IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE JAI KUMAR PILLAI

ON THE 28TH OF JANUARY, 2026

WRIT PETITION No. 5807 of 2019

DURGAPRASAD & THREE OTHERS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri L. C. Patne - Advocate for the petitioners.

Shri Pradyumna Kibe –G.A for the respondents/State.

WRIT PETITION No. 7554 of 2019

RAMPRASAD CARPENTAR

Versus

Appearance:

Shri Lokesh Kumar Bhatnagar - Advocate for the petitioner.

Shri Pradyumna Kibe – G.A for the respondents/State.

WRIT PETITION No. 7558 of 2019

BALCHAND SINGHWAL

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Lokesh Kumar Bhatnagar - Advocate for the petitioner.

Shri Pradyumna Kibe – G.A for the respondents/State.

ORDER

These are a bunch of writ petitions filed by the petitioners under Article 226 of the Constitution of India challenging the common order/letter dated 02/03/2019 and 19/03/2019 issued by respondent directing that the services of persons appointed on contractual basis as Technical Assistants under the Mahatma Gandhi National Rural Employment Guarantee Scheme (hereinafter referred to as

"MNREGS/MNREGA") shall not be continued after 28/02/2019, pursuant to which consequential steps have been taken by the authorities for discontinuance of the petitioners from service.

2. Since the facts involved in all these writ petitions are similar and the questions of law raised are identical, they were heard together and are being decided analogously by this common order. As the facts involved in all the writ petitions are identical, the pleadings and annexures filed in W.P. No. 5807/2019 are treated as the lead case and are taken into consideration for adjudication of the entire bunch of writ petitions.

3. The facts of the case, briefly stated, are that under the Mahatma Gandhi National Rural Employment Guarantee Scheme, Madhya Pradesh a process was initiated for appointment of Technical Assistants on contractual basis by issuance of notification inviting applications thereafter vide letter No. 2504 dated 10/05/2010, the Directorate of Training, Madhya Pradesh, directed the concerned authorities, including the Principal, Industrial Training Institute, Khilchipur, to make appointments to the post of Technical Assistant on contractual basis under MNREGS. Pursuant thereto, applications were invited in the prescribed format, interviews were conducted, and eligible candidates were selected and appointed as Technical Assistants on contractual basis by order dated 24/06/2010.

4. Prior to issuance of the appointment orders, correspondence was made by the competent authority, which is placed on record as Annexure P/5. During the course of their engagement, the petitioners were assigned various duties, including election-related duties, under different orders. The petitioners continued to work as Technical Assistants under MNREGS pursuant to extensions granted from time to time. On 02/03/2019 and 19/03/2019, respondent authority issued a letter/order directing that persons working on contractual basis under MNREGS shall not be continued after 28/02/2019. In compliance of the aforesaid order, the subordinate authorities initiated proceedings to discontinue the services of the petitioners. Aggrieved by the issuance of the order dated 02/03/2019 and 19/03/2019 and the consequential action taken thereunder, the petitioners have approached this Court by filing the present batch of writ petitions.

5. Learned counsel for the petitioners submitted that the impugned orders dated 02/03/2019 and 19/03/2019 are illegal, arbitrary, and contrary to the settled principles of law, and infringes the constitutional rights of the petitioners. It is contended that the petitioners were appointed to the post of Technical Assistant after following due procedure, including issuance of notification, interview, and selection, and have continuously rendered services under MNREGS since the year 2010. It is further contended that the petitioners were appointed on

sanctioned posts and their services were extended from time to time, reflecting satisfaction of the respondents with their performance. According to the petitioners, as per the governing terms and conditions, termination of contractual appointment can be effected only in accordance with prescribed procedure, including notice, whereas the impugned action has been taken abruptly and without due process.

6. It is submitted that the petitioners have rendered long years of service and their discontinuance without assigning any reason or fault is arbitrary and violative of Articles 14 and 16 of the Constitution of India. The petitioners further contended that the posts of Technical Assistant are sanctioned under MNREGS, as evident from the operational guidelines of MNREGS, 2013, the job chart issued by circular dated 28/01/2011, and the letter dated 10/05/2010. It is also contended that the order dated 18/02/2019, which forms the background of the impugned action, was expressly made inapplicable to MNREGS by the subsequent order dated 02/03/2019, and therefore, the petitioners could not have been discontinued on that basis. In the rejoinder, the petitioners contended that the terms of appointment, particularly Clause 5 and Clause 6 of Annexure P/5, contemplate renewal of service on satisfaction of work and necessity, and the petitioners' continued engagement over the years demonstrates such satisfaction. The petitioners further submitted that despite interim protection granted by

this Court, issues relating to non-payment of salary have arisen, which have been brought on record through rejoinder and subsequent pleadings. On the aforesaid grounds, the petitioners seek quashment of the impugned order dated 02/03/2019, 19/03/2019 and consequential directions restraining the respondents from discontinuing them from the post of Technical Assistant.

7. *Per contra*, learned counsel for the respondents opposed the batch of writ petitions and submitted that the petitioners were appointed purely on contractual basis for a fixed period of one year, and such appointments were extended from time to time strictly as per administrative requirement. It is contended that as per Clause 25 of the appointment order (Annexure P/5), any dispute relating to the appointment is subject to the decision of the Madhya Pradesh State Employment Guarantee Board, and therefore, an alternative remedy is available. The respondents submitted that pursuant to the impugned orders dated 02/03/2019 and 19/03/2019, orders discontinuing the services of the petitioners were issued by the competent authority. It is further contended that the order dated 02/03/2019 directed that after 28/02/2019, contractual appointments under MNREGS should not be continued and no payments should be made, unless specific permission is obtained from the competent authority. According to the respondents, the posts held by the petitioners were contractual and temporary in

nature and have subsequently been abolished, and therefore, the petitioners do not possess any right to continue in service.

8. The respondents placed reliance upon the judgment of the Hon'ble Supreme Court in **State of Karnataka vs. Umadevi and others, reported in (2006) 4 SCC 1**, to contend that contractual employees do not acquire any right to continue or to seek regularization. Reliance has also been placed on the decision of this Court in **Hariom and others vs. State and others, WP No. 11482/2020 (S),** wherein it has been held that long continuation on contractual basis does not confer a legal right to continue. It is contended that the discontinuance of the petitioners is termination simpliciter, not stigmatic in nature, and therefore, principles of natural justice are not attracted. The respondents further submitted that the petitioners were allowed to continue pursuant to interim orders passed by this Court and that salary has been paid for the period during which work was actually discharged. It is also contended that the issue regarding payment of salary was subject matter of Contempt Petition No. 195/2023, which was dismissed by order dated 22/04/2024. On the aforesaid grounds, the respondents prayed for dismissal of the bunch of writ petitions.

9. Heard both parties at length and examined the entire record available.

10. This Court, upon careful examination of the record, first proceeds to examine the impugned orders dated 02/03/2019 and 19/03/2019. The relevant portion whereof reads as under:-

> "कृपया संदर्भित पत्र का अवलोकन करने का कष्ट करें। संदर्भित पत्र द्वारा जिला/पंचायत स्तर पर राज्य स्तर से स्वीकृति के बगैर रखे गए दैनिक वेतनभोगी/संविदा पर कार्यरत व्यक्तियों के पारिश्रमिक/मानदेय के भुगतान की अनुमति 30 जून, 2019 तक के लिये प्रदान की गई है।
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> उक्त पत्र के संबंध में लेख है कि महात्मा गांधी नरेगा योजनांतर्गत सहायक ग्रेड-2, कैशियर, लेखापाल, डाटा एंट्री ऑपरेटर इत्यादि पदों पर कर्मचारियों को रखा गया है तथा इसके अतिरिक्त ऐसे पदों पर भी कर्मचारियों को रखा गया है, जो योजनांतर्गत पद स्वीकृत ही नहीं हैं, जैसे स्वीपर, चौकीदार इत्यादि।
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> संदर्भित पत्र महात्मा गांधी नरेगा योजना पर लागू नहीं होगा। 28 फरवरी, 2019 के उपरांत मनरेगा योजनांतर्गत किसी भी पद पर इस प्रकार के कर्मचारियों को नहीं रखा जाये एवं न ही मनरेगा योजना से इनका भुगतान किया जाये। यदि अति-आवश्यक हो, तो इसके लिये आयुक्त, म.प्र. राज्य रोजगार गारंटी परिषद से अनुमति लिया जाना अनिवार्य होगा। अनुमति उपरांत ही आउटसोर्स पर सेवाएँ ली जा सकती हैं।"

11. From a plain and meaningful reading of the impugned order, the following position clearly emerges:-

> a) Permission was granted to pay remuneration/honorarium up to 30 June, 2019 to daily wage/contract employees who were engaged at the District/Panchayat level without State-level approval.
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> b) It was noticed that under the Mahatma Gandhi NREGA Scheme, employees were engaged not only on sanctioned posts, such as Assistant Grade-II, Cashier, Accountant, Data Entry Operator, but also on non-sanctioned posts, such as

Sweeper and Chowkidar, which were not approved under the Scheme.

c) The order further clarifies that the referenced letter shall not apply to the Mahatma Gandhi NREGA Scheme, and that after 28 February, 2019, no such employees shall be engaged or paid under the scheme.

d) It further stipulates that if engagement is absolutely necessary, prior permission of the Commissioner, M.P. State Employment Guarantee Council is mandatory, and only thereafter services may be taken on an outsourcing basis.

12. Thus, the expression *"no such employees shall be engaged or paid under the scheme"* used in clause (c) cannot be read in isolation. The words *"no such employees"* are clearly referable to the category of employees described in clauses (a) and (b), namely:-

(i) Daily wage/contract employees engaged at the District/Panchayat level without State-level approval, and

(ii) Employees appointed on non-sanctioned posts under the Scheme.

13. Therefore, the prohibition contained in clause (c) is not a blanket prohibition against all employees working under the Mahatma Gandhi NREGA Scheme. It is confined only to those employees who were appointed either on non-sanctioned posts or without approval of the State Government. This Court is of the considered view that the impugned order was intended only to regulate and discontinue the

engagement of unauthorised daily wage/contract employees, who were engaged at the District or Panchayat level without State approval, or against posts which were not sanctioned under the Scheme. Consequently, the said order does not apply to employees who were appointed against sanctioned posts created and approved by the State Government in accordance with prescribed procedure.

14. The next question which arises for consideration is whether the petitioners were appointed against posts which were sanctioned or approved by the State Government. If the answer to the said question is in the affirmative, the impugned orders would not operate against the petitioners. Upon careful perusal of the circular dated 10/05/2010 issued by the Directorate of Training, State of Madhya Pradesh (Annexure P/2), it is evident that the said circular specifically records creation of a post of Technical Assistant on contractual basis under the Mahatma Gandhi National Rural Employment Guarantee Scheme. The relevant portion reads as under:-

> "कृपया संलग्न संदर्भित पत्र का अवलोकन करें। महात्मा गांधी राष्ट्रीय रोजगार गारण्टी स्कीम मध्यप्रदेश में प्रावधानित ग्रामीण राङ्कक समार्कता के अंतर्गत अभिसरण के माध्यम से ग्रामीण क्षेत्र की समस्त बसाहटों को ग्रामीण सड़क सम्पर्क योजना के तहत 2013 तक जोड़े जाने का लक्ष्य रखा गया है इस योजना के अंतर्गत एक तकनीकी सहायक संविदा का पद सृजित किया गया है, जिन पर औद्योगिक प्रशिक्षण संरथाओं से ग्रामीण इंजीनियर योजना के अंतर्गत जिन युवाओं द्वारा 110 दिवस का प्रशिक्षण प्राप्त किया है वे ही तकनीकी सहायक के पद हेतु आवेदन करने के पात्र है"

15. The aforesaid circular clearly establishes that the post of Technical Assistant was created by the State Government itself under MNREGA and eligibility conditions were also prescribed therein. It is further borne out from the record that ten posts each were created in eleven districts, including the district to which the petitioners belong, and prescribed reservation was applied in the district of Rajgarh where ten posts were created (UR-6, SC-2, OBC-2). Pursuant thereto, applications were invited (Annexure P/3), and after due selection process, the petitioners were appointed to the said posts. Thus the records unequivocally establish that: -

(i) The posts on which the petitioners were appointed were created by the State Government;

(ii) The petitioners were appointed through modalities prescribed by the State Government; and

(iii) The posts were sanctioned posts, against which reservation was also applied.

16. In view of the aforesaid factual position, this Court has no hesitation in holding that the posts of Technical Assistant held by the petitioners were sanctioned and State-approved posts, and therefore, the impugned orders dated 02.03.2019 and 19.03.2019 do not apply to the petitioners.

17. Further, upon careful examination of Annexure P/11 and

Annexure P/12, it is apparent that the duties and responsibilities of the Technical Assistant are specifically recognized under the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 as well as by the State of Madhya Pradesh, clearly indicating that the post of Technical Assistant is a core and essential post for smooth functioning of MNREGA.

18. This Court also finds substance in the submission of the petitioners based on the Circular dated 05/06/2018 issued by the State of Madhya Pradesh, the subject whereof reads as "संविदा पर नियुक्त अधिकारियों/कर्मचारियों को नियमित पदों पर नियुक्ति के अवसर प्रदान किए जाने हेतु नीति-निर्देश". The said Circular provides, *inter alia*:-

> "1.14.1 संविदा पर कार्यरत अधिकारिर्या 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 रूप् से जॉच पूर्ण करने के बाद ही सेवा समाप्त की जा सकेगी।
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> 1.14.5 संविदा कर्मचारियों का मासिक पारिश्रमिक, समकक्ष नियमित पदों के वेतनमान के न्यूनतम का 90 प्रतिशत निर्धारित किया जाए"

19. In view of the aforesaid policy, this Court finds that although the petitioners are contractual employees, the State itself has conferred upon them service conditions and protections akin to those of regular employees. Their engagement is not casual or *ad hoc* in nature, but regulated by a comprehensive policy framework providing parity in

remuneration and protection against arbitrary termination. Thus, it is clear that the petitioners, despite being contractual employees, are entitled to the benefits flowing from the circular dated 05/06/2018, including structured remuneration comparable to regular posts and protection from termination except in accordance with due process. The impugned action, which abruptly affects their service without adherence to the said policy, is therefore contrary to the binding executive instructions of the State.

20. Moreover, the requirement of compliance with principles of natural justice, as embedded in clause 1.14.1 of the policy, has admittedly not been followed in the present case. No show-cause notice, no opportunity of hearing, and no enquiry preceded the impugned action, rendering it procedurally unsustainable.

21. The aforesaid position stands fortified by the decision of this Court in **Malkhan Singh Malviya Vs. State of M.P., W.A. No. 1166/2017, decided on 08.03.2018 (Bench at Gwalior),** wherein it has been held that even an employee not borne on the regular establishment is entitled to a reasonable opportunity of hearing before passing a stigmatic order of termination. The Division Bench observed as under:-

> *13. Reverting to the facts of the case, it is noticeable that before casting stigma on the petitioner by holding him guilty of misconduct, a mere preliminary inquiry report prepared*

behind the back of the petitioner and reply of petitioner to the show cause notice was considered by the competent authority before issuing order of termination of service. The misconduct as alleged in the show cause notice and the preliminary inquiry conducted behind the back of the petitioner were the foundation of the termination. The termination was not merely on the basis of finding the services of the petitioner to be no more required but because he was found guilty of the misconduct.

22. A reference may be also made to the recent judgment of the Hon'ble Supreme Court in **Swati Priyadarshni v. State of Madhya Pradesh & Ors., Civil Appeal No. 9758 of 2024 [arising out of SLP (C) No. 11685 of 2021], decided on 22.08.2024,** wherein the Hon'ble Court reiterated that:-

*34. It is profitable to refer to what five learned Judges of this Court laid down in **Parshotam Lal Dhingra v Union of India, 1957 SCC OnLine SC 5**:*

"28. The position may, therefore, be summed up as follows: Any and every termination of service is not a dismissal, removal or reduction in rank. A termination of service brought about by the exercise of a contractual right is not per se dismissal or removal, as has been held by this Court in Satish Chander Anand v. Union of India [(1953) 1 SCC 420: (1953) SCR 655]. Likewise the termination of service by compulsory retirement in terms of a specific rule regulating the conditions of service is not tantamount to the infliction of a punishment and does not attract Article 311(2), as has also been held by this Court in Shyam Lal v.

State of Uttar Pradesh [(1955) 1 SCR 26]. In either of the two abovementioned cases the termination of the service did not carry with it the penal consequences of loss of pay, or allowances under Rule 52 of the Fundamental Rules. It is true that the misconduct, negligence, inefficiency or other disqualification may be the motive or the inducing factor which influences the Government to take action under the terms of the contract of employment or the specific service rule, nevertheless, if a right exists, under the contract or the rules, to terminate the service the motive operating on the mind of the Government is, as Chagla, C.J., has said in Shrinivas Ganesh v. Union of India [LR 58 Bom 673 : AIR (1956) Bom 455] wholly irrelevant. In short, if the termination of service is founded on the right flowing from contract or the service rules then, prima facie, the termination is not a punishment and carries with it no evil consequences and so Article 311 is not attracted. But even if the Government has, by contract or under the rules, the right to terminate the employment without going through the procedure prescribed for inflicting the punishment of dismissal or removal or reduction in rank, the Government may, nevertheless, choose to punish the servant and if the termination of service is sought to be founded on misconduct, negligence, inefficiency or other disqualification, then it is a punishment and the requirements of Article 311 must be complied with. As already stated if the servant has got a right to continue in the post, then, unless the contract of employment or the rules provide to the contrary, terminated cannot than for services otherwise misconduct, negligence, inefficiency or other good and sufficient cause. A termination of the service of such a servant on such grounds must be a punishment and, therefore, a dismissal or removal within Article 311, for it operates as a forefeiture of his right and he is visited

with the evil consequences of loss of pay and allowances. It puts an indelible stigma on the officer affecting his future career. A reduction in rank likewise may be by way of punishment or it may be an innocuous thing. If the government servant has a right to a particular rank, then the very reduction from that rank will operate as a penalty, for he will then lose the emoluments and privileges of that rank. If, however, he has no right to the particular rank, his reduction from an officiating higher rank to his substantive lower rank will not ordinarily be a punishment. But the mere fact that the servant has no title to the post or the rank and the Government has, by contract, express or implied, or under the rules, the right to reduce him to a lower post does not mean that an order of reduction of a servant to a lower post or rank cannot in any circumstances be a punishment. The real test for determining whether the reduction in such cases is or is not by way of punishment is to find out if the order for the reduction also visits the servant with any penal consequences. Thus if the order entails or provides for the forfeiture of his pay or allowances or the loss of his seniority in his substantive rank or the stoppage or postponement of his future chances of promotion, then that circumstance may indicate that although in form theGovernment had purported to exercise its right to terminate the employment or to reduce the servant to a lower rank under the terms of the contract of employment or under the rules, in truth and reality the Government has terminated the employment as and by way of penalty. The use of the expression "terminate" or "discharge" is not conclusive. In spite of the use of such innocuous expressions, the court has to apply the two tests mentioned above, namely, (1) whether the servant had a right to the post or the rank, or (2) whether he has been visited with evil consequences of the kind hereinbefore referred to? If the

case satisfies either of the two tests then it must be held that the servant has been punished and the termination of his service must be taken as a dismissal or removal from service or the reversion to his substantive rank must be regarded as a reduction in rank and if the requirements of the rules and Article 311, which give protection to government servant have not been complied with, the termination of the service or the reduction in rank must be held to be wrongful and in violation of the constitutional servant."

23. In view of the aforesaid, the contention of the respondents that the impugned orders apply to the petitioners is wholly misconceived and is based on a misreading of the impugned orders itself. The impugned orders do not apply to the petitioners, as they were appointed against sanctioned and State-approved posts.

24. The reliance placed by the respondents on the judgments in **State of Karnataka vs. Umadevi and others, reported in (2006) 4 SCC 1, and Hariom and others vs. State and others, W.P. No. 11482/2020 (S),** is misplaced and does not advance the case of the respondents in the facts of the present bunch of petitions, inasmuch as the said decisions do not lay down an absolute bar on regularization of contractual employees, but recognize that regularization may be permissible in exceptional and duly justified circumstances.

25. In the light of the aforesaid discussion, this Court is of the considered opinion that the impugned orders dated 02/03/2019 and

19/03/2019 cannot be sustained in the eyes of law.

26. Accordingly, the writ petitions are allowed. The impugned orders dated 02/03/2019 and 19/03/2019 are hereby **quashed.**

27. The respondents are directed to reinstate the petitioners on their respective posts with all consequential benefits, including notional pay fixation and back wages, in accordance with law. It is further directed that no coercive action shall be taken against the petitioners, and their services shall be regulated strictly in accordance with the applicable policies of the State Government and the relevant service laws.

28. It is made clear that this Court has not expressed any opinion on the issue of regularization of the petitioners, and the same, if raised, shall be considered independently in accordance with law.

29. The aforesaid directions shall be complied with by the respondents within a period of **sixty (60) days** from the date of receipt of a certified copy of this order.

30. Resultantly, the writ petitions are **allowed** with the aforesaid directions

31. A copy of this order shall be kept on record in the other connected matters and shall govern their disposal accordingly.

32. Pending applications, if any shall be **disposed off** accordingly.

(Jai Kumar Pillai)
Judge

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