

**(2008) 10 JH CK 0030**  
**In the Jharkhand High Court**

Seema Sinha and Another

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

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**Date of Decision :** 20-10-2008

**Acts Referred:**

**Citation :** (2009) 1 JCR 42

**Hon'ble Judges :** Dabbiru Ganeshrao Patnaik, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

D.G.R. Patnaik, J.—Petitioners in this writ application, have challenged the letter No. 2132 dated 22.12.2004 and letter No. 2131 dated 20.12.2004 (Annexure-6) and (Annexure-6/A) respectively, by which they were dismissed from their services under the respondent authorities. Prayer has been made both for quashing the aforesaid impugned letters and also for issuance of a writ of mandamus commanding upon the respondents not to give effect to the impugned letters of dismissal.

2. The grounds on which the impugned letters have been challenged are,-

(i) that, the orders of dismissal have been passed without following the due procedure laid down under Rule 54 of the Service Regulations of Bihar Education Project Council;

(ii) that, no notice was served upon the petitioners to enable them an opportunity to show-cause as to why their services should not be terminated. As such, the order of dismissal is against the principles of natural justice.

3 The case of the petitioners, in brief, is that in response to the advertisement issued by the Bihar Education Project Council, which was created by the Government of Bihar as a Autonomous Body and registered under the Society Registration Act, 1860, inviting applications from interested candidates for their selection and appointment to the post of Assistant Programme Officer and

Assistant Resource Persons, both the petitioners had submitted their respective applications. Both of them had passed the written test and other tests and were declared successful. Thereafter, they were offered appointment initially for a period of one year on contract basis. The tenure was extended by way of renewal from time to time and the petitioners continued thereby to render their services continuously till the date of issuance of impugned letters of dismissal.

After reorganization of the State, the State of Jharkhand had also constituted the Jharkhand Education Project Council and had adopted all the rules and guidelines, which were earlier maintained by the Bihar Education Project Council. The employees who were earlier employed under the Bihar Education Project Council and who were employed in the territory of Jharkhand, began discharging their duties under the Jharkhand Education Project Council. It is contended that though, the period of the petitioners' services was extended from time to time, but to their surprise, they were served with the impugned letters, whereby their services were terminated.

4. The grievance of the petitioners is that they were not served with any show-cause notice prior to issuance of the impugned letters of dismissal, nor were given any opportunity to explain as to why they should not be dismissed.

5. Counter-affidavit has been filed on behalf of the respondents, denying and disputing the entire claim of the petitioners. The stand taken by the respondents inter alia is,-

(i) that, the appointment of the petitioners was on short-term contract basis for specific period of one year;

(ii) that, under the terms of contract, services of the petitioners could be terminated any time, without assigning any reason, either by giving a notice of one month or on payment of one month's salary and allowance in lieu of such notice;

(iii) that, the service conditions of the petitioners are guided entirely by the terms and conditions laid down in the contract of appointment;

(iv) that, as per Clause-5 of the condition of service stated in the letter of appointment, it was clearly stipulated that the services of the petitioners during the tenure of contract, is to be regulated by the Service Regulation of the Bihar Education Project Council. Appointments of the petitioners were made under Rule 7 of the Service Regulations, which lays down, that the Executive Committee shall be competent to appoint any person to any post on individual service contract for specific period renewable from time to time. The service condition of the person so appointed on contract, shall be governed by terms of their respective contract. Other service conditions are meant for the permanent employees/casual employees only and the same do not apply to the petitioners since the petitioners are not employees of the council on permanent or temporary basis;

(v) that, the services of the petitioners were not extended after the period 2003-2004 and as such, in absence of any extension, their services are deemed to have automatically terminated. The impugned letters have therefore to be construed as formal letters of termination of their services and in such view of the matter, it cannot be said that termination of the petitioners' services was by way of punishment. As such, it was not incumbent upon the council to issue show-cause notice to the petitioners, nor was any departmental proceeding required to be initiated;

(vi) that, the service contract of the petitioners was not extended on account of the fact that the petitioners were found involved in the purchase of vulgar books which were supplied for different primary and middle schools of East Singhbhum;

(vii) that, the services of the petitioners were not found to be satisfactory and therefore, their service tenure was not extended since after 2003-2004.

6. The facts, which emerge from the rival submissions of the learned Counsel, are,-

(i) that, the petitioners were appointed on contract basis initially for a period of one year, which was extended from time to time;

(ii) that, such appointment was made by the Executive Committee of the council in exercise of its powers under Rule 7 of the Recruitment Rules Under the Bihar Education Project Service Conditions.

7. It is apparent from the above that the petitioners' appointment was made purely on contract basis and under the terms of contract, the tenure of service was for a fixed period which could be extended from time to time. The terms of contract had also stipulated that the extension of the tenure of the services of the petitioners could be terminated at any point of time even before expiry of the contract period by a month's notice in advance or payment of one month's salary in lieu of notice.

Clause 5 of the conditions of the contract declares that during the tenure of their services, the service conditions of the petitioners would be guided by the Service Regulations of the Bihar Education Project Council.

8. Learned Counsel for the petitioners emphasizes mainly on two grounds, Firstly, that even though, the petitioners' appointment was on contract basis, but they are essentially employees under the respondent council, as per definition of the term "employee" as given in the Service Regulations and also as per terms contained in Clause-5 of service contract. Secondly, that the decision to terminate the services of the petitioners even before the expiry of the contract period, was made on the basis of inquiry conducted against the petitioners on the purported charge of misconduct and negligence in performance of their duty. Termination of the petitioners' services, according to the learned Counsel, amounts to punishment which was imposed on them even without following the procedure laid down in Rule 54 of the Service Regulations.

9. From perusal of the impugned letters, it transpires that services of the petitioners were terminated purportedly in exercise of the right vested in the Executive Committee under the terms of contract of appointment and on the ground that services of the petitioners were not found beneficial in the interest of the council.

It is not disputed that service conditions of the petitioners are basically guided by the terms and conditions of the contract of their appointment and neither is there any dispute that their appointment was made by the Executive Committee of the council in exercise of powers under Rule 7 of the Service Regulations, which provides that appointment to several posts can be made by way of contract of service for a limited period and such services can be terminated at any point of time even without assigning any reason. The reason for termination of the petitioners' services, as indicated in the impugned letters, is that their services were not found beneficial in the interest of the Education Council. The impugned letters do not suggest that the decision of termination attaches any stigma of misconduct or dereliction of duty against the petitioners. The petitioners have attempted to raise an issue on the basis of an averment in the impugned letters that the decision was taken on the basis of the inquiry report submitted by the Deputy Commissioner. In absence of any indication in the impugned letters that the petitioners were found guilty of any misconduct or that, any inquiry was conducted against them for any misconduct, the report of the Deputy Commissioner referred to in the impugned letters, does at best suggest that in the assessment of the performance of the petitioners in discharging their duty, they were not found satisfactory.

10. Under such circumstances, the council had the absolute powers to terminate the services of the petitioners on the ground that it did not find services of the petitioners satisfactory. Since apparently, no departmental proceeding on any charge was contemplated against the petitioners and neither was any punishment contemplated, the provision of Rule 54 of the Service Regulations is not attracted.

11. In the light of the above discussion, I do not find that the petitioners have made out any legitimate ground to challenge the impugned letters of termination of their contract of appointment. These being no merit in this writ application, the same is accordingly dismissed.