

IN THE HIGH COURT OF MADHYA PRADESH

AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ANAND PATHAK

WRIT PETITION No. 847 of 2022

Between:-

**MANOJ RAJPUT S/O SHRI HANUMANT
SINGH RAJPUT, AGED-30 YEARS,
OCCUPATION: GRAM ROZGAAR SHAYAK
GRAM PANCHAYAT IMALIYA VIDISHA R/O
MADI TEHSIL KURWAI, DISTRICT VIDISHA
(MADHYA PRADESH)**

.....PETITIONER

(BY SHRI SANKALP SHARMA - ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH
THROUGH SECRETARY, PANCHAYAT &
RURAL DEVELOPMENT, MANTRALAYA,
VALLABH BHAWAN BHOPAL (MADHYA
PRADESH)**
- 2. COMMISSIONER BHOPAL DIVISION,
BHOPAL (MADHYA PRADESH)**
- 3. CHIEF EXECUTIVE OFFICER, DISTRICT
PANCHAYAT VIDISHA, VIDISHA
(MADHYA PRADESH)**
- 4. CHIEF EXECUTIVE OFFICER JANPAD
PANCHAYAT KURWAI, DISTRICT
PANCHAYAT VIDISHA (MADHYA
PRADESH)**

.....RESPONDENTS

(BY SHRI DEVENDRA CHAUBEY – GOVERNMENT ADVOCATE)

ORDER RESERVED ON : 29.03.2022
ORDER PASSED ON : 28.07.2022

ORDER

Heard on admission.

Petitioner has preferred the instant petition under Article 226 of the Constitution of India seeking following reliefs:-

a) Pleased to quash impugned order dated 24.09.2020 (Annexure P-3) passed by Respondent No.4, impugned order dated 31.03.2021 (Annexure P-5) and impugned order dated 23.08.2021 (Annexure P-8) in the interest of justice.

b) Pleased to direct respondent authorities to reinstate the petitioner on the post of Gram Rojgar Sahayak, Gram Panchayat Imaliya, Janpad Panchayat Kurwai District Vidisha (M.P.) with back-wages.

(c) Grant any other relief as this Hon'ble Court deem fit in the present facts and circumstances of the case.

2. It is the submission of counsel for the petitioner that he was appointed as Gram Rojgar Sahayak at Grampanchayat, Imaliya District Vidisha vide order dated 26.08.2012 (Annexure P-12) and working since then on contract basis from time to time.

3. A complaint was submitted against the petitioner pursuant to which a show cause notice was issued to the petitioner with allegation regarding some illegality/irregularity in construction work done through muster rolls under MANREGA Scheme. It was the allegations that despite withdrawal of amount of Rs.5,33,760/- no work was done. Petitioner replied to the show cause notice enumerating upon the reasons as to why the construction work remained incomplete and admitted the fact that some incomplete work is still pending but undertook to complete the work as early as possible.

4. Justifications tendered by the petitioner were found to be

unsatisfactory therefore, after considering his reply vide impugned order dated 24.09.2020 (Annexure P-3) services of petitioner as Gram Rojgar Sahayak were terminated on the grounds that his conduct was against the rules and against the public interest.

5. Being aggrieved by the impugned order dated 24.09.2020 appeal was preferred before the CEO District Vidisha but met the same fate and vide order dated 31.03.2021 (Annexure P-5) appeal was dismissed. Thereafter, second appeal was preferred before the Commissioner Bhopal but vide impugned order dated 23.08.2021 (Annexure P-8) second appeal was also dismissed. Therefore, this petition is preferred under Article 226/227 of Constitution of India.

6. It is the submission of counsel for the petitioner that services of petitioner have been terminated without adverting to the response submitted by him and without conducting any fact finding inquiry into the allegations levelled against the petitioner which according to him is contravention of Principles of Natural justice. He relied upon **Rahul Tripathi Vs. Rajiv Gandhi Siksha Mission** reported in **2001 (3) MPHT 397** and the judgment passed by Division Bench in **W.A.No.1166/2017 (Malkhan Singh Malviya Vs. State of M.P.)** reported in **ILR 2018 M.P. 660**.

7. It is further submitted that although sheet anchor of argument of petitioner is violation of Principle of Natural Justice but he also advanced his arguments on the ground that no reasons have been assigned in show cause notice or impugned orders which illustrates non-application of mind. According to him, multiple requests were tendered by the petitioner to the CEO Janpad Panchayat to conduct valuation of ground leveling work and relating to agriculture pond but same were turned down and therefore, valuation of work is not properly done. Removal harps upon an inquiry of

Assistant Engineer prepared behind the back of petitioner.

8. Learned counsel for the respondent on advance notice opposed the prayer and prayed for dismissal of petition as according to him, allegations are serious in nature and have the wider, financial and social ramification.

9. Heard the counsel for the parties and perused the documents appended thereto.

10. In the case in hand petitioner who was working as Gram Rojgar Sahayak at Grampanchayat, Imariya District Vidisha, was terminated from his service. Perusal of documents indicate that there were some irregularities reported against the petitioner regarding levelling of ground work, digging of ponds and other muster roll work in which as per allegations, Rs.5,33,760/- was withdrawn but no such work was done. On complaint being received, Assistant Engineer and Assistant Account Officer were jointly given task by Janpad Panchayat to inquire into it and vide inquiry report dated 28.08.2020, allegations were found *prima facie* true. Therefore, show cause notice dated 02.09.2020 (Annexure P-1) was issued by CEO, Janpad Panchayat, Kurwai in which reference of inquiry report, terms of conditions of appointment order dated 26.08.2012 as well as guidelines issued by Madhya Pradesh Rajya Rojgar Guarantee Parishad dated 03.06.2017, were given in response to which vide reply dated 15.09.2020 (Annexure P-2), petitioner admitted the allegations but explained it on the ground that a week's time be given for completion of work.

11. Admission of guilt by the petitioner is writ large in his reply itself and rightly because of contents of inquiry report matches with the allegations and his admission. Thereafter, vide order dated 24.09.2020 (Annexure P-3), CEO, Janpad Panchayat Kurwai, terminated his services. As referred in order, termination was as per Clause-16 Point No.7 of guidelines dated

02.06.2012, as per Point No.1 of letter dated 03.06.2017 and as per Point No.1 of letter dated 15.04.2017. Thereafter, he preferred an appeal before the CEO, Zila Panchayat, Vidisha vide (Annexure P-4) and in the said case also, he regretted for his misdeed and sought reinstatement with assurance that in future, he would not commit the mistake. This also indicates his admission of guilt at appellate stage.

12. But CEO, Zila Panchayat in appellate jurisdiction maintained the termination while passing the order dated 31.03.2021 (Annexure P-5). Thereafter, he referred a letter to CEO, Zila Panchayat on dated 26.06.2021 and again explained his point of view but it also has the trappings of admission. Thereafter, he preferred a detail appeal before Commissioner Bhopal Division on 30.07.2021 and from the appeal memo itself, it appears that by now he received the legal advice and therefore, raised grounds mainly on legal aspects and covered admission aspect. But after considering all these aspects, appellate authority passed the impugned order dated 23.08.2021 (Annexure P-8) and dismissed it. At all stages, appropriate opportunity was given to the petitioner.

13. So far as principle of denial of adequate opportunity of hearing is concerned, the circular dated 02.07.2020 which is in respect of contractual employee of Panchayat and Rural Development Department has clarified that in case of serious allegations show cause notice be issued and thereafter, appropriate opportunity of hearing be given to employer and after undertaking the inquiry in complete manner, then only termination order be passed. Therefore, as per guideline dated 02.07.2020 itself (Annexure P10) twin requirements are:- (i) adequate opportunity of hearing and (ii) after completion of inquiry.

14. It nowhere contemplates that when any preliminary/technical inquiry

is conducted then it should incorporate adequate opportunity of hearing at preliminary stage. It only contemplates that inquiry be conducted holistically and adequate opportunity be given to the employee therefore, contention of petitioner that necessarily regular departmental inquiry ought to have been held loses ground from the very guidelines itself. Guideline dated 02.07.2020 makes some amendments in earlier guideline dated 05.06.2018 and said guideline dated 05.06.2018 also contemplates in similar manner specially Clause 1.14.1. Therefore, this Court cannot move out of the circular dated 05.06.2018 and circular dated 02.07.2020 (Annexure P-10) which are the governing executive instructions.

15. Be that as it may, the another contention of petitioner relying upon the order dated 02.08.2017 passed by Coordinate Bench in Bunch of writ petitions at Principle Seat Jabalpur in which W.P.No.16572/2014 (Ramcharan Versus State of M.P. & Others) is concerned, facts of the said case and present one are bit different. The said case is of the year 2017. Thereafter, guideline dated 05.06.2018 and dated 02.07.2020 have been issued by the State Government. Besides that in the present case, petitioner himself admitted in categorical terms about his fault and even prayed for improvement in future.

16. Once technical/preliminary inquiry is being held thereafter, show cause notice was issued and after considering his reply and inquiry report, termination order has been passed as per the guideline of 05.06.2018/02.07.2020, then in such facts and circumstances of the case, order referred above does not come to the rescue of the petitioner.

17. So far as judgment dated 08.03.2018 passed by Division Bench of this Court in **Malkhan Singh Malviya (supra)** is concerned, in the said order also the Division Bench has held in Para-10 that petitioner in the said case

denies the charges in *toto* and therefore, in that condition, it was held that reasonable opportunity be given to the employee to rebut the charges of misconduct by adducing evidence. Here no evidence was adduced and in fact petitioner admitted his guilt. Therefore, on this count also, the judgment relied upon by Division Bench move in different factual realm.

18. One another aspect deserves consideration in the matter is the conditions contained in appointment order itself. Appointment order dated 26.08.2012 (Annexure P-12) of petitioner contains Clause-15 and 17 which are reproduced for ready reference and convenience:-

15. संविदा पर नियुक्त व्यक्ति के कदाचार या किसी आपराधिक क्रियाकलाप में संलिप्त पाये जाने नियुक्ति प्राधिकारी उसे सुनवाई का युक्तियुक्त अवसर देने के पश्चात् ऐसी संविदा नियुक्ती समाप्त कर सकेगा।

17. संविदा नियुक्ति पर नियुक्त आधिकारी/कर्मचारी की सेवाएं निर्धारित अवधि के पूर्व संस्था द्वारा बिना किसी नोटिस के समाप्त की जा सकेगी।

19. These conditions also stipulate that after giving adequate opportunity of hearing his services can be terminated in case he is involved in misconduct or any criminal activities.

20. The concept of principle of Natural Justice or *audi alteram partem* doctrine although is required to be complied with but at the same time it has some exceptions. In catena of judgments including the judgment rendered in **A.P.Social Welfare Residential Educational Institutions Vs. Pindiga Sridhar**, reported in (2007) 13 SCC 352, **Haryana Financial Corpn. Vs. Kailash Chandra Ahuja**, reported in (2008) 9 SCC 31, **State of Chhattisgarh Vs. Dhirjo Kumar Senger**, reported in (2009) 13 SCC 600, **Indu Bhushan Dwivedi Vs. State of Jharkhand**, reported in (2010) 11 SCC 278, **Natwar Singh Vs. Director of Enforcement**, reported in (2010)

13 SCC 255 and Dharampal Satyapal Ltd. Vs. Deputy Commissioner of Central Excise, Gauhati and Ors, reported in **(2015) 8 SCC 519**, all discussed in detail on the different facets of said doctrine of Audi Alteram Partem, Principle of Natural Justice/Opportunity of Hearing quotient and discussed the exceptions also in detail. In Natwar Singh (Supra) Supreme Court held in following words:-

“26. Even in the application of the doctrine of fair play there must be real flexibility. There must also have been caused some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter to be dealt with and so forth. Can the Courts supplement the statutory procedures with requirements over and above those specified? In order to ensure a fair hearing, Courts can insist and require additional steps as long as such steps would not frustrate the apparent purpose of the legislation.”

*27. In Lloyd Vs. McMahon, Lord Bridge observed:
(AC pp. 702 H-703 B)*

"My Lords, the so-called rules of natural justice are not engraved on tablets of stone. To use the phrase which better expresses the underlying concept, what the requirements of fairness demand when any body, domestic, administrative or judicial, has to make a

decision which will affect the rights of individuals depends on the character of the decision-making body, the kind of decision it has to make and the statutory or other framework in which it operates. In particular, it is well-established that when a statute has conferred on any body the power to make decisions affecting individuals, the courts will not only require the procedure prescribed by the statute to be followed, but will readily imply so much and no more to be introduced by way of additional procedural safeguards as will ensure the attainment of fairness".

28. *As Lord Reid said in Wiseman Vs. Boardman: (AC p.308C)*

"....For a long time the courts have, without objection from Parliament, supplemented procedure laid down in legislation where they have found that to be necessary for this purpose..."

29. *It is thus clear that the extent of applicability of principles of natural justice depends upon the nature of inquiry, the consequences that may visit a person after such inquiry from out of the decision pursuant to such inquiry.*

* * * *

48. *On a fair reading of the statute and the Rules suggests that there is no duty of disclosure of all the documents in possession of the adjudicating authority before forming an opinion that an inquiry is required to*

be held into the alleged contraventions by a notice. Even the principles of natural justice and concept of fairness do not require the statute and the Rules to be so read. Any other interpretation may result in defeat of the very object of the Act. Concept of fairness is not a one way street. The principles of natural justice are not intended to operate as roadblocks to obstruct statutory inquiries. Duty of adequate disclosure is only an additional procedural safeguard in order to ensure the attainment of the fairness and it has its own limitations. The extent of its applicability depends upon the statutory framework.

49. Hegde, J. speaking for the Supreme Court propounded: "In other words, they (principles of natural justice) do not supplant the law of the land but supplement it" [see A.K. Kraipak Vs. Union of India]4]. Its essence is good conscience in a given situation; nothing more but nothing less (see Mohinder Singh Gill Vs. Chief Election Commr..)

In **Dharampal Satyapal Ltd. (Supra)** Supreme Court held in following words:-

"40. In this behalf, we need to notice one other exception which has been carved out to the aforesaid principle by the Courts. Even if it is found by the Court that there is a violation of principles of natural justice, the Courts have held that it may not be necessary to strike down the action and refer the matter back to the

authorities to take fresh decision after complying with the procedural requirement in those cases where non-grant of hearing has not caused any prejudice to the person against whom the action is taken. Therefore, every violation of a facet of natural justice may not lead to the conclusion that order passed is always null and void. The validity of the order has to be decided on the touchstone of 'prejudice'. The ultimate test is always the same, viz., the test of prejudice or the test of fair hearing.

21. Discussion surfaced in judgments referred above makes it very clear that fair or sufficient opportunity of hearing is what the scheme of appointment and relevant guidelines contemplate and visualize, not beyond that and infact, impugned order has to be tested on the touchstone of “Prejudice”. Therefore, principle of opportunity of hearing cannot be converted into unruly horse.

22. In the instant case, when preliminary/technical inquiry was held and certain findings were given against the conduct of petitioner and when petitioner was confronted with said findings by issuing show cause notice then petitioner admitted his alleged conduct and gave an undertaking to rectify the deficiencies, then in that condition no need of further elaborate inquiry or department inquiry as the case may be existed. It is true that all guidelines referred above do not contemplate conduct of departmental enquiry, it talks about a **detail enquiry** and **reasonable opportunity of hearing** but still in the interest of justice, services of an employee cannot be thrown in a slip shod manner but at the same time departmental enquiry as contemplated in M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 is not required to be conducted because if that would have been

the intention then subsequent guidelines issued in 2018 & 2020 would have incorporated so. However, said enquiry is required to be a fact finding enquiry. Either at the stage of preliminary enquiry or employee can be confronted with the show cause notice alongwith the said report so that he may have an opportunity to rebut the allegations and in that condition a detail inquiry can be held, otherwise not.

23. In the instant case, after conduct of preliminary enquiry, show cause notice was issued to him and after affording adequate opportunity of hearing, impugned order has been passed. Since he admitted his conduct in specific terms therefore, no need of any detail or departmental inquiry was required to be held. He was afforded sufficient opportunity of hearing at all stages.

24. Resultantly, in the facts and circumstances of the case and after considering the legal guidance available by way of plethora of judgments of Hon'ble Apex Court from time to time as referred above, no case is made out

25. Admission declined.

26. Petition sans merit and is hereby **dismissed**

(Anand Pathak)
Judge