

**HIGH COURT OF MADHYA PRADESH,
BENCH AT GWALIOR.**

SB : Justice R.S.Jha

Writ Petition No. 700 of 2016

Smt. Pinki
VS.
State of MP & others

Shri N.S.Kirar, Advocate for the petitioner.
Shri T.C.Singhal, Advocate for the respondent No.6.

ORDER
(18/03/2016)

This petition has been filed by the petitioner being aggrieved by the order dated 11.1.2016, passed by the respondent No.5, by which the petitioner, who had been appointed as Aganwadi Worker on Centre No.2 in village Rama, Tehsil Surpura (Ater) District Bhind, has been removed from the said post on account of the fact that the revision filed by the respondent No.6 against her removal from the very same post has been allowed by the Additional Commissioner, Chambal Division, Morena and she has been directed to be reinstated.

2. It is submitted by the learned counsel for the petitioner that the impugned order has been passed without giving any opportunity of hearing and, therefore, deserves to be set aside.

3. Having heard the learned counsel for the petitioner and having perused the record, it is apparent therefrom that the respondent No.6 was initially appointed as Aganwadi Karyakarta at Centre No.2, Village Rama, Tehsil Surpura (Ater), District Bhind but was subsequently removed from the said post on account of the allegations against her. It is also undisputed and apparent that the respondent No.6 has been

reinstated on the said post by order dated 15.10.2015, passed by the Additional Commissioner, Chambal Division, Morena and her order of removal/termination has been set aside. It is also clear that it is pursuant to the order of reinstatement passed by the Additional Commissioner that the respondent authorities have passed the impugned order dated 11.1.2016 reinstating the respondent No.6 on the post of Aganwadi Karyakarta at Centre No.2, Village Rama and the petitioner, who had been appointed on the said post during the pendency of the proceedings initiated by the respondent No.6 against her removal, has been removed.

4. It is contended by the learned counsel for the petitioner that as the order of appointment of the petitioner was not made subject to the result of the appeal proceedings pending against the removal of the respondent No.6 and as there was no stipulation in the order of appointment to the effect that the appointment of the petitioner would be subject to the said proceedings, therefore, the impugned order dated 11.1.2016 cannot be sustained as the petitioner has been appointed pursuant to fresh proceedings for recruitment. It is also contended that the petitioner should have been heard before passing the impugned order as well as in the revision proceedings filed by respondent No.6 and in the absence of the same the aforesaid orders are illegal and not binding upon the petitioner.

5. I am of the considered opinion that the contentions of the learned counsel for the petitioner cannot be accepted as in the proceedings taken up by the respondent No.6 against her removal, the petitioner was not a necessary party, moreso as on the date of initiation of the proceedings the petitioner had not even been appointed. I am also of the considered opinion that as the reinstatement of the respondent No.6 in the revisional proceedings by the Additional Commissioner is an

undisputed fact and as the said order passed by the Commissioner has become final and has to be complied with, therefore, no useful purpose could have been served even if a notice would have been issued to the petitioner which even otherwise is not required to be issued in view of the admitted and undisputed facts of the case.

6. I am also of the considered opinion that as the post on which the petitioner has been appointed was previously occupied by the respondent No.6, from which she had been terminated and her appeal against the termination has been allowed, therefore, even if there was no stipulation or condition as stated by the learned counsel for the petitioner in the order of appointment, it goes without saying that any such appointment would be subject to the order passed by the appellate authority in the proceedings taken up by the respondent No.6 against her termination. I am constrained to say so as if this position of law is not emphatically stated and affirmed, all orders passed by the appellate authorities or even by this Court would be rendered otiose and meaningless by adopting the method of filling up the post in the intervening period and would make a mockery of all provisions relating to appeals and revisions.

7. The law in this respect has already been emphatically stated by the Division Bench of this Court in the case of *Jhumilal Yadav vs. The State of Madhya Pradesh*, passed in Review Petition No.380/2012, decided on 16.4.2014, arising out of Writ Petition No.423/2001, with which I am respectfully bound, decided on 15.12.2011, wherein the Division Bench has held as under:-

"It is the case of the applicant now in the application that the applicant was appointed as a Panchayat Karmi based on an advertisement and recruitment process conducted by the Panchayat in the year 2001 and as the applicant was working in the panchayat, the order passed for reinstating Smt. Vijay Laxmi Mishra has the result of removing the applicant from service and as this has been done without hearing him, the action is unsustainable.

Shri Atulanand Awasthy, learned counsel appearing for respondent No.5 refuted the aforesaid and pointed out that services of Smt. was terminated in the year 2000 and after her termination the applicant was appointed in a vacancy that arose due to termination of Smt. Vijay Laxmi Mishra. It is said that termination of the original employee namely Smt. Vijay Laxmi Mishra having been found to be unsustainable, applicant has to make room as the applicant's appointment was on a vacancy which was created after termination of respondent Smt. Vijay Laxmi Mishra. Accordingly, it is submitted by him that no error has been committed, applicant is not entitled for any hearing and no case for review is made out.

We find much force and substance in the objection raised by Shri Atulanand Awasthy. Smt. Vijay Laxmi Mishra was working as Panchayat Karmi / Panchayat Secretary and in the year 2000 her services were terminated. After terminating her services, in a vacancy resultantly caused applicant herein was appointed but once the termination of Smt. Vijay Laxmi is quashed she is to be re-appointed as a Panchayat Karmi, the applicant cannot resist that reinstatement on the ground that applicant has been appointed. Applicant having been appointed in a vacant post created after termination of Smt. Vijay Laxmi cannot have any grievance in the matter of reinstatement of Smt. Vijay Laxmi after her termination is quashed.

In the facts and circumstances as are detailed herein above, merely on the ground that applicant was not impleaded in the original writ petition and he was not heard in the matter, we see no reason to review/ recall the order. If the applicant has any grievance for continuing him in service in any other Panchayat, he may take up the matter with the competent authority and it would be for the competent authority to consider the same. On the basis of consideration made herein above, we see no reason to interfere. There is no error apparent on the face of record warranting review/ recall of the order."

8. Similar view has also been taken in the case of *Jahar Ahirwar vs. State of MP & others (Writ Petition No.12045/2013, decided on 25.7.2013)*.

9. In view of the decision of the Division Bench in the case of *Jhunilal Yadav (supra)* and *Jahar Ahirwar (supra)*, as the order passed by the competent authority in appeal reinstating the respondent No.6 cannot be rendered otiose and redundant and be converted into a mere waste paper simply by stating that the post from which the respondent No.6 had been removed

has subsequently been filled up by some other person, therefore, I am of the considered opinion that there is no illegality in the impugned order dated 11.1.2016 passed by respondent No.5 warranting interference by this Court. The petition filed by the petitioner being meritless is accordingly dismissed. However, in view of the observation made by the Division Bench in the case of *Jhunilal Yadav (supra)*, the petitioner may apply for continuing her in service in any other Panchayat before the competent authority if such a course is permissible in law.

Certified copy as per rules.

(R.S.Jha)
Judge

(Yogesh)