
(2003) 06 JH CK 0098
In the Jharkhand High Court
Case No : C.W.J.C. No. 2966 of 1995 (R)

Dr. (Mrs.) Nupur Chandan	Vs	APPELLANT
Indian School of Mines and Others		RESPONDENT

Date of Decision : 20-06-2003

Acts Referred:

Constitution of India, 1950 — Article 226
School of Mines Society Rules — Rule 7A

Citation : (2004) 2 JCR 211

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : V. Shivnath, for the Appellant; M.M. Banerjea, for the Respondent

Final Decision : Allowed

Judgement

Tapen Sen, J.—Heard Mr. V. Shivnath, learned counsel appearing on behalf of the petitioner and Mr. M.M. Banerjea, learned counsel for the respondents.

2. The petitioner is aggrieved by the order dated 29.09.1995 issued by the Secretary, Executive Board, whereby and whereunder in exercise Rule 7(A)(i)(ii) of the Bye-laws, the petitioner's services have been terminated.

The stand of the petitioner is basically three folds, viz.,--

(a) that power could not have been exercised under Rule 7(A) inasmuch as the same applied to temporary employees;

(b) that the petitioner's appointment having been made on a permanent post and in a permanent capacity though with the condition that she would be on probation for a period of two years, the same did not mean that she was a temporary employee nor her being a probationer could have snatched away the status of a permanent employee merely because she was put on probation and therefore, all requirements in relation to permanent employees were necessarily required to be followed; and

(c) that the order is punitive in nature.

3. So far as the third contention is concerned as to whether the order is punitive or not, this Court refrains from making any comments because reading the order as a whole, it is not suggestive of the same being either punitive or that it has been resorted to as a measure of punishment although Mr. V. Shivnath. learned counsel appearing for the petitioner submits that paragraphs 15, 16, 20, 26 and 30 of the counter-affidavit are clear pointers to the effect that the only reason why the petitioner's services have been terminated is because of the dispute in relation to her staying with her husband 3 kms. away and not staying within the campus of the Indian School of Mines. The statement that her husband's campus is only 3 km. away is at paragraph 12 of her reply to the counter-affidavit. The relevant portion reads as follows :

"The petitioner has undertaken to make her own arrangement for coming on her duties when she is residing with her husband as C.M.R.I. Campus which is only 3 kms. away."

4. The other two contentions of Mr. V. Shivnath appears to be of some substance. From a perusal of Annexure 1 it admittedly appears that it is a letter of appointment on a post which was a permanent post because at Clause 2 of the letter of appointment it has been mentioned that the post is permanent. In the heading "NATURE OF APPOINTMENT" at Clause (a) it has been mentioned that the appointment is on a two years" probation with effect from the date of joining duty at the Indian School of Mines and the rest of the clauses, i.e., (b) to (e), i.e., wherever reference to the word "temporary" has been made, has been deleted. Even in Clause 2, all words that are related to the status of temporariness are also deleted. In addition to all these, two months after Annexure 1 was issued, an office order dated 23.08.1994 was issued by Annexure 2 which indicates that the terms and condition of source are not only subject to the terms of offer of appointment dated 26.03.1994, but they are subject to the relevant Indian School of Mines Society Bye-laws and Rules, etc. It has further been indicated that the age of superannuation of the petitioner will be 58 years. Thus, from a plain reading of these documents, it is clear that the petitioner's appointment was an appointment which was definitely not a pure and simple temporary appointment. That being the position, Rule 7(A)(A)(i)(ii) could not have been made applicable because that relates only to temporary appointments.

5. For the aforesaid limited reason alone, this writ application deserves to be allowed. Consequently, the impugned order is set aside and the other prayer of the writ petitioner to the effect that the respondents be directed to reinstate her in service with all consequential benefits is also allowed.

The writ application is allowed. No order as to costs.