

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

**HON'BLE SHRI JUSTICE SUBODH ABHYANKAR**

**ON THE 31<sup>st</sup> OF OCTOBER, 2022**

**WRIT PETITION No. 13316 of 2013**

**BETWEEN:-**

**GHANSHYAM KARMA S/O SHRI KALURAM KARMA,  
AGED ABOUT 42 YEARS, OCCUPATION: SERVICE  
LAXMI NAGAR JHABUA (MADHYA PRADESH)**

**.....PETITIONER**

***(BY SHRI ABHISHEK TUGNAWAT, ADVOCATE)***

**AND**

**1. PRINCIPAL SECRETARY STATE OF M.P. PUBLIC  
HEALTH AND FAMILY WELFARE DEPARTMENT AND 5  
ORS. GOVT. VALLABH BHAWAN BHOPAL (MADHYA  
PRADESH)**

**2. COMMISSIONER DTE. OF HEALTHSERVICES (STATE  
HEALTH COMMITTEE) 4TH FLOOR, SATPURA  
BHAWAN (MADHYA PRADESH)**

**3. DIRECTOR NATIONAL RURAL HEALTH MISSION  
BANK OF INDIA 3RD FLOOR, ARERA HILLS (MADHYA  
PRADESH)**

**4. DIVISIONAL JOINT DIRECTOR OF HEALTH SERVICES  
INDORE DIVISION (MADHYA PRADESH)**

**5. COLLECTOR AND CHAIRMAN OF DISTT.HEALTH  
COMMITTEE (MADHYA PRADESH)**

**6. CHIEF MEDICAL AND HEALTH OFFICER (MADHYA  
PRADESH)**

**.....RESPONDENTS**

***(SHRI ROMESH DAVE, ADVOCATE FOR RESPONDENT NO.3 AND  
SHRI N.S. BHATI, P.L. FOR THE STATE)***

*This petition coming on for ADMISSION/ORDER this day, the  
court passed the following:*

**ORDER**

1. This petition has been filed by the petitioner under Article 226 of the Constitution of India against the order dated 28/10/2013, passed by the respondent No.3/National Rural Health Mission, Bhopal whereby the petitioner's services have been terminated on the ground of his having committed financial irregularities.

2. In brief, the facts of the case are that the petitioner was initially appointed on contractual basis vide order dated 18/12/2006, on the post of District Accounts Manager in National Rural Health Mission. The contract was initially for a period of 2 years, however, subsequently it was extended from time to time and lastly, it was extended vide order dated 21/06/2013 till 31/03/2014. While the petitioner was posted at Jhabua, certain complaints about his financial irregularities were brought to the notice of the authority and thus a show cause notice dated 01/10/2013 was issued to the petitioner by the respondent No.6/Chief Medical and Health Officer, District Jhabua. The reply of which was also given by the petitioner on 17/10/2013, and thereafter another notice was issued to the petitioner on 03/10/2013 and its reply was also given by the petitioner on 25/10/2013, however, the reply filed by the petitioner was found to be not satisfactory and thus, his services were done away with vide order dated 28/10/2013.

3. Learned counsel for the petitioner has submitted that the order dated 28/10/2013 is a cryptic order and has been passed without conducting any inquiry in the matter and only on the basis of the

replies filed by the petitioner, the order has been passed and that too is without assigning any reason at all. Counsel has also submitted that the petitioner was appointed after due process and thus, he could not have been removed in such unceremonious manner.

4. Learned counsel for respondent No.3, on the other hand has opposed the prayer and it is submitted that no case for interference is made out and the petition itself is not maintainable as the petitioner was a contractual employee and is not amenable to the writ jurisdiction, and at the most, he can seek damages under the Specific Relief Act as has also been opined by the coordinate Bench of this Court in the case of *Anita Sant Vs. State of M.P. and others reported as 2017 SCC Online MP 78*. Counsel has also relied upon a decision rendered by the Supreme Court in the case of *SBI and others Vs. S.N. Goyal reported as (2008) 8 SCC 92* to buttress his arguments. It also submitted that even otherwise, before passing the impugned order, the petitioner was served with a show cause notice and only after considering his reply, the impugned order has been passed. In support of his submissions, he has relied upon the decisions in the case of *Sanjay Upadhyay Vs. State of M.P. and others passed in W.P. No.5013/2017 on 06/09/2021*, *Rajendra Prasad Bakoriya Vs. Secretary the State of M.P. passed in W.P. No.8150/2011 on 26/08/2016 reported as 2016 SCC Online MP 10905* as also the decision rendered in the case of *Akram Jafri and others Vs. State of M.P. and others reported as 2021 SCC Online MP 684*, *State Bank of India Vs. S.N. Goyal reported as (2008) 8*

**SCC 92.**

5. Learned counsel for the State has also opposed the prayer and it is submitted that no case for interference is made out.

6. In rebuttal, Shri Abhishek Tugnawat, learned counsel for the petitioner has submitted that in respect of the identically placed employees namely Rahul Jain and Lalit Sharma, this Court has already entertained the petitions and thus on the ground of parity also, this petition deserves to be allowed. Counsel has also drawn the attention of this Court to the order dated 07/11/2017, passed by co-ordinate bench of this court at Jabalpur in W.P. No.7332/2017, in which case, the decision rendered by the Supreme Court in the case of S.N. Goyal (supra) has also been taken note of and the petition was allowed as the impugned order was cryptic in nature. Thus, it is submitted that the petition be allowed. In support of his submissions, he has relied upon the decisions in the case of ***K. Raghupathi Vs. State of U.P. reported as (2022) 6 SCC 346, Susheel Kumar and another Vs. State of U.P. passed by the Allahabad High Court in Special Appeal No.259/2021, Umesh Vs. State of Maharashtra passed by the Bombay High Court in WP No.5740/2006, Ku. Shabanam Bano Vs. State of M.P. passed by this Court in WP No.132286/2018, Lalit Kishore Vs. State of M.P. passed in WP No.4589/2010 and Vinod Vs. State of M.P. reported as 2018 (2) MPLJ 689.***

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

8. On due consideration of submissions and on perusal of the

documents filed on record, it is found that it is not disputed that the employment of the petitioner was contractual in nature as he was appointed on the post of District Accounts Manager vide the order dated 18/12/2006, passed by the office of the Chief Medical and Health Officer, Jhabua. It is also found that the services of the petitioner were extended from time to time which was lastly extended on 21/06/2013 up to 31/03/2014, however, for audit of the petitioner's work, a committee was constituted on 30/07/2013 and the inquiry report was prepared on 26/09/2013, a copy of which was also furnished to the petitioner to submit his para-wise response. Vide its letter dated 01/10/2013, the CMHO, Jhabua made certain queries to the petitioner which was replied to by the petitioner on 17/10/2013, and in the meantime, on 03/10/2013, a show cause notice was also issued to the petitioner as to why the departmental proceedings be not initiated against him, to which also the petitioner filed his detailed reply on 17/10/2013 only and another reply on 25/10/2013, however on 28/10/2013, the final/impugned order was passed in the following manner:-

“विषय अंतर्गत कलेक्टर झाबुआ के द्वारा नियुक्त जाँच समिति द्वारा जिला स्वास्थ्य समिति झाबुआ के वित्तीय लेखाओं की जाँच की गई। समिति द्वारा प्रस्तुत प्रतिवेदन में जिला स्तर पर किये गये भुगतान में गंभीर अनियमितताएं पाई गई हैं। जाँच प्रतिवेदन के आधार पर प्रथमतः आप दोषी पाये जाते हैं। अतः संविदा मानव संवाधन नीति के सरल क्रमांक 2.18 सहपठित सरल क्रमांक 19.4 तथा 19.7 के तहत आपकी संवायें तत्काल प्रभाव से समाप्त की जाती है।”

9. A perusal of the aforesaid order clearly reveals that it does not disclose any reasoning at all as to how and why the reply given by

the petitioner was not found to be satisfactory and thus it is apparent that the petitioner has been kept in total dark so far as his responses to the show cause notice and other queries made by the respondents is concerned. Thus, the impugned order is nothing short of an order running contrary to the principles of natural justice, arbitrary and unjust.

10. The decisions of this court, on which learned counsel for the respondent has heavily relied upon viz. the Division Bench judgement i.e. *Akram Jafri and others* (supra) and the single bench judgement, *Shivratri Barmaiya Vs. State of M.P. passed in WP No.15502/2016 on 11/11/2016*, it has been held that a contract employee has no right to have his services regularized. The Supreme Court, in the case of *S.N. Goyal* (supra) has held that in the case of contractual appointment, writ petition is not maintainable and the only remedy available to the petitioner is to seek damages, and not to seek specific performance of contract of personal service. So far as the *S.N. Goyal* (supra) is concerned, the relevant paras of the same reads as under:-

“17. Where the relationship of master and servant is purely contractual, it is well settled that a contract of personal service is not specifically enforceable, having regard to the bar contained in Section 14 of the Specific Relief Act, 1963. Even if the termination of the contract of employment (by dismissal or otherwise) is found to be illegal or in breach, the remedy of the employee is only to seek damages and not specific performance. Courts will neither declare such termination to be a nullity nor declare that the contract of employment subsists nor grant the consequential relief of reinstatement. The three well-recognised exceptions to this rule are:

(i) where a civil servant is removed from service in contravention of the provisions of Article 311 of the Constitution of India (or any law made under Article 309);

(ii) where a workman having the protection of the Industrial Disputes Act, 1947 is wrongly terminated from service; and

(iii) where an employee of a statutory body is terminated from service in breach or violation of any mandatory provision of a statute or statutory rules.

There is thus a clear distinction between public employment governed by statutory rules and private employment governed purely by contract. The test for deciding the nature of relief—damages or reinstatement with consequential reliefs—is whether the employment is governed purely by contract or by a statute or statutory rules. Even where the employer is a statutory body, where the relationship is purely governed by contract with no element of statutory governance, the contract of personal service will not be specifically enforceable. Conversely, where the employer is a non-statutory body, but the employment is governed by a statute or statutory rules, a declaration that the termination is null and void and that the employee should be reinstated can be granted by courts. (Vide *S.B. Dutt (Dr.) v. University of Delhi*, *U.P. Warehousing Corpn. v. Chandra Kiran Tyagi*, *Sirsi Municipality v. Cecilia Kom Francis Tellis*, *Vaish Degree College v. Lakshmi Narain*, *J.Tiwari v. Jwala Devi Vidya Mandir* and *Dipak Kumar Biswas v. Director of Public Instruction*)”

(emphasis supplied)

11. A perusal of the aforesaid decision clearly reveals that when it comes to contractual appointment, the nature of relief is only damages and not the specific performance. On perusal of the aforesaid decisions cited by the learned counsel for the rival parties, this Court is of the considered opinion that the impugned order cannot be sustained on the anvil of principles of natural justice as not only the same is stigmatic in nature, but it is also cryptic as no reasons have been assigned at all, dealing with the para-wise replies submitted by the petitioner on queries made by the respondents.

12. In the considered opinion of this Court, when the court is only considering process of termination of a contractual employee, *dehors* the relief of specific performance or reinstatement, it cannot close its eyes to an order which is stigmatic, runs contrary to the principles of natural justice, is arbitrary and unjust, and in such circumstances, to relegate the petitioner to file a suit for damages would be to award him a civil death by curtailing his legal right to be re-employed in any other public or private employment, which runs contrary to the mandate of Art.14 and 16 of the Constitution of India. This is for the reasons that once such an order which is stigmatic and cryptic in nature, is passed, the doors of all the other employments, whether public or private are closed to him so long as the stigma of the order of termination of his service continues with him/her, which would chase him down to the doors of such employer. It is also a common knowledge that a civil suit, either filed for damages or otherwise, takes years together to be disposed of, and then there is an appeal and second appeal also, which would also add couple of decades to decide the matter finally. Thus, if a person is relegated to file a suit for damages only in respect of order of termination of his employment which is stigmatic in nature, and runs contrary to principles of natural justice, he would be deprived to seek any employment for the rest of his life or till such suit is finally decided.

13. In such circumstances, when viewed from this perspective, the decisions cited by the counsel for the respondents are distinguishable and are of no avail to the respondent.



14. Resultantly, the impugned order cannot be sustained in the eyes of law and is hereby quashed. The respondents are directed to pass a reasoned and speaking order afresh, on merits, in accordance with law and after giving due opportunity of hearing to the petitioner. Let the said exercise be completed within a period of four months from the date of receipt of certified copy of this order.

Writ petition is accordingly *disposed of*.

**(Subodh Abhyankar)**  
Judge

krjoshi