
- Durgabai Deshmukh Memorial Sr. Sec. School v. J.A.J. Vasu Sena (2019) 17 SCC 157
- Bhartiya Sewa Samaj Trust Tr. Pres. v. Yogeshbhai Ambalal Patel AIR 2012 SC 3285
- Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.ED.) and Others (2013) 10 SCC 324

Representing Advocates:

For Appellant: Mr. K.R. Gupta and Mr. Nitin Gupta Advocates.
For Respondents: Mr. Vikrant Pachnanda, Mr. Mukul Katyal, Advocates and Mr. Deepak Saxena, AR for respondent

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J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. The present appeal assails the order dated 10.11.2022 passed by the Ld. Single Judge in Writ Petition (Civil) No. 6708/2003. It is a story of appointment, termination during the period of training and an order of reinstatement by the Labour Tribunal, followed by the impugned order which reversed the order of the Labour Tribunal and eventually upheld the termination.

2. As the devil often lies in the details, we may lay down the factual matrix of the case in brief. On 26.05.1988, the appellant was appointed as a Junior Medical Representative (Trainee) by the respondent company. The terms of appointment were sealed in a letter of appointment dated 20.05.1988 and service agreement dated 27.05.1988. The terms of appointment prescribed a mandatory training period of 12 months for the appellant. The training period was extendable for a further period of 12 months. On 10.07.1989, the training of the appellant was extended for a further period up to 26.11.1989.

3. In the aftermath of this letter, the appellant addressed a letter dated 16.08.1989 to the respondent claiming to be treated as a Medical Representative (Probationer) with effect from 26.05.1989 i.e. after the completion of one year training. The genesis of the letter lied in the contention

that the training of the appellant stood automatically terminated after the completion of 12 months and he was deemed confirmed as a Medical Representative with effect from the very next day after the completion of 12 months.

4. The respondent replied to letter dated 16.08.1989 of the appellant vide its letter dated 04.10.1989, wherein the claim for automatic confirmation was rejected as baseless and the appellant was called upon by the respondent to improve his performance during the extended training period. The respondent advised the appellant to achieve the sales target and to not indulge in levelling baseless allegations against the respondent in order to cover up the inadequacies in his performance. On 11.11.1989, the training period of the appellant was further extended up to 26.05.1990. Thus, the training of the appellant was extended for a full 12 months‟ period to enable the appellant to achieve a satisfactory level of performance. On 01.02.1990, another order was issued to the appellant requiring him to put in adequate efforts to improve his performance. He was also advised to take the guidance of his seniors for achieving the desired results.

5. On finding the appellant‟s performance unsatisfactory, the respondent terminated the training of the appellant on 22.05.1990 in accordance with the appointment letter and service agreement. The respondent also sanctioned one months‟ stipend in lieu of the mandatory notice.

6. Thereafter, the parties participated in the conciliation proceedings on the point of termination. On failure of the conciliation proceedings, the Delhi Administration held that an industrial dispute existed between the parties and the matter was referred to the Industrial Tribunal for adjudication. In the first round, the Ld. Labour Court dismissed the claim of the appellant by holding that he did not qualify as a “workman” under the Industrial Disputes Act. Assailing the said order, the appellant approached this Court in W.P.(C) No. 5611/1998. Vide order dated 24.05.2001, the writ was allowed and the matter was remanded back to the Ld. Labour Court for a fresh consideration on merits.

7. Ld. Labour Court adjudicated upon the issues and held the termination of the appellant to be illegal. It held that the appellant was entitled to be treated as a Probationer Medical Representative from 26.05.1989 to 25.11.1989, and thereafter as a Medical Representative Grade-II on regular

basis. Consequently, the respondent was directed to reinstate the appellant with continuity and with full back wages of a regular Medical Representative.

8. Impugning the aforesaid award of Ld. Labour Court, the respondent company approached this Court by way of the subject writ petition. By its order dated 21.10.2003, Ld. Single Judge issued a limited notice in the writ petition on the issues of automatic confirmation of the appellant and claim of backwages. The award of reinstatement was affirmed by the Court in the same order and no notice was issued on the challenge qua reinstatement. However, the interim order clarified that the appellant shall not be treated as a confirmed employee. The relevant extract of the aforesaid order reads thus:

*"**CW 6713/2003***

Issue notice to respondents confined to the question of whether the respondent could have been automatically confirmed and on the question of backwages as according to the learned counsel for the petitioner there is no averment by the respondent for unemployment in the affidavit of evidence, returnable on 12th February, 2004. In so far as the reinstatement is concerned, considering the fact that the letter of the petitioner dated 10th July, 1989 was issued only after the receipt of the registered letter from the respondent dated 3rd July, 1989 claiming dues as per completion of one-year training, the finding of the Tribunal is justified and furthermore there is an express clause in the appointment letter that the. training will automatically stand terminated at the end of 12 months period and there is no automatic extension, interference with the finding of reinstatement is not warranted.

CM 11721/2003

Notice, returnable on 12th February, 2004.

In the meanwhile, there will be stay of treatment of the respondent as a confirmed employee and payment of backwages. Subject to the above conditions, the remaining part of the award granting reinstatement stands affirmed."

9. The issues pertaining to automatic confirmation and backwages were decided against the appellant by Ld. Single Judge in the impugned order herein. Ld. Single Judge carefully analysed the letter of appointment and service agreement. He laid down the requirements stipulated in the aforesaid documents as:

"38. A clear reading of the Letter of Appointment palpably makes clear the following points:

(i) The training period was initially for a period of 12 months which can be extended by a further period of 12 months.

(ii) Clause 1 states that if the performance of the Respondent is found to be satisfactory, he will be offered a regular employment as Medical Representative Grade-II.

(iii) Clause 2 of the Letter of Appointment states that in the event of the satisfactory completion of the training period by the Respondent, he would then be offered a regular appointment by the Petitioner and that shall be accepted by him. Clause 2 states about three important words i.e., satisfactory completion, offer and acceptance.

(iv) Clause 2 of the Appointment letter further says that training will automatically stand terminated at the end of 12 months period from the date of joining. Meaning thereby the training will automatically stands terminated after 12 months unless it is specifically extended. There cannot be any automatic extension or automatic revival of training.

(v) Clause 3 states that the services of the Respondent could be terminated without assigning any reasons at the discretion of the company after giving a month„s notice or making payment of stipend of month in lieu of notice period inter alia if in the opinion of the company the progress of the Respondent was not satisfactory.

39. Hence from the reading of the appointment letter, there are 3 eventualities that can happen after the 12 months training period:

(i) In the event of successful completion of training period, the Petitioner will offer an appointment to the Respondent. If the Respondent accepts the said offer, he will be confirmed as a regular employee of the Petitioner. If the Respondent does not accept the offer of employment, he will be liable for damages.

(ii) If the Employer is not satisfied with the performance of the Respondent during his training period, however, still he feels that there is scope of improvement, the employer can extend the training period by 12 more months.

(iii) If the Employer is not satisfied with the performance of the Respondent during his training period, he can end the training period after 12 months without any offer of
appointment/extension of training period."

10. The Court further observed that the terms of appointment, as stipulated in the agreement, did not contemplate any provision for automatic confirmation. It observed that confirmation on regular basis was subjected to an „offer‟ being made by the respondent in that regard and acceptance of such offer by the appellant. Thus, Ld. Single Judge rejected the argument of deemed or automatic confirmation. The relevant para reads thus:

"40. Further, from the combined reading of Clauses 1, 2 and 3 of the Service Agreement makes it clear that the Respondent would be initially employed as a Junior Medical Representative (Trainee) for a period of 12 months on the conditions mentioned in the Letter of Appointment dated 20.05.1988. Further on completion of training there

has to be an offer by the Petitioner/ Company which has to b accepted by the Respondent and only then he would be eligible to serve the Company for a further period of 3 years in the post of Medical Representative Grade-II. It also makes it clear that the services of the Respondent may be terminated if his performance is unsatisfactory.

41. Hence in order to get a confirmation as a Junior Medical Representative (Trainee), there has to be satisfactory completion of the training period followed by offer of appointment by the Petitioner and acceptance of appointment by the Respondent."

11. The Court further observed that the terms of appointment categorically contained a provision for extension of training beyond the period of 12 months, if so required. It was observed that the extension of training was permissible for candidates who could not perform up to the mark and who demonstrated a scope for improvement. It was further observed that the appellant was not performing to the satisfaction of the respondent and was unable to meet the targets set for the trainee medical representatives. In that light, the training of the appellant was extended on two occasions so as to enable him to improve his performance and to achieve the desired results. Despite so, the appellant could not achieve the targets, thereby compelling the respondent to terminate the contract. The relevant para reads thus:

"44. In the present case, after the completion of one-year period of training on 26.05.1989 by the Respondent, there cannot be an automatic confirmation/deemed confirmation of the Respondent as a Medical Representative (Probationer) and later as a Junior Medical Representative Grade II. In order to be appointed as a Junior Medical Representative (Probationer), the Petitioner/Company upon satisfactory completion of the training period of 12 months, had to send an offer to the Respondent which had to be accepted by the Respondent, which was a pre-requisite to the appointment as Junior Medical Representative (Probationer). The Petitioner/Company rather sent an extension order for a period of 6 months in order to improve his performance, though on 10.07.1989 after the completion of 12 months training period on 25.05.1989 and later another extension letter dated 11.11.1989. Subsequently, after the completion of 2 years training by the Respondent, the contract of the Respondent was discontinued with effect from 25.05.1990 in terms of the Letter of Appointment and Service Agreement.

45. It is pertinent to note here that as per the Letter of Appointment dated 20.05.1988, it has clearly been mentioned that the training period may be extended for a further period of 12 months. It is nowhere mentioned that the extension letter is to be issued prior to the expiry of the training period. The Petitioner issued the extension letter dated 10.07.1989 extending the training period for 6 months, i.e. upto 26.11.1989. The extension letter sent by the Petitioner to the Respondent would not in any way mean as if the Respondent had been working first as a Junior Medical Representative (Probationer) w.e.f.

26.05.1989 to 25.11.1989 and later as a regular Junior Medical Representative Grade-II from
26.11.1989 onwards."

12. In the concluding paragraph, Ld. Single Judge summed up the legal position that the period of training was extendable and the same was duly extended by the respondent. He further observed that even if the extension order came after the lapse of one year of training, it would not mean that the training stood terminated and the appellant automatically stood confirmed as a regular employee without any „offer" of regular appointment. The concluding para reads thus:

"48. This Court is of the opinion that both the Letter of Appointment and the Service Agreement provided for a specific act by the Petitioner Company and that upon satisfactory completion of the training period by the Respondent, he would be given an offer which shall be required to be accepted by the Respondent, which clearly has not been the case herein. Hence, the Rules do not provide for any automatic confirmation/deemed confirmation to the Respondent. Further, this Court deems it appropriate at this juncture to state that the Respondent cannot claim the appointment as a regular Medical Representative Grade-II as a matter of right/entitlement. Furthermore, the Respondent, cannot after the expiry of the training period automatically acquire the status of a permanent/regular employee, unless the rules or Letter of Appointment or Service Agreement expressly provides. It is also pertinent to note here that merely because the
Petitioner/Company sent the extension letter dated 10.07.1989 and not before the initial ending of the 12 months training period on 26.05.1989, the Respondent cannot automatically become a regular employee by efflux of time. Neither the Letter of Appointment nor the Service Agreement contemplates an automatic confirmation after the expiry of the training period on 26.05.1989."

13. On the issue of backwages, Ld. Single Judge held that the appellant was not entitled to any backwages as he was gainfully employed elsewhere and thus, no entitlement for payment of backwages was proved by the appellant. The relevant para in this regard reads thus:

"51. From the evidence on record, it seems that the respondent has been gainfully employed somewhere and hence is not entitled to any back wages. Pertinently, the yearwise details of income of the respondent clearly proves that he was working somewhere."

14. Taking exception to the impugned order, as discussed above, the appellant contends that the order is violative of the terms of appointment which categorically provided that there would be no automatic extension of training. It is submitted that the respondent had not passed any order of extension of training before the lapse of the training period of 12 months and therefore, the training period was complete and stood terminated

immediately on the completion of 12 months. It is further submitted that since the training period was complete, the appellant automatically got confirmed as a Probationer Medical Representative with effect from the date of completion of training. He further submits that the order of extension of training was passed only after the appellant raised a claim for the salary of a Probationer Medical Representative. *Per contra*, the respondent company stands in agreement with the impugned order. In the counter affidavit filed by the respondent, the view taken by the Ld. Single Judge is reiterated in the form of submissions and it is contended that there was no provision for automatic confirmation of a trainee Medical Representative.

15. We have heard the rival contentions of the parties. We may now proceed to examine the issue whether non-extension of the training period before the lapse of 12 months led to automatic termination of training and consequently, automatic confirmation of the appellant as a regular Medical Representative on probation. The issue of backwages is consequential to the first issue and shall be dealt as the second issue arising in this appeal.

16. Be it noted at the outset that the relationship between the parties was not governed by any statute. The parties entered into a service agreement at the time of appointment of the appellant as a Trainee Medical Representative. The said service agreement is indicative of the nature of relationship between the parties and being a contract, it laid down the rights and liabilities of the parties involved in the contractual relationship. Therefore, the determination of this *lis* is contingent upon the meaning that the Court places on the terms of appointment of the appellant. The relevant parts of the appointment letter and service agreement are reproduced for a ready reference:

*"**Letter of Appointment***

With reference to your application dated - and the subsequent interview held with the selection committee on 5.5.88 we are pleased to offer you the post of Junior Medical Representative (Trainee)/ Junior Agrovet Representative (Trainee). The training period will be for a period of 12 months and may be extended by further period of 12 months.

1. You will be paid a consolidated stipend of Rs.1200/- p.m. during the said period of training. If your performance during training period is satisfactory, you will be offered regular employment as Medical Representative Gr. II/Field
Representative Gr.ll (Agrovet) in the scale of Rs. 190-15-23520-475-25-550 plus allowances as per Company's rules and terms and conditions applicable to such appointments.

2. ***The Company offers you regular employment on your satisfactory completion of training period, you shall be required to accept the said offer. Such an offer will include a probation for 6 months and a biding to serve the Company for a minimum period of 3 years inclusive of probation period.***

Failure to accept offer of employment on successful completion of training period, shall entail you to pay to the Company liquidated damages to the extent of stipend for a period of 4 months. You are, therefore required to furnish a bond in the form prescribed by the Company, to be signed on a non-judicial stamp paper of the value of Rs.10/- to be borne by you in triplicate i.e. one original on Stamp Paper plus 2 copies on plain paper. In case the surety is unable to come personally and sign in the office of the Company, surety will be accepted, provided it is signed in the presence of a First Class Magistrate or Gazetted Officer of State or a Central Government Officer, duly identified and attested by him. Proforma for such bond agreement is enclosed herewith. Your training will automatically stand terminated at the end of 12 months period from the date of joining. There is no automatic extension or revival of the training period.

3. ***Your services during training period are liable to be terminated without assigning any reasons at the discretion of the Company after giving one month's notice or making payment of stipend of one month in lieu of notice period.***

- *In the opinion of the Company your progress in the training is not satisfactory.*

- *In the opinion of the Company you commit any offence involving moral turpitude.*

- *In the opinion of the Company you commit breach of any terms & conditions mentioned hereunder and on your part to be observed and performed.*

- *Any declaration/ certificate or any information furnished by you is false or incorrect in material particulars of in the opinion of the Company you have suppressed or willfuly withheld material information.*

- *If you are declared medically unfit."*

Service Agreement

1. That the employee accepts appointment as Junior Medical Representative (Trainee) for a period of 12 months from the date of appointment on the conditions mentioned in the offer letter No.PER/R-JMR-42 dated 20.5.88 and on completion of training an offer by the Company, he agrees to serve the Company for a further period of 3 years in the post of Medical Representative Grade-II/Field Representative Gr.II (Agrovet) or such other post as may be offered to him under the terms and conditions specified in such offer.

2. That if the employee leaves the Company during the training period, he shall pay to the Company, a sum equivalent to 4 month stipend at the rate last drawn.

3. ***That during the period of training, the services of the employee may be terminated by the employer for unsatisfactory performance and in that event the employer shall have no obligation to pay any damages or compensation to the employee or the employee is liable to pay any damages to the Company."***

(emphasis supplied)

18. The terms of appointment, as mentioned above, are fairly certain and do not indicate any ambiguity. It is fairly clear that the appointment of the appellant was only as a trainee Medical Representative. The period of training prescribed at the beginning was 12 months. The said period was liable to be extended for a period of another 12 months if the respondent company found such additional training necessary for any trainee. Upon successful completion of training, an offer of regular appointment could be made by the respondent which ought to be accepted by the appellant for appointment. Once the offer of regular appointment is made and accepted, a trainee is appointed as a Probationer Medical Representative for a period of 6 months. After successful completion of the probation period, regular appointment takes effect.

19. The terms of agreement specifically cover the area relating to training, regular appointment and probation period. It is specifically expressed that the respondent company could make an offer of regular appointment upon satisfactory completion of the training period. Thus, satisfactory completion of the training period is a *sine qua non* for an offer of regular appointment. This condition is expressly provided in clause 2 of the letter of appointment. The said condition is to be read in conjunction with clause 3 of the letter, which provides for termination of service during the training period without assigning any reason. However, clause 3 of the letter of appointment is to be read with clause 3 of the service agreement. The latter clause indicates the grounds which could form the basis of such termination of service. The expression "*during the period of training, the services of the employee may be terminated by the employer for unsatisfactory performance*" indicates that termination of service during the training period shall be on the ground of "unsatisfactory performance".

20. The factual scenario in this case indicates that the appellant was put to notice by the respondent, that too on multiple occasions, to improve his performance. The letters dated 10.07.1989, 04.10.1989, 11.11.1989 and 01.02.1990 are indicative of the same. Therefore, it is fairly apparent that the

training period of the appellant was extended on the ground of unsatisfactory performance. It is also apparent that the appellant was reminded of the same in express terms. It is the case of the appellant that the intimation of unsatisfactory performance was given to him only after his communication to the respondent claiming wages of a probationer medical representative. Be that as it may, it is demonstrated by the respondent that the appellant could not meet the desired targets and was reminded to improve his performance. Para 8 of the impugned order also notes the inadequacies in performance.

21. Thus, it is not in doubt that the respondent was empowered by the service agreement to terminate the training of the appellant. In this case, the termination was not challenged on the ground that the appellant‟s performance was not unsatisfactory. Furthermore, the inadequacy of his performance has not been refuted by the appellant save and except for bald averments and unsubstantiated submissions, which cannot be made the premise of this present appeal. Rather, the termination was challenged on the ground that the training period stood automatically terminated as it was not extended timely by the respondent and thus, the appellant stood automatically confirmed as a regular employee i.e. automatic confirmation from Trainee Medical Representative to Probationer Medical Representative.

22. Rejecting the aforesaid contention, Ld. Single Judge observed that the act of confirmation required an express offer and acceptance thereof, as per the terms of appointment. We find ourselves in complete agreement with this view. The terms of appointment and service agreement, as discussed above, categorically provide that an offer of regular appointment may be given by the respondent company after successful completion of the training period. Once the said condition is read with the provision for termination of training due to unsatisfactory performance, the unavoidable conclusion is that successful completion of the training period was a pre-requisite for consideration as a regular employee. The offer of regular appointment was to follow only after satisfaction of the respondent during training period. The appellant contends that the terms of appointment categorically noted that there could be no automatic extension of training and therefore, if the training was not extended before the lapse of first 12 months, it terminated automatically. In our considered view, placing the said interpretation on the terms of appointment would amount to doing violence to the language. Firstly, in this case, the training was extended by an express letter dated 10.07.1989. Secondly, there was no provision in the terms of appointment to automatically terminate the training. The only provision that exists is for extension of training by an express order. It could not be twisted to mean that the training

would automatically terminate, if not extended, and the employee would be confirmed by a deeming fiction. Even if we accept the view that the training stood terminated automatically as extension order was passed almost 2 months after the completion of 12 months‟ training, the only consequence of that would be limited to the termination of training. It would not automatically convert him into a regular employee by applying a fiction of automatic confirmation. For, confirmation is contemplated by a positive act of offer and acceptance.

23. When the law prescribes an act to be done in a particular manner, it ought to be done in that manner or not at all. It is a settled proposition of law. In the present case, the relationship between the parties is governed by the underlying agreement entered into by and between the parties. The agreement categorically requires the positive act of “offer” for regular employment. Automatic confirmation could not replace a positive act.

24. The concept of deemed confirmation or automatic confirmation, as the appellant has put it, has evolved over the course of time through judicial discourse. First and foremost, it has to be recognized that in determining whether the principle of deemed confirmation shall be attracted to a case or not, the first point of reference is the governing rule in the case. If the governing rules provide for a positive or overt act for confirmation, there could no deemed confirmation without such positive act. In ***Kazia Mohammed Muzzammil v. State of Karnataka*** [1] , the Hon‟ble Supreme Court summarized the aforesaid principle as:

> *“46. On a clear analysis of the above enunciated law, particularly, the seven-Judge Bench judgment of this Court in Samsher Singh [(1974) 2 SCC 831 : 1974 SCC (L&S) 550] and the three-Judge Bench judgments, which are certainly the larger Benches and are binding on us, the courts have taken the view with reference to the facts and relevant rules involved in those cases that the principle of “automatic” or “deemed confirmation” would not be attracted.* ***The pith and substance of the stated principles of law is that it will be the facts and the rules, which will have to be examined by the courts as a condition precedent to the application of the dictum stated in any of the line of cases aforenoticed.”***
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> (emphasis supplied)

25. The position of law has been succinctly summarized by the Hon‟ble

[1] (2010) 8 SCC 155

Supreme Court in ***High Court of Madhya Pradesh.*** **v.** ***Satya Narayan Jhavar***[2]**,** in the following words:

> *"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.****"*
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> (emphasis supplied)

26. The above extract makes it explicitly clear that wherever confirmation is contingent upon an overt act, no confirmation could take effect until and unless it is done by the prescribed act, irrespective of whether or not the maximum period of probation has expired. Recently, in ***Durgabai Deshmukh Memorial Sr. Sec. School v. J.A.J. Vasu Sena***[3], the Hon'ble Supreme Court was dealing with a similar set of rules which prescribed confirmation upon successful completion of the probation period. The Court, speaking through Dr. D.Y. Chandrachud J., observed that the requirement of successful completion would operate as a condition precedent and therefore, without fulfilment of the condition precedent, no deemed confirmation could take place despite expiry of the probation period. The relevant para reads thus:

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[2] (2001) 7 SCC 161
[3] (2019) 17 SCC 157

> *"45.* ***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."*
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> (emphasis supplied)

27. In light of the position of law discussed above, it is noteworthy that deemed confirmation could take place only in exceptional cases and specifically when: *First*, the terms of appointment have prescribed a maximum period of probation or training, as the case may be, and the said period has expired without any order of termination of service;

    Second, the extant rules do not stipulate any overt or positive act for confirmation.

28. In the present case, the terms of appointment and service agreement require a positive or overt act for confirmation. Although, the rules did prescribe a maximum period of training, however, the said period was not over and the order of termination was issued during the continuance of training. Therefore, the argument of deemed confirmation due to expiry of maximum period of training shall not even apply to the facts of the case. The maximum period has not expired. Arguendo, it is indeed true that the extant terms of appointment provided that there could be no automatic extension of training. However, training in this case was extended by an express order. Moreover, it would be absurd to propose a view that the rules which did not even provide for automatic extension of training would provide for automatic confirmation of a trainee as a regular employee. The terms of appointment required an overt act, for extension of training as well as for confirmation.

29. It may be apposite to note that the terms of an agreement or of the rules governing the parties must be construed in their simple and grammatical sense. Until and unless a construction is warranted for preventing any absurdity of consequences or to protect the constitutionality of the rules or to

achieve their purpose, the Court must limit itself to the literal meaning. Especially so when the literal meaning presents a clear and legally sustainable view. We see no reason to deviate from the literal meaning of the terms of appointment and service agreement (extant rules).

30. In support of his case, the appellant has relied upon the decisions in ***Bhartiya Sewa Samaj Trust Tr. Pres. v. Yogeshbhai Ambalal Patel***[4] and ***Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.ED.) and Others***[5]. The former case pertains to dismissal of a teacher for raising who had raised his voice against the management. The Court struck down the dismissal and held it to be a case of victimization. In our considered view, the said decision has no bearing on this case, being premised in a different factual scenario. The latter decision pertains to payment of full back wages after holding of a termination as illegal. In the present case, the termination itself has been upheld and therefore, the consequences of wrongful termination shall not follow. The decision, in our respectful view, cannot be pressed into service for any purpose and fails to advance the case of the appellant.

31. As regards the issue of backwages, we find ourselves in agreement with the view that the appellant does not qualify for the same, as he was gainfully employed during the period in question. The appellant has not questioned the above observation of Ld. Single Judge by placing any facts to the contrary on record. Therefore, we have no reason to disturb the finding.

32. In light of the above discussion, we are of the considered view that there is no infirmity in the order passed by Ld. Single Judge and accordingly, we uphold the same.

33. Accordingly, we dismiss the present appeal. Interim applications, if any, also stand disposed of in the aforesaid terms. No order of costs.

[4] AIR 2012 SC 3285

[5] (2013) 10 SCC 324