

(2009) 11 JH CK 0011
Jharkhand High Court
Case No: None

Miss Anuradha Basu

APPELLANT

Vs

Steel Authority of India, Bokaro
Steel Plant and Others

RESPONDENT

Date of Decision: Nov. 4, 2009

Hon'ble Judges: Amareshwar Sahay, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Amareshwar Sahay, J.
Heard the parties.

2. The petitioner Miss Anuradha Basu was Deputy Manager (Nursing) Staff No. 085333. in the Medical Department of Bokaro Steel Limited, a

Subsidiary Company of Steel Authority of India Limited. She was allotted Q, No. 2003 of Sector - IV/C in Bokaro Steel City and she was

residing in the said quarter since the year 1988. In the year 2001, Steel Authority of India Limited floated a Scheme namely "SAIL SCHEME

FOR LEASING OF HOUSES TO EMPLOYEES - 2001" to enable the employees, the Ex-employees, the spouses of the deceased employees,

to acquire Company's Houses/Flats on long term lease basis and on the terms and conditions stipulated in the aforesaid Scheme and accordingly,

applications were invited from the persons covered under the Scheme.

3. The petitioner applied for taking the quarter, which was in her occupation which was already allotted to her by the Company on long term lease

as per the Scheme. The Company allotted the said Quarter to her under the said Scheme and a Premium of Rs. 3,10,000/- was worked out. The

petitioner deposited the said amount in installments, as directed by the Company. The ground floor of the said Quarter was marked and numbered

as Qr. No. 2001, and it was in occupation of one Dr. (Mrs.) Bimla Singh.

4. It appears that because of some dispute, Dr. (Mrs.) Bimla Singh, the occupant of the ground floor i.e. of Q. No. 2001, reported to the

Management of Bokaro Steel company that the petitioner was making some unauthorized constructions on the terrace of her Quarter No. 2003

and because of the said unauthorized construction on the terrace, the building was getting damaged since it developed some cracks. On the other

hand, the petitioner denied those allegations of having made any construction on the terrace. Both the parties went on leveling allegations and

counter allegations against each other and then it appears that the employer - Company, Bokaro Steel Limited took action against the petitioner.

5. The petitioner was served with notices and reminders by her employer - Bokaro Steel Limited to remove the alleged unauthorized construction

already made on the terrace by her and ultimately, a memorandum of charge dated 19.06.2002 was served on the petitioner asking her to submit

her written statement of defence. The charges against the petitioner were as under:

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That Ms. A. Basu, Dy. Manager (Nursing), Staff No. 085333, Medical Department unauthorisedly constructed rooms on the terrace/ roof of the

Q. No. 04C/cj 2003 allotted to her on long term lease basis under the SAIL Scheme For Leasing of Houses to Employees - 2001. In spite of

letters/ notices issued to her with the direction to demolish the unauthorized construction, she failed to comply with the said direction and

committed misconducts vis-a-vis violated Clause 13.1 and 13.7 of the SAIL Scheme for Leasing of Houses to Employees - 2001, Clause (xi) of

the Allotment Order of the said quarter and provisions of the Estate Manual.

Thus, according to the management, Ms. A. Basu has committed the following acts of misconduct.

(i) She had failed to conduct herself in a manner which shall enhance the reputation of the Company.

- (ii) Dishonesty in connection with the business or property of the Company;
- (iii) Acting in a manner prejudicial to the interests of the Company
- (iv) Causing damage to the property of the Company
- (v) Committing an act subversive of discipline and good behaviour and thereby, contravened Clause 4.0(1)(iii), 5.O(1), 5.0(5). 5.0(10) and 5.0(20) of SAIL Conduct, Discipline and Appeal Rules, 1977.

6. Ultimately, a Departmental inquiry was initiated against the petitioner by the management for the aforesaid alleged misconduct said to have been committed by her.

7. The inquiry report was submitted by the inquiry officer holding that the charges against the petitioner were proved. The petitioner was given second show-cause notice to which she replied and thereafter, by issued or an order dated 14.02.2003, the Disciplinary Authority, dismissed the petitioner from the service with immediate effect, which is under challenge in this writ petition by the petitioner.

8. The main contention of the petitioner is that the findings of the enquiry officer are perverse since the same are not based on the evidence and materials on record. It is submitted that in spite of the direct evidence, available on the record, the enquiry officer based his finding.,, on his own presumption ignoring/ rejecting the evidence on record. The disciplinary authority also passed the order of dismissal without application of his own mind and, therefore, the same is liable to be quashed.

9. It is also contended that the misconduct alleged against her had no nexus with her employment. According to her, she did not commit any misconduct under the Conduct, Discipline and Appeal Rules, 1977 of the SAIL and, therefore, for the alleged unauthorized construction, she could not have been proceeded departmentally under the Conduct, Discipline and Appeal Rule, 1977 and she could not have been dismissed from service. Further, according to her, if she made some unauthorized construction, even then at best it can be said that she only viola fed the terms and conditions of the Lease under which the Quarter was allotted to her and for any violation of the terms and conditions of Lease Agreement, the

respondent at best could have taken recourse to the provisions of the Terms and Conditions mentioned in the Lease agreement or in the

alternative, could have taken action against the petitioner under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, but in no

case, she could have been proceeded departmentally or could have been dismissed from the service in any manner for any alleged breach of terms

and conditions of "SAIL SCHEME FOR LEASING OF HOUSES TO EMPLOYEES - 2001" which had no nexus with her employment and,

therefore, the order of dismissal passed by the respondents against the petitioner was liable to be quashed.

10. The Scheme i.e. the "SAIL SCHEME FOR LEASING OF HOUSES TO EMPLOYEES - 2001" under which the petitioner was allotted the

aforesaid Quarter, has been produced before me at the time of Arguments.

From perusal of the provisions of the Scheme in question, it appears that Clause 13.0 of the said Agreement speaks about the terms and

conditions of the Scheme.

Clause 13.1 of the Scheme envisages that the lessee shall not make any addition/ structural alternation into the leased premises and Clause 13.12.

speaks that the lessor shall have the right to terminate the lease giving three months" notice to the lessee in case of violation of any of the terms and

conditions of lease and upon such termination, the lessor shall had the right to evict the lessee from the premises.

Clause 13.14 speaks that the lease shall be governed by the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971

and/or any other relevant Act/ Statute applicable in this regard.

According to the petitioner, if she had violated any of the terms of "SAIL SCHEME FOR LEASING OF HOUSES TO EMPLOYEES - 2001",

then recourse to Sub Clause 13.12 and 13.14 of the Scheme mentioned above could have been taken.

11. On the other hand, Mr. G.M. Mishra, learned Counsel appearing for the respondent - SAIL, relying on the averments made in the counter

affidavit and controverting ""he stand taken by the petitioner, submitted that Q. No. 2003 on the first floor of two. storied Block was allotted to the

petitioner, whereas the Q. No. 2001, is on the Ground Floor and is just below the quarter occupied by the petitioner. That quarter No. 2001 was allotted to one another employee of the respondent SAIL, i.e. to Dr. (Mrs.) Bimla Singh and she reported that the petitioner had constructed two rooms on the terrace in an unauthorized way as a result of which, several cracks cropped up in the Q. No. 2001. The petitioner was served with several notices for demolishing the unauthorized construction by the respondent Company but she did not comply with the directions served to her by the Town Administration Department of the respondent Bokaro Steel Limited and thereby, her activity resulted for the damage of the Company property and, therefore, the Bokaro Steel United took recourse to the rights given to it under the Conduct, Discipline and Appeal Rules, 1977 and the disciplinary action under the relevant Rules of the Company was taken, and after the departmental proceedings, when the charges were found to be proved, the petitioner has been dismissed from the service.

12. In view of the facts and circumstances above, it has to be considered as to whether the alleged unauthorized construction made by the petitioner on the terrace of her Quarter which she failed to demolish, in spite of the direction by her employer and whether for this act, she could have been departmentally proceeded under the SAIL Conduct. Discipline and Appeal Rules, 1977 and whether she could have been dismissed from the service on the ground that she did commit misconduct. Further as to whether the finding;; arrived at by the inquiry officer is perverse and is based on no evidence and whether the Disciplinary authority has passed the impugned order of dismissal from service without application of mind.

13. So far the first charge that the petitioner failed to conduct herself in a manner to enhance the reputation of the Company is concerned, from the inquiry report, which has been annexed with the writ petition, it appears that the Enquiry Officer has, on appreciation of evidence, has held that though the witness of Mrs. Basu corroborated her stand that the construction on the terrace was already existing there from before was not believable because no earlier occupant would tike to leave the construction materials like this, therefore, the construction must have been made by

the petitioner.

The above finding of the inquiry officer is apparently based on conjectures and surmises. The enquiry officer has himself held that though the witnesses corroborated the stand taken by the petitioner but he rejected that evidence on his presumption only that unauthorized construction must have been erected by the petitioner. I do not find that there was any material or evidence on record to come to such findings.

14. From the enquiry report, it appears that the enquiry officer has not dealt with the separate charges; rather, he has come to an abrupt finding that the charges have been proved because on his presumption unauthorized construction must have been erected by the petitioner. The disciplinary authority, who has passed the impugned order also appears to have awarded the extreme punishment of dismissal from service without applying his own mind and without examining the enquiry report minutely and in its right perspective.

15. Though there was no material to show that the alleged construction was made by the petitioner but in any view of the matter, it appears that during pendency of this writ petition by filing a Supplementary Affidavit, the petitioner has stated that as per the order of this Court, she has already removed and demolished the alleged unauthorized construction from the terrace of her Quarter and has brought on record a document annexed with her Supplementary Affidavit filed on 02.07.2004 to show that the employer also accepted the said fact and it issued a letter dated 17/18.06.2004 to the effect that the unauthorized rooms constructed on the roof of the Quarter No. 2003 has been demolished as per the directions of the Jharkhand High court. It is also brought on record that after the said demolition of the alleged unauthorized construction, the respondent SAIL has entered into an Agreement of Lease with the petitioner on 8th July, 2004.

16. In view of the discussions and findings above, I hold that the findings of the enquiry officer about the alleged unauthorized construction said to have been made by the petitioner are perverse and are against the evidence and materials of record. Further, I hold that the disciplinary authority,

without applying his independent judicial mind and without considering evidence and materials on record has mechanically passed the impugned order of punishment of dismissal from service and, therefore, such order of dismissal passed by the disciplinary authority on 14.02.2003, against the petitioner as contained in Annexure-4 cannot be sustained in law.

17. Consequently, this writ petition is hereby allowed. The order dated 14.02.2003 as contained in Annexure-4 dismissing the petitioner from service is hereby quashed. Since this writ petition has been allowed on the above points and as such, it is not necessary to go into the other questions raised by the petitioner. The respondents are hereby directed to issue consequential orders within a period of two weeks treating the petitioner to be in service during which she was compelled to remain out of service. No order as to costs.