

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

BEFORE

HON'BLE SHRI JUSTICE ANAND PATHAK

&

HON'BLE SHRI JUSTICE HIRDESH

ON THE 7th OF JANUARY, 2025

WRIT APPEAL NO. 2541 of 2024

THE NATIONAL HEALTH MISSION

Vs.

SMT. RICHA SAXENA

APPEARANCE:

Shri Sankalp Sharma – Advocate for the appellant.

Shri D.P. Singh – Advocate for the respondent.

JUDGMENT

Per: Justice Anand Pathak

1. The present appeal under Section 2 (1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 is preferred by the appellant/respondent No.2 being crestfallen by the order dated 20-07-2024 passed by learned Single Judge in Writ Petition No.15348 of 2024 whereby the writ petition filed by the respondent (hereinafter referred to as “the petitioner”) has been allowed.
2. Precisely stated facts of the case are that the petitioner was appointed as Family Planning Counselor on contract basis in 2007 and thereafter the said post was given the nomenclature as Block Community Mobilizer on which petitioner was again appointed on contract basis on 19-08-2021. Contract period of petitioner was

extended by the appellant from time to time. A show cause notice dated 22-03-2024 was issued to the petitioner indicating lapses occurred in discharge of duties and poor performance of duties by the petitioner. Petitioner replied to the same on 05-04-2024 explaining all the allegations levelled against her. Finding the reply of the petitioner unsatisfactory, the appellant terminated the contractual services of petitioner. Being aggrieved by the same, petitioner approached learned writ Court. Learned Writ Court allowed the said writ petition setting aside the impugned order of termination of petitioner with liberty to competent authority to proceed in accordance with law after holding an enquiry in the matter. Being aggrieved by the order of the writ Court, National Health Mission (respondent No.2 in writ petition) approached this Court by filing the instant writ appeal.

3. Learned counsel for the appellant refers the Contractual Human Resources Manual, 2021 of National Health Mission as well as its clauses. According to the said Manual, 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 petitioner was a contractual employee and her non performance of duty and nonchalance behaviour given bad impact on the image of National Health Mission, therefore, being an employer, the National Health Mission has right to terminate the contract of the petitioner.
4. It is further submitted that since the work of petitioner was not found

satisfactory and despite warning, she did not improve her working, therefore, her services were terminated by the appellant. First petitioner was given show cause notice and since reply of the petitioner was not found to be satisfactory, therefore, her services were terminated by the appellant by passing a speaking order clarifying each and every lapse of petitioner. Therefore, it is not a case where order of termination has been passed without affording opportunity of hearing to the petitioner. Learned Writ Court erred in passing the impugned order without considering material aspect of the matter that the termination of petitioner was based on her work performance and it was passed after giving show cause notice to her. Thus, prayed for setting aside the impugned order.

5. *Per contra*, learned counsel for the respondent (petitioner in writ petition) opposed the submission and while supporting the order passed by learned Writ Court submits that since the order of termination of petitioner was stigmatic in nature therefore, proper opportunity of hearing was required to be given by the appellant before passing the order of her removal from services. Petitioner was never afforded adequate opportunity of hearing by the appellant, therefore, caused illegality. Reliance has been placed over the judgment of Apex Court in the case of **Krushnakant B. Parmar Vs. Union of India & Anr. (2012) 2 Supreme 254** and this Court in the case of **Rahul Tripathi Vs. Rajeev Gandhi Shiksha Mission, Bhopal, 2001 (3) MPLJ 616**.
6. Learned counsel for the petitioner further submits that in similar matter when services of an employee were terminated, his termination order was set aside by the Coordinate Bench of this Court at Indore in the case of **The Mission Director, National**

Health Mission, Bhopal Vs. Mukesh Yadav and others, 2011 (4) MPHT 266. Thus, prayed for dismissal of this appeal.

7. Heard the learned counsel for the parties at length and perused the record.
8. This is the case where appellant has called in question the order passed by learned Writ Court whereby the termination order of the petitioner (a contractual employee) has been set aside on the ground of non affording the proper opportunity of hearing to her.
9. The Hon'ble Apex Court has given guidance from time to time in relation to Rule of Natural Justice. The Hon'ble Apex Court in the matter of **Poonam Vs. State of Uttar Pradesh and others, (2016) 2 SCC 779** held that principle of *Audi Alteram Partem* has its own sanctity but the said principle of natural justice is not always put in straitjacket formula. That apart, a person or an authority must have a legal right or right in law to defend or assail. Natural justice is not an unruly horse. Its applicability has to be adjudged regard being had to the effect and impact of the order and the person who claims to be affected and that is where the concept of necessary party becomes significant. This aspect has also been taken care of by Division Bench of this Court {**See: Vikas Gupta Vs. Smt. Merrra Singh and others, 2007(2) EFR 46**}.
10. 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, (2007) 13 SCC 352, Haryana Financial Corpn. Vs. Kailash Chandra Ahuja, (2008) 9 SCC 31, State of Chhattisgarh Vs. Dhirjo Kumar Senger, (2009) 13 SCC**

600, Indu Bhushan Dwivedi Vs. State of Jharkhand, (2010) 11 SCC 278, Natwar Singh Vs. Director of Enforcement, (2010) 13 SCC 255 and Dharampal Satyapal Ltd. Vs. Deputy Commissioner of Central Excise, Gauhati and Ors, (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*14]. Its essence is good conscience in a given situation; nothing more but nothing less (see *Mohinder Singh Gill Vs. Chief Election Commr.*)

In the case of **Indu Bhushan Dwivedi (supra)**, 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."

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

"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."

11. In the backdrop of the aforesaid cases, it appears that petitioner was a contractual employee and was appointed in the year 2007 and her appointment order categorically stipulates conditions of appointment in the following manner:-

“25. संविदा जिला कम्यूनिटी 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। ”

12. Since contractual appointment has been given to the petitioner under the National Rural Health Mission Project therefore, terms and conditions of the contract assume importance. Nonetheless, petitioner was required to be afforded reasonable opportunity of hearing before proceeding against her. From the submission of learned counsel for the appellant/National Health Mission, it appears that when complaint was received, by issuing show cause notice, reply was

solicited from the petitioner and after considering each and every aspects of the matter, work of petitioner was not found satisfactory and upto mark to the guidelines issued by the appellant.

13. Allegations against the petitioner appears to be constant dereliction of duties. She was found to be an employee not working properly. Around 15 show cause notices were issued to the petitioner vide Annexure A/3 for improvement of work and even complaints were made by the concerned Chief Medical and Health Officer about her working and conduct. Allegations against her are serious in nature which find place in the impugned order itself:

"श्रीमती रिच स्मरेन द्वारा कभी समय पर अश कार्यकर्ताओंके वउचर पेटलपर अफेट कर वउचर त्रिस्ट नहीं किए जानेके कारण अश कार्यकर्ताओं के मस्कि भुगतन में बिंब हेत है।

श्रीमती रिच स्मरेन द्वारा अशओंके कोवि-19 मेकिइजेशन के प्रेसहान के भुगतन के जन्मारी समय पर तैयार कर भुगतन शख में उपरब्ध नहीं कराये गये जिसे कारण युक्त मद् अश भुगतन मे अत्यधिक बिम्ब हुआ अश एवं अश सुपरवर्डजों द्वारा लिखित अफेटन प्राप्त कर लेख किय गय है कि किसी भी कार्यक्रम के कोई भी सूचन सुघरु एवं समय पर न मिलने के कारण कार्य पूर्ण नहीं हो प रहे है। किासंख कम्युनिटी मेकिइजर द्वारा मर्गदर्शन नहीं दिय ज रह है।

श्रीमती रिच स्मरेन क कार्य जिा स्तर से अश समुच्चयिक प्रक्रियाओं कार्यक्रम के स्म-समय पर समीक्षा में कार्य प्रदर्शन अत्यक्त है अंसोषजन्क एवं निशजन्क रह है। विभिन्न गतिविधियों कार्यक्रमों एवं उत रिपोटिंग के संबंध में अफेक बार लिखे / मौखिक स्मरण कराये जाने के वद भी इन्क कार्य समय पर पूर्ण नहीं किय गय।

श्रीमती रिच स्मरेन के कार्य व्यह्वर के कारण पृक-पृक पत्रों द्वारा (15)

कारण बसओनैटिस जरी किये गये तथ मुख्य खड चिक्त्स अधिकारी सम्प्रयिकि स्वस्थ्य केन्द्र काहल द्वरा फ्रंक फ्र क्रमंक 24 दिंक 21/04/2023 द्वरा श्रीमती रिच सस्सेम के विद्ध्य अमरासमत्सक कर्यवृत्ति किये जने के निर्दिश दिये गये ।

14. Therefore, it is abundantly clear that not only repeated show cause notices were given to the petitioner but even in present occasion prior to notice her work was assessed objectively. When the chart mentioned in the impugned order indicates repeated poor performance of the petitioner then she cannot be continued in employment to defeat the very object for which she was appointed.
15. Contractual Human Resource Manual, 2021 contemplates certain contingencies about conduct of a contractual employee. Relevant clause 11.3 is reproduced as under:

“11.3 संविदा कर्मचारी द्वारा कदाचरण करने, वित्तीय अनियमितता में शामिल होने, किसी भी अपराधिक 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 समयवाधि 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 बाध्यता नहीं होगी।”

16. Learned counsel for the appellant also referred the letter dated 08-04-2024 addressed to the Deputy Director, I.T. National Health Mission in which it has been mentioned that 16 contractual employees have been under scrutiny and therefore, their orders for extension would be considered separately. However, contention of the petitioner that

contractual period of other employees (out of those 16) have been extended, would not give any entitlement to the petitioner to claim extension as a matter of right.

17. It is to be recapitulated that petitioner 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 her case. It is generally seen that in the matters of contractual employee, when performance of employee is found poor and non-satisfactory then, delinquent is show caused and after soliciting reply from the employee, the order is passed. In the present case, sufficient opportunity of hearing has been provided to the petitioner to explain the allegations levelled against him before passing the impugned order. The learned writ Court did not consider the matter in correct perspective and ignored the fact that petitioner is a contractual employee and her performance was found poor, non-satisfactory and not upto the mark to the terms and conditions as framed by the National Health Mission especially when repeated show cause notices were given to her to improve performance.
18. From the above discussion and the judgments of Apex Court, it appears that learned Writ Court erred in passing the impugned order, setting aside the termination order of petitioner by granting extension to her till 31-03-2025.
19. In cumulative analysis, in fact petitioner was given sufficient opportunity of hearing as contractual employee. As per Contractual Human Resources Manual, 2021, appellant has complied with the provisions and due opportunity of hearing was given to the petitioner. Judgment relied upon by the petitioner in the case of **Mukesh Yadav and others (supra)** was based on the earlier judgment of Division

Bench of this Court in the case of **Mission Director, RCH/NRHM Vs. Ranjit Jain and another, 2011 (4) MPHT 266** and that was in respect of case where no opportunity of hearing was given. No notice was issued to the employee in the said matter. Here, show cause notice was issued and tabulation was also made which reflects comparative performance of the petitioner. Therefore, objective assessment is made before arriving to conclusion. Therefore, the judgments relied upon by the petitioner move in different factual realm and cannot be relied upon in the given set of facts.

20. However, in the given facts and circumstances of the case, it is made clear that the order of removal of petitioner shall not be treated as stigmatic order and it would not come in the way of petitioner in any future prospects of employment.
21. In the conspectus of facts and circumstances of the case, no manifest illegality, procedural impropriety or palpable perversity is reflected in the termination order of the petitioner passed by the appellant. Therefore, the writ appeal filed by the appellant is allowed. The order passed by learned Writ Court is hereby set aside.
22. Appeal stands **allowed and disposed of. No costs.**

Anil*

(ANAND PATHAK)
JUDGE

(HIRDESH)
JUDGE