



**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE ANAND SINGH BAHRAWAT

ON THE 28th OF OCTOBER, 2025

WRIT PETITION No. 352 of 2018

SMT. MALTI VISHWAKARMA

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Bhagwan Raj Pandey - learned counsel for petitioner.

Shri M.S.Jadon - learned Government Advocate for respondents/State.

ORDER

With the consent of parties, the matter is heard finally.

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

"a. That, this Hon'ble Court may kindly be pleased to allow this writ petition and impugned order (Annexure P/1) may kindly be quashed.

b. The respondents may kindly be directed to absorbed the petitioner on the post of Adhyapak Samvarg from the post of Samvida shala shikshak grade III w.e.f. 27.11.2010.



c. Any other writ order, or direction as this Hon'ble Court may deem fit in the facts and circumstances of the case be granted costs be awarded."

3. Learned counsel for the petitioner submits that the respondent department conducted the examination for the selection of *Samvida Shala Shikshak Grade III* through the Professional Examination Board. In the year 2007, the petitioner appeared in the said examination and qualified. As per Annexure P/2, the petitioner was appointed to the said post on 27.11.2007. After the appointment, the petitioner joined the post on 1.12.2007. Thereafter, on 23.5.2009, respondent No.4 suddenly cancelled the petitioner's appointment without affording any opportunity of being heard. Being aggrieved by the order dated 23.5.2009 (Annexure P/3), the petitioner filed a revision before the Upper Commissioner, Division Bhopal. The Additional Commissioner stayed the effect and operation of the impugned order dated 23.5.2009 by order dated 29.6.2009. Thereafter, during the course of arguments before the Additional Commissioner, Division Bhopal, it was observed that the order dated 23.5.2009 (Annexure P/3) was appealable before the Collector. Accordingly, the petitioner was directed to file an appeal before the Collector, Vidisha, under Section 91 of the *M.P. Panchayat Raj Avam Swaraj Adhiniyam, 1993*. On 24.4.2013, the Additional Collector, Vidisha, stayed the effect and operation of the impugned order dated 23.5.2009 (Annexure P/3). Thereafter, the appeal filed by the petitioner was allowed vide order dated 29.5.2015.

4. Learned counsel for the petitioner further submits that the order dated 29.5.2015 (Annexure P/6) passed by the Additional Collector, Vidisha, has attained finality, as respondent No.4 has not filed any appeal or revision before



the competent authority. Thereafter, the petitioner submitted representations dated 18.1.2016, 10.11.2016, and 17.7.2017 for absorption of her services on the post of *Adhyapak Samvarg-III* but the respondents/concerned authorities did not consider the same. Piqued by the same, petitioner preferred a writ petition No.5330/2017 before this Court. The said petition was disposed of by order dated 18.8.2017 and respondents were directed to decide the pending representation(s) of the petitioner in accordance with law. Thereafter, the petitioner again submitted a representation dated 18.8.2017 but the respondents/concerned authorities did not consider the same. In violation of the order dated 18.8.2017 passed in W.P. No.5330/2017, Contempt Petition No.2454/2017 was filed before this Court. After issuance of notices to the respondents in the contempt petition, the respondent/concerned authority passed the impugned order dated 29.12.2017. It is further submitted that the petitioner had submitted a representation seeking absorption of her services on the post of *Adhyapak Samvarg-III* w.e.f. 27.11.2010 but the respondents did not consider the same and without giving any proper show-cause notice or affording a reasonable opportunity of being heard, the respondent/concerned authority cancelled the petitioner's appointment by order dated 29.12.2017. It is further submitted that the order dated 29.5.2015 (Annexure P/6) passed by the Additional Collector, Vidisha, was not challenged by respondent No.4 before the competent authority. It is further submitted that the Chief Executive Officer, Zila Panchayat, Vidisha, is lower in the hierarchy in comparison to the Additional Collector, Vidisha and once the higher authority has already considered the case of the petitioner, the lower-ranking officer cannot take a view contrary to that already taken by the higher authority, i.e., the Additional Collector, Vidisha. It is further submitted that since 27.11.2007, the



petitioner had been working on the post of *Samvida Shala Shikshak Verg-III* and was not suppressed any fact from the respondents. By order dated 3.7.2015 (Annexure P/12), the Chief Executive Officer, Janpad Panchayat, Kurwai, directed the Principal, Higher Secondary School, Sihora, Kurwai, District Vidisha to settle the dues of the petitioner in accordance with the order passed by the appellate authority. It is further submitted that the petitioner has already cleared the Diploma in Elementary Education examination conducted by Indira Gandhi National Open University, New Delhi, on 16.3.2015 (Annexure P/13).

5. *Per contra*, learned Government Advocate appearing on behalf of the respondents/State on the other hand opposed the prayer made by learned counsel for petitioner. It is further submitted that examination was conducted by M.P. Professional Examination Board for the post of Samvidha Shala Shikshak Varg III and the selection was vested on three folds (i) 50% marks in Vyapam Exam was to be considered. For kind illustration if candidate get 40 marks in Vyapam Exam then her/his mark would be considered as 20 marks; (ii) 15 marks for teaching experience and (iii) 20 marks for D.Ed/B.Ed. After following aforesaid formula, the merit list was required to be prepared. The petitioner by playing fraud with the authorities shown her Vyampam marks as 63 whose 50% is 31.5 and with respect to others two (ii) & (iii) conditions as elaborated above petitioner neither had any teaching experience nor had D.Ed/B.Ed. at the time of selection. Considering the marks of the petitioner as 31.5, she was opted for the post in question merely on account of aforesaid fraud played by her. Though actually she obtained only 48.88 marks in Vyapam Exam and 50% of that was 24.44. Subsequently, when the said forgery and cheating came in the knowledge of the authorities, an enquiry was carried out by the Competent Authority and



after deep enquiry, it was found that her initial appoint is absolutely bad in law and her services deserves to be terminated. It is further submitted that by order dated 27.1.2016, the Commissioner, Public Instruction, directed the Collector, Vidisha, stating that the Additional Collector, Vidisha, had passed the order wrongly, as in the year 2007 the petitioner did not possess the qualification of a Diploma in Elementary Education. On the basis of the said order/letter dated 27.1.2016, the impugned order dated 29.12.2017 (Annexure P/1) was issued by the Chief Executive Officer, Zila Panchayat, District Vidisha. It is further submitted that before issuing the impugned order, proper opportunity of hearing was provided to the petitioner and since the appointment of the petitioner was bad in law, her services were terminated by the impugned order dated 29.12.2017 (Annexure P/1). It is also submitted that the petitioner has an alternative remedy of filing an appeal before the appellate authority; hence, the present petition deserves to be dismissed.

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

7. Admittedly, the order dated 29.5.2015 passed by the Additional Collector, Vidisha, has attained finality, as respondent No.4, i.e., the Chief Executive Officer, Janpad Panchayat, did not file any appeal or revision before the appellate or revisional authority. Before issuing the order dated 27.1.2016, the Commissioner, Public Instruction, did not afford any opportunity of being heard to the petitioner, nor was the said order dated 27.1.2016 ever communicated to the petitioner. Even prior to issuing the impugned order dated 29.12.2017, no show-cause notice was issued to the petitioner stating why his services should not be terminated on the basis of the order dated 27.1.2016. By a non-speaking and unreasoned order, the services of the petitioner were terminated by



cancelling his appointment. Furthermore, Annexure P/1 is a stigmatic order, as allegations have been made against the petitioner, and it is a settled legal position that a stigmatic order cannot be passed without holding a regular departmental inquiry.

8. The services of petitioner have been terminated without holding any enquiry. Since impugned order dated 29.12.2017 (Annexure P-1) is stigmatic in nature, therefore, regular departmental enquiry ought to have been held by respondents. The judgment passed by Co-ordinate Bench of this Court 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.

9. 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**. The Apex Court while deciding the case of **Khem Chand vs. The Union of India and Ors.** reported in **1958 SC 300**, had an occasion to summarize the concept of reasonable opportunity, relevant para of 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 cross-examining 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."

10. The relevant part of impugned order dated 29.12.2017 (Annexure P/1) is reproduced below:-

“ माननीय उच्च न्यायालय खण्डपीठ ग्वालियर के निर्देशों के क्रम में याचिककार्ता श्रीमती मालती विश्वकर्मा की नियुक्ति संबंधी अभिलेखों की जाँच में पाया गया कि श्रीमती मालती विश्वकर्मा ने अपने आवेदन में व्यापम परीक्षा में प्राप्त अंकों के कालम में 63 अंक लिखे थे जबकि उनके वास्तविक अंक व्यापम प्रमाणपत्र सह अंकसूची के अनुसार 48.88 थे। उनकी समक्ष में सुनवाई दिनांक 27.11.2017 को इस त्रुटि का कोई संतोषजनक उत्तर नहीं दे सकी जिससे यह स्पष्ट हुआ कि उन्होंने यह त्रुटि जानबूझकर आवेदनों की जाँच करने वाले कर्मचारियों को धोखा देने के लिये कि गई है।”

From the aforesaid, it is clear that impugned order is stigmatic in nature, therefore, without conducting regular departmental enquiry impugned order



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

11. 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."

12. 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.”

13. The co-ordinate Bench of this Court vide order dated 02.02.2024 passed in **WP.5856/2020 [Devkaran Patidar Vs. State of M.P. And others (Indore Bench)]** has also decided the similar issue in the following manner:

4. Learned counsel for the petitioner submits that the impugned orders are illegal and arbitrary. He further submits that the respondent no.4 without considering the provisions of 15.01, 15.02 and 16 of the scheme according to which the respondent no.4, is not empowered to terminate the service of the petitioner, and the aforesaid impugned



order Annexure-P/1 has been wrongly uphold. He further submits that the respondents have acted in high handed manner and without following the instructions/guidelines issued by the Higher Authorities, issued the impugned termination order. Thus, the action of the respondents is unjust and arbitrary. In the present case, neither any charge-sheet has been issued against the petitioner nor any enquiry has been conducted before passing of the impugned stigmatic order. In such circumstances, he prays that the impugned orders be set aside. He further relied on the judgment passed by this Court in the case of ***Rahul Tripathi vs. Rajeev Gandhi Shiksha Mission, Bhopal 2001 (3) MPLJ 616 and Prakash Chandra Kein vs. State of M.P. and others 2010 (3) MPLJ 179.***

5. The respondents have filed the reply and has submitted that a number of complaints has been received against the petitioner. After receiving the complaints a Committee was constituted for conducting an enquiry against the petitioner and on the basis of the enquiry report submitted by the Committee a show cause notice was issued to the petitioner and after giving opportunity to the petitioner to file reply, the respondent has terminated the services. In such circumstances, the petition deserves to be dismissed.

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

7. In the present case, admittedly, the petitioner is working on the post of Gram Rojgar Sahayak and neither any charge-sheet has been issued to the petitioner at any point of time nor any enquiry was conducted with the participation of the petitioner. This Court has passed the judgment in the case of ***Ramchandra vs. State of M.P. and others decided in W.P. No.16572/2014 on 02/08/2017*** and several other writ petitions on the subject are under consideration before this Court.

8. In the light of the aforesaid as no charge-sheet was issued to the petitioner and no enquiry has been conducted, the impugned orders dated 12.06.2017(Annexure-P/1) and 27.08.2016(Annexure-P/2), passed by the respondents deserves to be quashed and are accordingly, quashed. The respondents are directed to reinstate the petitioner in service; however a liberty is granted to proceed against



the petitioner in accordance with law, in case if need so arises in future.

14. Considering the aforesaid, the present petition is allowed. The impugned order dated 29.12.2017 (Annexure P/1) is hereby quashed. The respondents/concerned authorities are directed to absorb the petitioner on the post of *Adhyapak Samvarg-III* with effect from 27.11.2010, and all consequential benefits shall be extended to the petitioner within a period of two months from the date of receipt of the certified copy of this order.

15. As the order dated 29.5.2015 was not challenged by respondent No.4/ the Chief Executive Officer, Janpad Panchayat, Kurwai, till date, no liberty shall be granted to the respondent/concerned authority to take any fresh action against the petitioner.

16. With the aforesaid observation, the petition is disposed of.

17. All interlocutory applications, if pending, are disposed of.

(Anand Singh Bahrawat)
Judge

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