

## Appointing on Probation – Benefits, Good Practices and Implications

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In Industrial and Commercial Organisations, it is the normal practice that the new employees are taken on probation. The probationary period may range between six months to two years depending on the nature of the role and responsibilities. During the probationary period a new employee performance and behaviour is required to be monitored and provided close supervision and coaching, guidance and training, either to learn a new job or to turn around a performance problem. The period is also required to be utilised to make the new employee to understand and integrate with the culture of the organisation besides systems and processes of working. The intent and object of such probationary period is rarely utilised by the organisations.

The other purpose of probationary period is to suspend or modify the usual employment rules for an employee and to understand and assess his or her on the job competencies, potential, behaviour patterns and commitment to the organisation and its objectives.

The implied promise or threat of a probationary period is that the employee will have to utilise the opportunity and perform to best of his abilities and if the employee fails to do so, he may not be considered for permanent employment and lose his employment at the end of probation or during the period of the probation.

To achieve the real objectives of the probationary period organisations may practice the below mentioned policies.

- Notify the employee the probationary period, the intent and consequences.
- Conduct periodic reviews with the employee to provide feedback and counselling.
- If the employee is having performance issues, detailed guidance may be provided on how the employee can improve—and offer training, if necessary.
- Assign a knowledgeable and experienced mentor to advise the employee.
- Treat the employee fairly and consistently.
- If an employee can't do the job or improve performance, clearly document everything ie. employee's performance, your efforts to coach and manage, training provided and so on.

The model standing orders provided in the Industrial Employment Standing Order Act has defined probationer as a workman who is provisionally employed to fill a permanent vacancy in a post and has not completed three months service therein. If a permanent employee is employed as a probationer in a new post he may, at any time during the probationary period of three months, be reverted to his previous permanent post.

Model standing orders are the guiding principles to the employer for finalisation of its own standing orders and certification of the same. When once the company standing orders are certified, the probationary period mentioned therein will be applicable. The three months mentioned therein is only indicative and not necessary applicable to all organisations.

The employer normally incorporates the period of probation and terms of extension of the same in the appointment order. If there is any conflict between the certified standing orders and the appointment order, the provisions contained in the certified standing orders shall prevail.

Most of the employees and also some of the employers believe that if no action is taken at the end of the probationary period and the employee is continued in the employment, it is deemed confirmation. It is not true. It will become deemed confirmation only if the rules of the company or the appointment order or the standing orders specifically incorporates such provision. The Constitution Bench in the matter of Sukhbans Singh V. State of Punjab and also in the matter of G S Ramaswamy and Ors v. Inspector-General of Police, Mysore has opined that a probationer cannot, after the expiry of the probationary period, automatically acquire the status of a permanent member of the service, unless of course, the rules under which he is appointed expressly provide for such a result.

Therefore even though a probationer may have continued to act in the post to which he is 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.

If provided in the appointment order, the services of the probationer can be terminated at the end of the probationary period or during the course of the probationary period without conducting an enquiry in accordance with the terms of employment. The Honble Punjab & Haryana HC in the matter of Jitender Kumar VS. P O, Industrial Tribunal-cum-Labour Court, Gurgaon [2014 LLR 985] confirmed this view and the facts of the matter are as under:

The workman was appointed initially on 12.01.2001, on probation for a period of six months after two years of training. As per the appointment order the probationary period is liable to be extended at the sole discretion of the Management and workman is deemed to be on probation unless confirmed in writing. In accordance with the terms of appointment order the probationary period was extended for 3 months on 12.07.2001 till 11.10.2001, after advising him to be more careful in future by considering his appraisal report and asked him to improve his work and conduct. On 09.10.2001 that is just before completion of the extended probationary period the Management discharged the workman by holding that his work and conduct was not found upto the expectation of the Management. Compensation and notice pay, along with the letter of termination of service was also sent to him and the discharge was after the Management had reviewed the working of the probationers on 08.10.2001 wherein it was noticed that the probationer was remaining absent, adversely affecting the working of the Company, doing illegal activities at the gate of the Company and affecting the industrial peace of the Company.

The court held, the Management is within its right to discharge the workman from his services in view of his conduct during period of probation since the main object of appointment of a person on probation is to enable the employer to assess his suitability in the establishment during the probation period and afterwards. Hence, no regular enquiry is required in such matter since the termination is neither stigmatic nor against the conditions of employment.

In another matter [DM, Rajasthan State Road Transport Corporation Vs. Kamruddin 2009 LLR 945] Supreme Court opined that dismissal of a probationer, for unsatisfactory work, will not be interfered by the courts.

The HR function has to take up the responsibility of monitoring, guiding, counselling and assisting the probationers to cope up with the work requirements and also document the deficiencies, if any, found during the probationary period so as to enable the management to take an appropriate decision on the probationary workmen. If this is not done, the purpose for which the probationary period has been created will be defeated.