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BOMBAY HIGH COURT ON TERMINATION DURING PROBATION

A. Introduction

The High Court of Bombay (**HC**) in the *Manganese Ore (India) Ltd.* case,¹ held that termination of a probationer on the grounds of unsatisfactory performance is not stigmatic if they had been given sufficient opportunities to improve.

B. Brief Facts

1. The petitioner-employee, Naseem Ahmad (**Ahmad**) filed a complaint against her employer, Manganese Ore (India) Ltd. (**MOIL**) to the Central Government alleging unlawful termination of her services.
2. Ahmad had been employed on grounds of compassion and was posted at Beldongri Mine.
3. During her first stint of probation, Ahmad's performance was said to be 'appreciated'. When she was transferred to Chikla Mine thereafter, her probation period was extended by six months.
4. Ahmad failed to attend work regularly due to an illness, and alleged that MOIL wrongfully terminated her employment during her leave, and further claimed that she was entitled to reinstatement with back-wages due to her seniority.
5. Ahmad had approached the Central Government (**CG**) about her wrongful termination. The CG then referred the dispute to the Central Government Industrial Tribunal. Both MOIL and Ahmad had challenged the order of remand passed by a Single Judge, who had upheld the termination order.

C. Contentions

Ahmad contended that:

1. she became a permanent, full-time employee (**FTE**) on completion of her first probationary period, and that the extensions were unwarranted;
2. actions of the management terminating her employment, on the presumption that she was still a probationer, was illegal; and
3. the termination of her services without conducting an enquiry was illegal, and the facts contained in the termination letter were stigmatic.

MOIL contended that Ahmad:

1. had been on probation for one year, with the possibility of extension, as per the terms and conditions of her appointment order;
2. was not punctual and did not show interest in her duties, and despite warnings and advice from

¹ *The Management of Manganese Ore (India) Ltd. vs. Naseem Ahmad* (03.09.2021 - BOMHC): MANU/MH/2454/2021.

- management, there were no observable changes in her attitude;
3. consistently extended her leave and did not report to duty at the transferred location;
 4. was ordered to approach MOIL's Medical Officer (**MO**) for treatment, but continued to submit records from the Civil Surgeon; and
 5. submitted false medical reports.

D. Order & Grounds

1. HC observed that the evidence was not sufficient to accept Ahmad's contentions, as there is sufficient documentation to prove her lack of punctuality.
2. Ahmad had been informed of her non-performance and was given opportunities to improve. Since she had not contested these assertions with appropriate documentation, the HC observed that this substantiated MOIL's claims of her unsatisfactory performance.
3. On perusal of Ahmad's medical records and her refusal to get treated by the MO, the HC further observed that she may have used this as an excuse not to report for duty. The HC observed that this conduct reflected poorly on her *bona fides*.
4. The HC also observed that, per MOIL's Rules, employees will be on probation for one year, with scope of extension for six months. Thus, the HC did not accept Ahmad's contention that she was an FTE following the first probation stint.
5. The HC held that the termination of Ahmad was strictly according to law. The HC set aside the Single Judge's order which held that Ahmad had not been given ample opportunity to present her case prior to her termination, especially as MOIL had not been able to verify the legitimacy of the medical records. The HC thus held: "*In view of this factual position, the burden was on [Ahmad] to prove that she was suffering from serious illness. The burden was on her to prove that her illness prevented her from resuming her duty. [Ahmad] could have adduced ample documentary evidence if she had been ill as stated by her. [MOIL] in our view cannot be blamed. [...] In our opinion, therefore, the negative burden could not be cast upon [MOIL] to prove the case of the appellant.*"
6. The HC finally held that the termination letter was not stigmatic, by stating: "*The management [of MOIL] on the basis of performance and her conduct came to the conclusion that she was not interested in the service of [MOIL] and also failed to carry out the reasonable instructions of the management and, therefore, her services were terminated. Perusal of termination order would show that aspersions were not cast upon [Ahmad].*"

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