

IN THE HIGH COURT OF MADHYA PRADESH

AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE RAVI MALIMATH,

CHIEF JUSTICE

&

HON'BLE SHRI JUSTICE PURUSHAINDRA KUMAR KAURAV

ON THE 02nd OF MAY, 2022

WRIT APPEAL No. 413 OF 2006

Between:-

**SUNIL KUMAR VERMA, AGED ABOUT 30
YEARS, SON OF SHRI SOMNATH VERMA,
EX-PEON IN THE ESTABLISHMENT OF
DISTRICT AND SESSIONS JUDGE,
CHHINDWARA (M.P.)**

.....APPELLANT

(BY SHRI ROHIT SOHGAURA - ADVOCATE)

AND

- 1. THE HIGH COURT OF JUDICATURE AT
JABALPUR, MADHYA PRADESH, THROUGH
ITS REGISTRAR GENERAL, JABALPUR
(M.P.)**
- 2. THE DISTRICT AND SESSIONS JUDGE,
CHHINDWARA (M.P.)**

....RESPONDENTS

(SHRI SAMDARSHI TIWARI - ADVOCATE)

*This appeal coming on for hearing this day, Hon'ble Shri Justice
Purushaindra Kumar Kaurav, passed the following:*

ORDER

The instant writ appeal takes exception to order dated 10.01.2006 (Annexure-A-1) passed by the learned Single Judge in Writ Petition No.3718 of 2001, whereby, the petition filed by the appellant has been dismissed against termination of his services.

2. The facts of the case are that the appellant applied for appointment on the post of Water-man under the establishment of District and Sessions Judge, Chhindwara. Pursuant to his application, a call letter dated 25.07.1994 was issued for his interview. After interview, the appellant was selected and vide order dated 29.07.1994 (Annexure-R-1), he was appointed as full time Water-man against Contingency Fund. The appellant further states that having found his service satisfactory, he was given promotion on the post of Peon vide order dated 01.05.1996. He states that he continued to work on the post of Peon. He was on continuous duty till 02.01.2000. However, on account of a false case registered against him at the instance of one D.R. Baghel, who was working as Naib Nazir, the appellant was taken into custody. When the appellant was released, he immediately, submitted an application in prescribed format for earned leave. However, without considering his application vide order dated 20.01.2000 (Annexure-P-1) his services have been terminated. The appellant filed an appeal to the appellate Authority which has also been rejected vide order dated 25.11.2000 (Annexure-P-2). The appellant, therefore, approached this Court in writ petition which has also been dismissed by the learned Single Judge. Hence, the appellant is in the instant writ appeal.

3. The learned counsel appearing for the appellant submitted that a perusal of the order of termination dated 20.01.2020 shows that the same is

a stigmatic. According to him, without following the principles of natural justice, the services of the appellant could not have been terminated. He further states that the order is passed on 20.01.2000 alleging his unauthorized absence with effect from 03.01.2000. Such an order from the face of it is a stigmatic and hence, the same should have been interfered with by the learned Single Judge. He also submits that the order of his promotion dated 01.05.1996 clearly states that he became regular employee of the respondents.

4. The learned counsel appearing for the respondents opposed the prayer and he submits that there were serious allegations against the appellant and he was bound over under Sections 103 and 107 of the Cr.P.C. He further submits that the impugned order is not a stigmatic order. Since the appellant was working against Contingency Fund Establishment, therefore, there was no necessity to conduct any inquiry before his termination.

5. We have heard the learned counsel appearing for the parties and perused the record.

6. The constitutional Bench of Hon'ble the Supreme Court in the matter of *Jagdish Mitter vs. Union of India*¹, has considered the scope of applicability of Article 311(2) of the Constitution of India in a case of dismissal or removal of a temporary employee. In that case, the employee was working as a temporary Second Division Clerk in the General Post Office. His services were terminated on the ground that it was found undesirable to retain him in a Government service and hence, with one month's notice, he was discharged from services. The Hon'ble Supreme Court in that context has held that the protection of Article 311 of the

1 AIR 1964 SC 449

Constitution can be invoked not only by permanent Government servants, but also by public servants who are employed as temporary servants, or probationers, and so, there can be no difficulty in holding that if a temporary public servant or a probationer is served with an order by which his services are terminated, and the order unambiguously indicates that the said termination is the result of punishment sought to be imposed on him, he can legitimately invoke the protection of Article 311 and challenge the validity of the said termination on the ground that the mandatory provisions of Article 311(2) have not been complied with. In other words, a temporary public servant or a probationer cannot be dismissed or removed from service without affording him protection guaranteed by Article 311(2). In para 22 of the said decision it has also been held that no doubt the order purports to be one of discharge and as such, can be referred to the power of the authority to terminate the temporary appointment with one month's notice. But when the order in question refers to the fact that the employee was found undesirable to be retained in government service, it expressly casts a stigma on the employee and in that sense, it must be held that such an order is of dismissal and not a mere order of discharge. It has been considered that if an employee is found to be undesirable to continue, the same attaches stigma against him. However, if it is said that it is unnecessary to continue an employee in that case no stigma attaches to him. Anyone who reads the order in a reasonable way, would naturally conclude that the employee was found to be undesirable, and that must necessarily import an element of punishment which is the basis of the order and is its integral part. In that case, the Hon'ble Supreme Court has held that the order was of dismissal and not of discharge.

7. The Hon'ble Supreme Court in the matter of the *State of U.P. vs. Madan Mohan Nagar*² had an occasion to consider the validity of an order of compulsory retirement where the employer had used the word that the concerned employee had "outlived his utility". While taking into consideration the various earlier decisions of the Hon'ble Supreme Court, it has been held that such a remark clearly shows that a charge or imputation has been made against an employee that the employee had "outlived his utility". Such an order was found to be stigmatic and accordingly it was held that the same amounts to punishment.

8. Since the appellant is working against Contingency paid Fund and his services are governed by the rules known as **Recruitment and Conditions of Service of Contingency Paid (District and Sessions Judge Establishment) Employees Rules, 1980** (hereinafter referred to as "the Rules of 1980"). In the context of Rules of 1980, the Division Bench of this Court in the matter of *Rajesh Kumar Rathore vs. High Court of M.P and another*³ had an occasion to consider the issue whether services of the employee governed under the Rules, 1980 can be terminated without conducting any departmental inquiry where an order of termination cast stigma on the employee. In paragraph 7 of the said decision in the case of *Rajesh Kumar Rathore*, the Division Bench has held as under:-

"7. We are in full agreement with the legal position expounded in various judgments cited by the learned counsel appearing for the respondent. However, in the instant case, the question that arise for consideration, as stated above, is squarely covered by the decision of co-ordinate bench of this Court in the case of Krishna Pal Vs. District & Sessions Judge, Morena (supra). In the present case, it is an admitted fact that neither charge-sheet was issued nor departmental enquiry was

2 AIR 1967 SC 1260

3 2022 (1) MPLJ 581

*conducted and order of termination attributes dereliction of duty amounting to misconduct, and hence, the same is clearly stigmatic order. The petitioner's services are admittedly governed under the Rules of 1980. If the facts and situation of the present case is examined in the context of the facts and situation of the case of **Krishna Pal** (supra), it is found that this Court had taken a view (para-5 of the said judgment) that Normally when the services of a temporary employee or a probationer or contingency paid employee is brought to an end by passing innocuous order due to unsatisfactory nature of service or on account of an act for which some action is taken, but the termination is made in a simplicitor manner without conducting of inquiry or without casting any stigma on the employee, the provisions of Rule 9 of the Rules 1980 can be taken aid of. However, when the termination is founded on acts of commission or omission, which amounts to misconduct. Such an order casts stigma on the conduct, character and work of the employee and hence, the principle of natural justice, opportunity of hearing and inquiry is requirement of law."*

9. The order of appointment of the appellant dated 27.09.1994 clearly shows that the appellant was appointed in Contingency paid Establishment and was paid salary from the Contingency Fund. A perusal of the order of his promotion on the post of Peon in the pay scale of Rs.750-12-870-945 does not change his nature of employment from the Contingency Establishment to the regular Establishment. Nothing has been brought on record to show that the nature of employment of the appellant from Contingency paid Establishment to regular establishment has changed on the basis of any recommendations of Departmental Promotion Committee or in accordance with any rules or regulation. In view of the aforesaid, the appellant cannot be treated to be regular employee under the regular establishment of District & Sessions Court, Chhindwara, hence, the

arguments of the learned counsel appearing for the appellant that the appellant has become regular employee is rejected.

10. So far as the arguments with respect to nature of order passed by the respondent No.2 is concerned, the same requires to be considered. The order of termination of the services of the appellant dated 20.01.2000 (Annexure-P-2) reads as under:-

“ कार्यालय जिला एवं सत्र न्यायाधीश, छिन्दवाड़ा
आदेश

क्रमांक 27/दो-12-13/99 छिन्दवाड़ा दिनांक 20 जनवरी 2000

श्री सुनील कुमार वर्मा, अस्थायी भृत्य की सेवायें बिना कलंक के आवश्यकता न होने के कारण उनकी अनाधिकृत अनुपस्थिति दि. 3.1.2000 से समाप्त की जाती है। उन्हें एक माह का वेतन एवं भत्ता नियमानुसार देय है।

“ He is terminated without any stigma”

जिला एवं सत्र न्यायाधीश,
छिन्दवाड़ा ”

11. A perusal of the order clearly shows that a charge of unauthorized absence has been made against the appellant and the punishment order is made without following principle of natural justice. Therefore, the same is stigmatic. Such a charge and punishment could not have been made without following principles of natural justice as has been held in the case of **Rajesh Kumar Rathore¹**.

12. In view of the aforesaid, the impugned order of termination dated 20.01.2000 (Annexure-P-2), the order passed by the appellate Authority dated 25.11.2000 (Annexure-P-1) and the order passed by the learned Single Judge dated 10.01.2006 are hereby set aside. The appellant would be entitled for back wages to the extent of 25% from the date of his termination till the date of his reinstatement. The appellant is working as a

Clerk in the private office of an Advocate. The nature of the employment of the appellant was of contingency. The reason for termination of his service, duration for which he remained out of employment and the length of service which the appellant would still be able to render, are the facts which we have taken into consideration for granting back wages to the extent of 25%.

13. The Writ Petition filed by the appellant stands allowed to the extent indicated above.

(RAVI MALIMATH)
CHIEF JUSTICE

(PURUSHAINDR KUMAR KAURAV)
JUDGE