



IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ANAND SINGH BAHRAWAT

ON THE 30th OF OCTOBER, 2025

WRIT PETITION No. 623 of 2011

BALVEER SINGH TOMAR

Versus

STATE OF M.P. AND OTHERS

Appearance:

Shri R.B.S. Tomar- Advocate for petitioner

Shri Prabhat Pateria – Deputy Government Advocate for respondent/State.

ORDER

This petition, under Article 226 of Constitution of India, has been filed seeking the following relief (s):

- “(i) That, the order Annexure-P/1 passed by the respondent No.3 may kindly be ordered to be quashed with a further direction that the petitioner be reinstated in service with all the consequential benefits and the petitioner be allowed to perform the work as Samvida Shalla Shikshak Varg-II.
- (ii) That, the respondents may kindly be further directed to pay the difference of salary of the intervening period and also pay the difference of arrears along with interest at the rate of 15%.
- (iii) That, any other relief, which is suitable in the facts and circumstances of the case in favour of the petitioner may also be granted in the interest of justice.
- (iv) That, the cost of this petition may also be awarded to the petitioner.”



2. It is submitted by learned counsel for petitioner that petitioner was initially appointed on 13.08.2009 as Samvida Shala Shikshak Varg-II. At the relevant point of time, regular Principal was not available and one Upper Division Teacher, namely, Mr. Virendra Singh Jadon was posted as officiating Principal (Incharge), discharging duties and disbursing power by performing his work as teaching. The petitioner was also authorized to perform the work to collect the salary charts and cheques with the Sankul Kendra. Thereafter, on 01.11.2010, respondent No.3 issued a show-cause notice levelling allegations regarding illegal gratification with the teachers for completing the e-service book, preparation of identity cards or disclosure forms of the assets and by doing so sought explanation. Petitioner submitted his reply to the aforesaid notice and without considering the reply, impugned order Annexure P-1 dated 27.12.2010 has been issued by Chief Executive Officer, Jila Panchayat Sheopur (M.P.).

3. It is submitted by learned counsel for petitioner that the impugned order is stigmatic in nature which has been passed, without holding the regular departmental enquiry, on the basis of fact finding enquiry done by SDO(R), Sub-Division Vijaypur (M.P.) in which petitioner has been held guilty and the impugned stigmatic termination order has been issued by Chief Executive Officer, Jila Panchayat Sheopur (M.P.). It is further submitted by learned counsel for petitioner that the competent authority who has to take action against petitioner is General Administration Committee. Learned counsel for petitioner submitted that by order dated 01.09.2016 passed in the case of **B. Kanka Raju Vs. State of M.P. & Others in WP. No.89/2009** the co-ordinate Bench of this court has held that the General Administration Committee is only empowered to impose major penalty/termination of service of petitioner.



4. *Per contra*, learned counsel appearing on behalf of the respondent/State submits that services of petitioner have been terminated after taking into consideration the fact finding enquiry, supported the impugned order and opposed the prayer made by learned counsel for petitioner.

5. Heard learned counsel for the parties and perused the record.

6. The services of petitioner have been terminated without holding any enquiry. Since impugned order Annexure P-1 dated 27.12.2010 is stigmatic in nature, therefore, regular departmental enquiry ought to have been held by respondents. The order passed by Co-ordinate Bench in **WP No.23267/2019 (Omprakash Gurjar vs. Panchayat and Rural Development & Ors.)**, also the order dated 12.09.2023 passed in **WP No.19117/2022 (Hukumchand Solanki vs. Panchayat and Rural Development & Ors.)** and the order dated 19.07.2023 passed in **WP No.14663/2022 (Arvind Malviya vs. State of MP & Ors.)** are worth mentioning.

7. The Division Bench of this Court in the case of **Rahul Tripathi Vs. Rajeev Gandhi Shiksha Mission, Bhopal & Others** reported in 2001(3) MPLJ 616 and **Jitendra Vs. State of M.P. & Others** reported in 2008(4) MPLJ 670 has rightly held that the order of termination is stigmatic in nature as the same entails serious consequences on future prospects of respondent and therefore, the same ought to have been passed after holding an inquiry. This Court is further supported in its view by the judgment passed by Division Bench of this Court in the case of **Malkhan Singh Malviya Vs. State of M.P.** reported in ILR(2018) MP 660. It is further submitted that the Apex Court while deciding the case of **Khem Chand vs. The Union of India and Ors.** reported in AIR 1958 SC 300,



had an occasion to summarize the concept of reasonable opportunity, relevant para of which has been pressed into service and which reads as under:-

"(19) To summarize: the reasonable opportunity envisaged by the provision under consideration includes-

- (a) An opportunity to deny his guilt and establish his innocence, which he can deny only do if he is told what the charges levelled against him are and the allegations on which such charges are based;
- (b) an opportunity to defend himself by crossexamining the witnesses produced against him and by examining himself or any other witnesses in support of his defence;
- (c) an opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do if the competent authority, after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the government servant tentatively proposes to inflict one of the three punishments and communicates the same to the government servant."

8. From the aforesaid, it is clear that impugned order is stigmatic in nature, therefore, without conducting regular departmental enquiry impugned order cannot be issued by respondents. The impugned termination order has been issued without giving any proper opportunity of hearing to petitioner without regular departmental enquiry. From the language of impugned order, it is clear that it is a stigmatic termination order.

9. It is settled position that if the order of termination is stigmatic in nature, the same entails serious consequences on future prospects of the petitioner and therefore the same ought to have been passed after holding an enquiry. In **Arvind Malviya (supra)**, it is held as under:-

"3) After hearing learned counsel for the parties and taking into consideration the fact that the present petition is covered by the



order dated 25/4/2022 passed in WP No.23267/2019 (Omprakash Gurjar (supra)), the present petition is allowed. The impugned order is hereby set aside. The respondents are directed to reinstate the petitioner in service with 50% backwages within a period of 2 months from the date of communication of the order. However, liberty is granted to the respondents to proceed against the petitioner afresh in accordance with law, if so advised. The said order passed in W.P. No.23267/2019 shall apply mutatis mutandis to the present case."

10. The Division Bench of this Court, at Principal Seat, Jabalpur, in the case of **Rajesh Kumar Rathore vs. High Court of M.P. and another (W.P. No.18657 of 2018)** vide order dated 23/11/2021 has held as under:

"6. The short question of law involved in the present case is as to whether the services of an employee under the Rules relating to Recruitment and Conditions of Service of Contingency Paid (District and Sessions Judge Establishment) Employees Rules, 1980, can be terminated without conducting a departmental enquiry when an order of termination casts stigma on the employee.

7. We are in full agreement with the legal position expounded in various judgments cited by the learned counsel appearing for the respondent. However, in the instant case, the question that arise for consideration, as stated above, is squarely covered by the decision of co-ordinate bench of this Court in the case of Krishna Pal Vs. District & Sessions Judge, Morena (supra). In the present case, it is an admitted fact that neither charge-sheet was issued nor departmental enquiry was conducted and order of termination attributes dereliction of duty amounting to misconduct, and hence, the same is clearly stigmatic order. The petitioner's services are admittedly governed under the Rules of 1980. If the facts and situation of the present case is examined in the context of the facts and situation of the case of Krishna Pal (supra), it is found that this Court had taken a view (para-5 of the said judgment) that Normally when the services of a temporary employee or a probationer or contingency paid employee is brought to an end by passing



innocuous order due to unsatisfactory nature of service or on account of an act for which some action is taken, but the termination is made in a simplicitor manner without conducting of inquiry or without casting any stigma on the employee, the provisions of Rule 9 of the Rules 1980 can be taken aid of. However, when the termination is founded on acts of commission or omission, which amounts to misconduct. Such an order casts stigma on the conduct, character and work of the employee and hence, the principle of natural justice, opportunity of hearing and inquiry is requirement of law.

8. In view of the aforesaid pronouncement of law, we are not inclined to take a different view, therefore, in view of the aforesaid, the impugned order dated 06.06.2017 (Annexure-P-6) and order dated 20.06.2018 (Annexure-P-9) are set aside.”

11. As per order passed by the co-ordinate Bench of this court in the case of **B. Kanka Raju (supra)**, the competent authority is the General Administration Committee and the impugned order has been issued by the CEO, Jila Panchayat Sheopur (M.P.). Relevant para of **B. Kanka Raju (supra)** reads as under:

“Taking exception to the order impugned, learned counsel for the petitioner contends that as per the Schedule I appended to Madhya Pradesh Panchayat Samvida Shala Shikshak (Employment and Conditions of Contract) Rules, 2005, the appointing authority for Samvida Shala Shikshak Grade II is Janpad Panchayat. Learned counsel also placed before this court the disciplinary rules known as Madhya Pradesh Panchayat Service (Discipline and Appeal) Rules, 1999 (hereinafter shall be referred to as the “Rules of 1999”). Part III of the Rules of 1999 deals with the discipline. Penalties are prescribed under Rule 5 of the Rules of 1999. Removal from service is a major penalty under Rule 5 (b)(vi) of the Rules of 1999. Rule 7 of the Rules of 1999 prescribes procedure for imposing major penalties. Sub rule (1) thereof stipulates that no order, imposing on a member of the Panchayat Service, any of the penalties specified in clause (iv) to (via) of rule 5 shall be passed



except after a formal inquiry is held as far as may be, in the manner hereinafter provided. Admittedly, the inquiry provided under Rule 7 of the Rules of 1999 has not been conducted and the impugned order of removal from service has been passed. That apart, as per the Appendix appended to the Rules of 1999, in relation to Class III and IV employees of Janpad Panchayat, the Chief Executive Officer is the disciplinary authority and is empowered to impose minor penalty and the General Administration Committee is empowered to impose major penalty. The appellate authority is the General Body of the Janpad Panchayat.

Admittedly, the impugned order of removal of service has not been passed by the General Administration Committee, therefore the same has been passed by an incompetent authority.

In the opinion of this court, the impugned order suffers from patent illegality on both the counts, namely; the order impugned has been passed by an incompetent authority and the order impugned has been passed without holding a formal inquiry, as contemplated under Rule 7 of the Rules of 1999.

Consequently, the petition is allowed. The impugned order (Annexure P/1) is hereby quashed. The respondents are directed to reinstate the petitioner with all consequential benefits.”

12. Taking into consideration the entire gamut of the matter and also the fact that the present petition is covered by **order dated 25.04.2022 passed in W.P.No.23267/2019 (Omprakash Gurjar Vs. Panchayat and Rural Development & Ors.)**, the impugned stigmatic termination/removal order dated 27.12.2010 (Annexure P/1) is hereby quashed. As learned counsel for petitioner submits that petitioner has already been appointed in District Shivpuri (M.P.) on the same post, therefore, there is no need to reinstate petitioner.

13. With the aforesaid, present petition stands *disposed of*.

(Anand Singh Bahrawat)
Judge