

(2013) 02 CHH CK 0042
In the Chhattisgarh High Court
Case No : Writ Petition No. 2679 of 1993

Kum. Shoba Lata Sinha

APPELLANT

Vs

Ravi Shankar University and Others

RESPONDENT

Date of Decision : 13-02-2013

Acts Referred:

Citation : (2013) 2 CGBCLJ 180 : (2013) 1 CGBCLJ 476

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : U.N. Awasthi, with Ms. Raksha Awasthi, for the Appellant; Manish Nigam, Panel Lawyer for the State, for the Respondent

Judgement

Satish K. Agnihotri, J

1. By this petition, the petitioner impugns the notice dated 28-4-1990 (Annexure-P/14) as well as the termination/relieving order dated 27-7-1990 (Annexure-P/15) passed by the Bhilai Institute of Technology/respondent No. 2. The facts, in brief, are that initially the petitioner was appointed temporarily on 28-8-1986 (Annexure-P/2) for a period of two years on probation. Pursuant thereto, an agreement between the petitioner and the management was executed on 1-9-1986 (Annexure-R/7) wherein it was clearly provided that after confirmation, the services of the first party can be terminated on the ground of misconduct including willful negligent of duty; breach of any of the terms of contract; physical or mental unfitness; and incompetence. After completion of probation, the services of the petitioner was confirmed by order dated 29-3-1989 (Annexure-P/5) subject to conditions, inter alia, "after confirmation, your services are liable to be terminated by the management on three months notice or on payment of notice pay in lieu thereof; you may resign from your post after giving three months notice pay in lieu thereof notice; and you shall devote your whole time to your duties and shall not carry on or be concerned in any other business or occupation whatsoever."

2. Thereafter, pursuant to the advertisement published by the Madhya Pradesh Public Service Commission (for short "the MP PSC") (Annexure-P/10), wherein the last date for filing the application form was 12-5-1989, the petitioner made an application for appointment on the post of Lecturer. Clause 5 of the advertisement clearly provided that any candidate working either as Government employee or in Corporations, Boards, Public Undertakings, Banks, private institutions and also under Government of India will have to obtain approval of the appointing authority/head of the department.

3. The petitioner admittedly did not obtain any approval of the institute/respondent No. 2 wherein she was working, however, according to the petitioner, the petitioner has already written to the Director of the respondent No. 2 on 11-5-1989 (Annexure-P/11) to grant approval. A certificate was issued on 26-3-1990 (Annexure-P/12) that the petitioner was working in the Institute as a Lecturer and her work was satisfactory. Subsequently, three months notice was issued to the petitioner on 28-4-1990 (Annexure-P/14) clearly stating that after 90 days the services of the petitioner would come to an end, as she had already been selected by the MP PSC on the post of Lecturer and before making application the petitioner had not sought approval of the respondent No. 2. After completion of 90 days, the petitioner was relieved from the service by the impugned order dated 27-7-1990 (Annexure-P/15). Thus, this petition.

4. Shri U.N. Awasthi, learned senior counsel appearing with Ms. Raksha Awasthi, learned advocate for the petitioner, would submit that the removal of the petitioner on the ground that she had not taken approval of the respondent No. 2 before making an application is not legally justified, as there was no condition to obtain approval of the appointing authority or Head of the department before making an application for selection on the post of Lecturer. Shri Awasthi would further submit that the petitioner could not have been terminated without following the due process, as required under the law.

5. None appears on behalf of the respondent No. 2, however, return has been filed, wherein it has been stated that the removal of the petitioner was in accordance with the terms and conditions of the agreement entered between the petitioner and the respondent No. 2 on 1-9-1986 (Annexure-R/7) and also the terms and conditions of the appointment. The appointment of the petitioner was on contract basis, not in accordance with the rules and regulations. Thus, the service conditions of the petitioner was governed under the terms of the contract. In the return it has also been stated that the petitioner has already been paid full and final payment of Rs. 5,616/- by order dated 5-10-1990 (Annexure-P/16) and nothing remains to be paid to the petitioner.

6. I have considered all the aspects of the matter, perused the pleadings and the documents appended thereto. Indisputably, the appointment of the petitioner was not in accordance with law, rules & regulations, but as per the terms of the agreement dated 1-9-1986 executed between the petitioner and the respondent No. 2. There is no dispute that the petitioner was confirmed in service by order

dated 29-3-1989 (Annexure-P/5) subject to conditions, inter alia, "after confirmation, your services are liable to be terminated by the management on three months notice or on payment of notice pay in lieu thereof; you may resign from your post after giving three months notice pay in lieu thereof notice; and you shall devote your whole time to your duties and shall not carry on or be concerned in any other business or occupation whatsoever."

7. It is also not in dispute that the petitioner has not obtained the approval from the respondent No. 2 before approaching the MP PSC for selection on the post of Lecturer.

8. A bare reading of the advertisement, it is manifest that even a person working in the private institute was also required to take approval of the appointing authority/head of the department. The same was not done. Three months notice was issued after selection of the petitioner by the MP PSC, though the petitioner had joined the service on 26-9-1990. Thus, under the conditions of the contract, it cannot be held that 90 days notice, particularly when the petitioner was duly selected by the MP PSC, was not justified or illegal.

9. After notice dated 28-4-1990 (Annexure-P/14) when it was made clear that after 90 days the services of the petitioner would come to an end the petitioner has not raised any objection to the notice and also did not respond to the same and allowed the notice to reach its conclusion. As a sequel, the writ petition, being devoid of merit, is liable to be and is hereby dismissed. However, on the request of learned counsel for the petitioner, liberty is reserved to the petitioner to make a representation before the respondent No. 2 for payment of dues, if any, is still pending. No order as to costs.