

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

**BEFORE**

**HON'BLE SHRI JUSTICE ASHISH SHROTI**

**WRIT PETITION No. 25354 of 2023**

***MALKHAN SINGH YADAV***

*Versus*

***STATE OF MADHYA PRADESH AND OTHERS***

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**Appearance:**

Shri B.P.Pathak & Shri Shivam Kumar, Advocates for the petitioner.

Shri K.K.Prajapati- GA for the respondents/State.

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**RESERVED ON:** 18/08/2025

**ORDER PASSED ON:** 08/09/2025

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**O R D E R**

The petitioner has filed this petition under Article 226 of the Constitution of India challenging the order dated 10.11.2022 (Annexure P/7), whereby, Chief Executive Officer, Jila Panchayat, Vidisha, has passed order directing recovery of amount from petitioner and two others and has also recommended for termination of petitioner's contract service. He has also challenged the order dated 19.06.2023 (Annexure P/1) passed by Collector, Vidisha, whereby, his contractual service has been terminated. The petitioner has further prayed for a direction to the respondents to reinstate him in service with full back wages.

2. The facts necessary for decision of this case are that the petitioner was initially appointed as Gram Rojgar Sahayak in MGNREGA Scheme in Gram Panchayat Muskura, Janpad Panchayat Lateri, District Vidisha on contract basis vide order dated 24.08.2022 (Annexure P/2).

3. From the records, it is gathered that certain complaints were made against the petitioner, Panchayat Secretary and Sarpanch of the Gram Panchayat with regard to irregularities in construction work carried out in

Gram Panchayat. Based upon social audit report, a show cause notice was issued to petitioner and Panchayat Secretary on 15.09.2020 (Annexure P/4) asking them to show cause with regard to spending the amount without there being any work carried out on spot. An allegation of not maintaining proper record was also levelled. The petitioner submitted his reply on 18.09.2020 (Annexure P/5) thereby denying the allegations. In substance, he blamed Panchayat Secretary and Sarpanch of Gram Panchayat for the illegalities committed.

4. It appears that the Chief Executive Officer, Janpad Pachayat constituted a two member committee to enquire into the allegations made in the complaints. The Committee conducted the enquiry and submitted its report (Annexure P/6), wherein, the petitioner as also the Sarpanch and Panchayat Secretary of the Gram Panchayat were held guilty of disbursement of the amount without there being any work on site. It is not clear from the report as to whether any opportunity was given by enquiry committee to petitioner before rendering any finding. It is also not clear as to on what material the findings are rendered against the petitioner.

5. Thereafter, based upon the report submitted by the Committee, proceedings under Section 89 of Panchayat Raj Evam Gram Swaraj Adhiniyam, 1993 were initiated against all the aforesaid three persons. The proceedings ultimately concluded with passing of order, dated 10.11.2022, (Annexure P/7) by Chief Executive Officer, Jila Panhayat, Vidisha whereby recovery of certain amounts found unauthorizedly spend, was directed to be recovered from Sarpanch, Panchayat Secretary and the petitioner. Simultaneously, a recommendation was made to Collector, Vidisha to terminate petitioner's contractual service from the post of Gram Rojgar Sahayak.

6. The Collector, Vidisha, then issued a show cause notice to petitioner on 14.12.2022, (Annexure P/8) thereby asking the petitioner to show cause as to why his services be not terminated on the basis of report submitted by committee. The petitioner submitted his reply on 30.12.2022 (Annexure

P/9) whereby he denied the allegations made against him. He also stated in his reply that he has already deposited his share of amount as directed vide order, dated 10.11.2022.

7. The impugned order, dated 19.06.2023 (Annexure P/1) thereafter came to be passed whereby the petitioner's contractual service was terminated. The impugned order states that during the proceedings under Section 89 of Adhiniyam, the opportunity to lead evidence was given and the evidence was received. It further states that reasonable opportunity to hearing was given to petitioner. It also states that based upon the irregularities found in construction work and amount of recovery determined, the issues for enquiry were framed. Thereafter, the findings recorded in enquiry report are reproduced and ultimately the petitioner's services were terminated.

8. Challenging the impugned orders, learned counsel for the petitioner primarily alleged ground of non-compliance with principles of natural justice inasmuch as no charges were framed against the petitioner and he was not afforded adequate opportunity of hearing before passing of impugned orders. It is his submission that even though in his explanation, the petitioner has made various submissions, which are required to be enquired into by a fact finding enquiry, the impugned orders have been passed solely based upon the enquiry report submitted by the two members Committee behind the back of petitioner. It is his submission that the respondents failed to adhere to the provisions of Circular dated 21/1/2021, which provides for grant of reasonable opportunity of hearing before passing any order. He placed reliance upon the judgments passed by the coordinate Benches of this Court in the cases of *Rajdeep Singh Sendhaw Vs. State of M.P. & Ors, in W.P. No.10225/2023*, *Pawan Kumar Thakur Lodhi Vs. State of M.P. & Ors., in W.P. No.3002/2024* and *Satyaprakash Jatav Vs. State of M.P. & Ors. in W.P. No.29509/2022*.

9. On the other hand, learned counsel for the State supported the impugned orders and submitted that the petitioner was only a contractual

employee and was therefore, not having any right to continue in service after expiry of period of his contract. He further submitted that findings were recorded against the petitioner by the two members Committee, which had called the petitioner also to participate in the enquiry. Therefore, if the impugned orders are passed based upon the said enquiry report, nothing wrong can be said to have been done by the authorities. He therefore, prays for dismissal of the petition.

10. Considered the arguments and perused the records.

11. The principles of natural justice are required to be complied with while taking action against a contractual employee also like the petitioner. This has been so held by this Court in the cases of *Rajdeep Singh Sendhaw (supra)*, *Pawan Kumar Thakur Lodhi (supra)* and *Satyaprakash Jatav (supra)* as relied upon by learned counsel for the petitioner. Further, Clause 1.14.1 of Circular dated 5/6/2018 (Annexure P/11) also provides for the provision and the same reads as under:-

“1.14.1 संविदा पर कार्यरत अधिकारियों / कर्मचारियों की सेवा युक्तियुक्त आधार व कारणों के बिना समाप्त नहीं की जावे। किसी के विरुद्ध गम्भीर आरोपों की स्थिति में कारण बताओ सूचना पत्र जारी कर युक्तियुक्त सुनवाई का अवसर देने एवं समग्र रूप से जाँच पूर्ण करने के बाद ही सेवा समाप्त की जा सकेगी।”

12. Therefore, the compliance of principles of natural justice by affording adequate opportunity of hearing to the petitioner was the mandate of law. It is therefore, required to be seen as to whether, the aforesaid requirement of law has been satisfied in the present case or not?

13. Admittedly, the impugned orders have been passed based upon the report submitted by two members Committee which has been brought on record as Annexure P/6. The respondents have not brought on record any material to show that opportunity of hearing was given to the petitioner. Even otherwise, after the report was received, it was incumbent upon the respondent authorities to have framed specific allegations against the petitioner and asked him for his explanation. Further, if the explanation

given by the petitioner was found to be factual, necessary evidence was also required to be led in support of the charges. At least, the petitioner should have been granted an opportunity to give his evidence in rebuttal of the allegations. However, the authorities have miserably failed in complying with the aforesaid minimum requirement of law.

**14.** From a perusal of the explanation given by the petitioner before CEO, Janpad Panchayat, it is evident that various factual aspects have been raised by the petitioner. He has specifically denied his power to withdraw the amount and has stated that the said power vests with the Sarpanch and the Panchayat Secretary. He has also stated that the musters were prepared by him on the dictates of the Panchayat Secretary and the Sarpanch. The aforesaid explanation given by the petitioner is not found to have been considered in the impugned orders.

**15.** The another important aspect which was to be considered is issue of quantum of punishment which was required to be considered by authorities while passing the impugned orders. The petitioner has given his explanation denying his involvement in the matter of disbursement of the amount. If this is found correct, this may affect the ultimate punishment which is required to be passed in the matter. It is profitable to refer to the memo dated 16/8/2022 (Annexure P/17) issued by the Commissioner, M.P. State Employment Guarantee Council to all Collectors/District Programme Coordinators under MGNREGA Scheme stating that in cases of Gram Rojgar Sahayak, termination order should not be passed mechanically, instead, the other punishments like warning, censure, no work no pay can also be imposed looking to the gravity of the allegations made. He has deprecated the practice of terminating the services of Gram Rojgar Sahayak mechanically in all cases.

**16.** During the course of arguments, the learned respondents' counsel submitted that the petitioner has already deposited the amount as directed pursuant to order, dated 10.11.2022, (Annexure P/7) and, therefore, by this conduct, the petitioner has admitted his guilt. In response, the petitioner's

counsel submitted that, in order to put the controversy at rest, the petitioner deposited the amount. However, should not be treated to be his admission of his guilt.

**17.** The argument so made by learned counsels is considered. The admission of guilt is required to be clear, unequivocal and unambiguous. It cannot be presumed by drawing inferences from facts. Further, before using it as admission, the petitioner was required to put to notice that his act is proposed to be used as admission. However, no such procedure is adopted in the present case. There may be cases, where the incumbent is not in a position to contest and he may decide to deposit the amount to put the controversy at rest. The petitioner is admittedly not put to notice that his act of depositing the amount is proposed to be used as his admission. The finding of guilt, therefore, cannot be based upon his act of depositing the amount pursuant to order, dated 10.11.2022. The submission made by respondents' counsel is, therefore, not acceptable and is accordingly rejected.

**18.** In view of the aforesaid, this Court is of the considered opinion that the respondents have failed to provide adequate opportunity of hearing to the petitioner. Further, the issue of quantum of punishment has also not been considered while passing the impugned orders.

**19.** Resultantly, the impugned order dated 19.06.2023 (Annexure P/1) is set aside. The respondents are directed to reinstatement the petitioner in service. The respondents are also granted liberty to take action afresh after affording due opportunity of hearing to petitioner keeping in view the provisions of various circulars issued by the State Govt. from time to time in this regard as also the observations made by this Court hereinabove.

**20.** Since, the petitioner has already complied with the order, dated 10.11.2022, (Annexure P/7), the same is not required to be set aside. Further, in the peculiar facts and circumstances of the case, it is directed that the issue of payment of back wages to the petitioner for the intervening period shall be decided based upon the outcome of the enquiry that is to be

conducted pursuant to the order passed by this Court.

**21.** With the aforesaid, the petition stands allowed and disposed of.

**(ASHISH SHROTI)**  
**JUDGE**

JPS/-