

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

**HON'BLE SHRI JUSTICE ANAND PATHAK &
HON'BLE SHRI JUSTICE BINOD KUMAR DWIVEDI**

ON 18th March, 2024

WRIT APPEAL NO. 2336 OF 2023

BETWEEN:-

1. **MANOJ SINGH TOMAR S/O SHRI NAGENDRA SINGH TOMAR, AGE 41 YEARS, OCCUPATION SERVICE (TERMINATED), ADDRESS – BOARD COLONY, DISTRICT-MORENA (M.P.)**

.....APPELLANT

(BY SHRI S.K. JAIN- ADVOCATE)

AND

1. **STATE OF MADHYA PRADESH, THROUGH PRINCIPAL SECRETARY DEPARTMENT OF PUBLIC HEALTH AND FAMILY WELFARE, VALLABH BHAWAN, BHOPAL (MADHYA PRADESH)**
2. **MISSION DIRECTOR, NATIONAL HEALTH MISSION, BHOPAL, MADHYA PRADESH**
3. **COLLECTOR MORENA, COLLECTORATE, DISTRICT-MORENA, MADHYA PRADESH**
4. **CHIEF MEDICAL AND HEALTH OFFICER, MORENA MADHYA PRADESH**

.....RESPONDENTS

(SHRI VIVEK KHEDKAR – ADDITIONAL ADVOCATE GENERAL FOR RESPONDENTS NO.1, 3 AND 4 – STATE AND SHRI SANKALP SHARMA – ADVOCATE FOR

RESPONDENT NO.2)

This appeal coming on admission this day, Justice Anand Pathak passed the following:

ORDER

This writ appeal under Section 2(1) of Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 is preferred taking exception to the order dated 04th August, 2023 passed in Writ Petition No.11296 of 2021 by the learned Single Judge whereby petition preferred by the appellant/ petitioner was dismissed.

2. Precisely stated facts of the case are that appellant/ petitioner was appointed as District Community Mobilizer on contract basis on 30-09-2014 and joined his services on 01-10-2014. The job of the appellant was to facilitate Asha and Asha (Sahyogi) Workers and his role came into play only after appointment of some Asha and Asha (Sahyogi) Workers. It appears that petitioner appointed some Asha & Asha Sahyogi Workers at village level and certain irregularities were caused in their selection process. Therefore, Collector, Morena wrote a letter dated 30-09-2019 addressed to Mission Director National Health Mission for termination of contractual services of the petitioner on the ground that he had committed alleged illegalities and irregularities in the selection process of Asha workers for the year 2016-17 and 2017-18. A show cause notice was issued to the petitioner on 05-10-2019. Appellant replied to the same vide reply dated 12-10-2019 explaining all the allegations leveled against him. Meanwhile, an enquiry committee consisting of three members was constituted. After conducting due enquiry, the Regional Director (Health

Services), Gwalior Division submitted enquiry report dated 19-08-2020, wherein; after considering the reply filed by the appellant/ petitioner and contents of the enquiry report, the appellant/ petitioner was found to be mischievous while tempering with the documents and not following the prescribed procedure in appointment of different Asha workers. Thus, contractual services of the petitioner were terminated. Being aggrieved by the same, petitioner approached the writ Court. His argument was based upon the ground of non-grant of opportunity of hearing.

3. The learned Writ Court after considering the rival submissions, came to the conclusion that petitioner was afforded sufficient opportunity of hearing and since matter pertains to termination of contract therefore, petitioner does not deserve any relief. Accordingly, writ petition was dismissed. Being aggrieved by the order of the writ Court, petitioner approached this Court by filing instant writ appeal.

4. It is the submission of learned counsel for the appellant that appellant was never afforded adequate opportunity of hearing by the respondents, therefore, caused illegality. Learned counsel placed reliance upon the judgment of the Hon'ble Supreme Court in the case of **State of Uttar Pradesh and Others Vs. Vinod Kumar Katheria** reported in **(2021) 14 SCC 668** and of Division Bench of this Court in the case of **Malkhan Singh Malviya Vs. State of M.P.** reported in **2018 SCC Online MP 1774**.

5. Learned counsel for the respondents-State opposed the prayer and submits that it is not a case of non-grant of opportunity of hearing. It is a case where proper enquiry was conducted at the instance of Regional

Director Health Services, Gwalior Division and opportunity of hearing was provided to the appellant by issuing show cause notice to him. Appellant responded to the same and after considering the contents of his reply, contractual services of the appellant have come to an end. Appellant/ petitioner is a contractual employee and terms and conditions of his services are governed by the contract itself.

6. Learned counsel for respondent No.2/ National Health Mission Shri Sankalp Sharma also opposed the prayer and refers the modified Contractual Human Resources Manual, 2018 of National Health Mission as well as its clause 11.2. It clearly says that in case of any misconduct, involvement in financial irregularities, involvement in criminal act or involvement in any act which undermines the image of National Health Mission, **oral or written opportunity of hearing** would be given to the employee and in case of non-reply or non-satisfactory reply, appointing authority can terminate the contract of the employee. Since appellant/ petitioner was a contractual employee and his misconduct brought bad name to the National Health Mission and allegations levelled against him are serious in nature therefore, being an employer, the National Health Mission has right to terminate the contract of the appellant because National Health Mission does not intend to keep the services of an employee whose conduct otherwise may ruin its image. With the aforesaid submission, learned counsel prays for dismissal of the writ appeal.

7. Heard the learned counsel for the parties at length and perused the record.

8. So far as question of following the rule of Natural Justice is concerned the Hon'ble Apex Court has given guidance from time to time in this regard. In the case of **Indu Bhushan Dwivedi Vs. State of Jharkhand and Another** reported in (2010) 11 SCC 278, the Apex Court has held:-

“24. However, every violation of the rules of natural justice may not be sufficient for invalidating the action taken by the competent authority/ employer and the Court may refuse to interfere if it is convinced that such violation has not caused prejudice to the affected person/ employee.”

9. Similarly, the Apex Court in the case of **Dharampal Satyapal Limited Vs. Deputy Commissioner of Central Excise, Gauhati and Others** reported in (2015) 8 SCC 519 has held in following manner:-

“38. But that is not the end of the matter. While the law on the principle of *audi alteram partem* has progressed in the manner mentioned above, at the same time, the Courts have also repeatedly remarked that the principles of natural justice are very flexible principles. They cannot be applied in any straight-jacket formula. It all depends upon the kind of functions performed and to the extent to which a person is likely to be affected. For this reason, certain exceptions to the aforesaid principles have been invoked under certain circumstances. For example, the Courts have held that it would be sufficient to allow a person to make a representation and oral hearing may not be necessary in all cases, though in some matters, depending upon the nature of the case, not only full-fledged oral hearing but even cross-examination of witnesses is treated as necessary concomitant of the principles of natural justice. Likewise, in service matters relating to major punishment by way of disciplinary action, the

requirement is very strict and full-fledged opportunity is envisaged under the statutory rules as well. On the other hand, in those cases where there is an admission of charge, even when no such formal inquiry is held, the punishment based on such admission is upheld. It is for this reason, in certain circumstances, even post-decisional hearing is held to be permissible. Further, the Courts have held that under certain circumstances principles of natural justice may even be excluded by reason of diverse factors like time, place, the apprehended danger and so on.

39. We are not concerned with these aspects in the present case as the issue relates to giving of notice before taking action. While emphasizing that the principles of natural justice cannot be applied in straight-jacket formula, the aforesaid instances are given. We have highlighted the jurisprudential basis of adhering to the principles of natural justice which are grounded on the doctrine of procedural fairness, accuracy of outcome leading to general social goals, etc. **Nevertheless, there may be situations wherein for some reason – perhaps because the evidence against the individual is thought to be utterly compelling – it is felt that a fair hearing 'would make no difference' – meaning that a hearing would not change the ultimate conclusion reached by the decision-maker – then no legal duty to supply a hearing arises.** Such an approach was endorsed by Lord Wilberforce in *Malloch v. Aberdeen Corporation*[20], who said that a 'breach of procedure...cannot give (rise to) a remedy in the courts, unless behind it there is something of substance which has been lost by the failure. The court does not act in vain'. **Relying on these comments, Brandon LJ opined in *Cinnamond v. British Airports Authority*[21] that 'no one can complain of not being given an opportunity to make representations if such an opportunity would have availed him nothing'. In such situations, fair procedures appear to serve no purpose since 'right'**

result can be secured without according such treatment to the individual.”

10. In the backdrop of the aforesaid guidance given by the Apex Court and in the factual background of the case, it appears that appellant/petitioner was a contractual employee and was appointed on 30-09-2014. His appointment order categorically stipulates conditions of appointment in the following manner:-

“25. संविदा जिला कम्युनिटी मोबेलाइजर का चरित्र सत्यापन शासकीय सेवकों को लागू नियमों व अनुदेशों के आधार पर किया जाएगा। चरित्र के संबंध में किसी प्रतिकूल निष्कर्ष की दशा में नियुक्ति प्राधिकारी द्वारा संविदा नियुक्ति बिना कोई कारण बताए तुरंत रद्द कर दी जाएगी। जिस हेतु अनुप्रमाणन फार्म तीन प्रतियों में कार्यालय में प्रस्तुत करना अनिवार्य होगा।

28. किसी भी निरीक्षण के दौरान संविदा कर्मचारी के अपने पदस्थापना स्थल से अनुपस्थित पाए जाने अथवा एक माह से अधिक अवधि तक निरंतर बिना कोई विशिष्ट कारण एवं सक्षम अधिकारी के अनुमति के अनाधिकृत रूप से अनुपस्थित होने पर संविदा नियमानुसार वेधानिक कार्यवाही कर संविदा सेवा समाप्त कर दी जावेगी तथा कार्यालय प्रमुख द्वारा असत्य प्रमाण पत्र प्रस्तुत किया जाना गंभीर कदाचरण की श्रेणी में गण्य होगा एवं असत्यता सिद्ध होने पर कार्यालय प्रमुख के विरुद्ध अनुशासनात्मक कार्यवाही प्रस्तावित की जावेगी।

34. संविदा नियुक्ति पर नियुक्त जिला कम्युनिटी मोबेलाइजर बिना सक्षम अधिकारी के पूर्वानुमति/निर्देश के कोई भी सूचना/जानकारी किसी अन्य व्यक्ति अथवा विभाग को किसी भी माध्यम से नहीं देगा तथा कार्यालयीन गोपनीयता भंग नहीं करेगा।

35. नियुक्ति उपरांत किसी भी समय संविदा जिला कम्युनिटी

मोबेलाइजर द्वारा वित्तीय अनियमितता/समाग्री संबंधी अनियमितता/शासकीय सम्पत्ति की हानि अथवा सेवा प्रदाता संवर्ग कार्य संबंधी गंभीर लापरवाही आदि में दोष सिद्ध होने पर क्षतिपूर्ति राशि की वसूली कर नियमानुसार आपराधिक प्रकरण दर्ज किया जावेगा एवं विधि सम्मत कार्यवाही की जावेगी। ”

11. Since contractual appointment has been given to the appellant under the National Rural Health Mission Project therefore, terms and conditions of the contract assumes importance. Nonetheless, appellant was required to be afforded reasonable opportunity of hearing before proceeding against him. From perusal of the reply filed on behalf of National Health Mission (respondent No.2 herein), it appears that when complaint was received then enquiry was conducted by three member committee which conducted the enquiry in detail and the appellant was found responsible for the irregularities caused in the appointment of some Asha workers for the year 2016-17 and 2017-18.

12. Allegations apparently were that Asha workers who were more competent than others were not given appointment and forged appointment letters were prepared under the hand-writing of the present appellant so as to give unjust benefits to some Asha Workers. Copy of the enquiry report filed by the respondents is annexed as **Annexure R-2/1**. From the proceedings of the said enquiry report, it appears that present appellant gave his statement and explained course of events and pleaded his innocence. Thereafter, committee weighed the same and gave its report. Committee found the role of appellant implicative in committing illegality and irregularity while preparing forged documents.

Allegations are *prima facie* serious in nature.

13. The said enquiry report was prepared at the instance of Regional Director Health Services and the same was referred to the Mission Director National Health Mission vide letter dated 19-08-2020. Thereafter, appellant was show caused by the Mission Director vide show cause notice dated 05-10-2020 (**Annexure R-2/2**). Appellant replied the same vide reply dated 10-12-2019 (**Annexure R-2/3**). Thereafter, impugned order has been passed against the appellant. Therefore, appellant had participated in the enquiry conducted by three member committee and after participation, committee came to the conclusion about culpability of the appellant. Thereafter, again appellant was show caused by the Mission Director before taking final decision. After considering his reply impugned order was passed. Therefore, it cannot be said that appellant was not afforded any opportunity of hearing.

14. Contractual Human Resource Manual, 2018 for contractual employee of National Health Mission was placed by respondent No.2 as **Annexure R-2/6**. Clause 11.2 of the same is worth reiteration and the same is reproduced as under:-

“11. अनुशासन/आचरण

11.2 संविदा कर्मचारी द्वारा कदाचरण करने, वित्तीय अनियमितता में शामिल होने, किसी भी आपराधिक कृत्य में लिप्त होने अथवा ऐसे किसी भी कार्य में लिप्त होने पर, जिससे राष्ट्रीय स्वास्थ्य मिशन की छवि को ठेस पहुँचती हो, सक्षम प्राधिकारी द्वारा मौखिक अथवा लिखित सुनवाई का अवसर दिया जायेगा। निर्धारित समयावधि में प्रत्युत्तर नहीं दिये जाने अथवा प्रत्युत्तर समाधान कारक न पाये जाने पर नियोक्ता अधिकारी द्वारा अनुबंध तत्काल समाप्त किया जा सकेगा। इस हेतु 01 माह के नोटिस/01 माह का मानदेय देने की आध्यता नहीं होगी। ”

15. Clause 11 of the said Manual, 2018 deals in respect of discipline/

conduct which is the guiding principle for contractual employees of the National Health Mission. *In fact*, competent authority can provide oral or written opportunity of hearing to the employee. From perusal of the above-discussed proceedings, it appears that in the present case, sufficient opportunities of the hearing were provided to the appellant before passing the impugned order.

16. It is to be recapitulated that appellant is a contractual employee and not a civil or government servant therefore, provisions of M.P. Civil Services (Classification and Control) Rules, 1966 would not be attracted with full force in his case. It is generally seen that in the matters of contractual employee, when allegations of corruption are levelled then enquiry committee is constituted which investigate into the allegations and thereafter, delinquent is show caused on the basis of enquiry report. In the present case, sufficient opportunity of hearing has been provided to the appellant/ petitioner to explain the allegations levelled against him before passing the impugned order. The learned writ Court delineated the issue in correct perspective and thereafter passed the impugned order dismissing the writ petition.

17. In view of the aforesaid, no case is made out for interference. Accordingly, the Writ Appeal sans merit, is hereby dismissed. No costs.

Anil*

(ANAND PATHAK)
JUDGE

(BINOD KUMAR DWIVEDI)
JUDGE