

REPORTABLE

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE SANJAY DWIVEDI
ON THE 12TH OF JUNE, 2023
W.P. No.7179 of 2023**

BETWEEN:-

**SHASHIKANT TIWARI S/O SHRI LAXMIKANT TIWARI,
AGED ABOUT 38 YEARS, OCCUPATION :
TERMINATED EAR MOLD TECHNICIAN,
HANDICAPPED AND REHABILITATION CENTRE,
KATNI, R/O VILLAGE SILI, POST GUNNOR DISTRICT
PANNA (M.P.)**

.....PETITIONER***(BY SHRI AKASH SINGHAI - ADVOCATE)*****AND**

1. **THE STATE OF MADHYA PRADESH
THROUGH ITS PRINCIPAL SECRETARY,
SOCIAL JUSTICE & DISABILITY
EMPOWERMENT DEVELOPMENT
DEPARTMENT, VALLABH BHAWAN,
DISTRICT BHOPAL (M.P.)**
2. **THE SECRETARY/DIRECTOR, SOCIAL
JUSTICE & DISABILITY EMPOWERMENT
DEVELOPMENT DEPARTMENT, DISTRICT
KATNI (M.P.)**
3. **THE COLLECTOR (SOCIAL JUSTICE &
DISABILITY EMPOWERMENT
DEVELOPMENT DEPARTMENT), KATNI,
DISTRICT KATNI (M.P.)**

.....RESPONDENTS***(BY SHRI L.A.S. BAGHEL – GOVERNMENT ADVOCATE)***

.....
Reserved on : 03.04.2023

Pronounced on : 12.06.2023
.....

This petition having been heard and reserved for orders,

coming on for pronouncement this day, the Court pronounced the following:

ORDER

The petitioner has filed this petition under Article 226 of the Constitution of India questioning the legality, validity and propriety of order dated 06.02.2023 (Annexure-P/3) whereby his services have been terminated by respondent No.3 on the ground that an offence vide Crime No.204/2022 under Sections 7(A), 13(1)B, 13(2) of the Prevention of Corruption Act, 1988 is registered against the petitioner.

2. Learned counsel for the petitioner is challenging the impugned order mainly on the ground that though the petitioner is a contractual employee, but merely on the basis of registration of an offence, his services cannot be terminated. He submits that unless the petitioner is held guilty, the action taken by the respondents terminating his services is not proper. He has placed reliance upon a judgment of Gujrat High Court passed on 08.02.2022 in **R/Special Civil Application No.22681 of 2019 (Minakshiben Laxmanbhai Paraliya Vs. State of Gujrat)** in which the Gujrat High Court has observed that the order of termination cannot be made only on the basis of registration of an offence and since that is referred in the impugned order, therefore, it can be considered to be stigmatic order in view of the several judgments of the Supreme Court as well as of the High Courts that before passing any stigmatic order, an enquiry is necessary and as such, the order impugned deserves to be set aside.

3. However, I am not convinced with the submission made by the counsel for the petitioner for the reason that the order of appointment dated 10.04.2017 (Annexure-P/1) contained terms and

conditions of appointment in which condition No.8 is important, which reads as under:-

“8. नियुक्त संविदा कर्मचारी का चरित्र सत्यापन शासकीय सेवकों को लागू नियमों या अनुदेशों के आधार पर कियो जावेगा । चरित्र तथा शैक्षणिक योग्यता एवं प्रमाणपत्रों के असत्य होने के संबंध में किसी प्रतिकूल निष्कर्ष की दशा में नियुक्ति प्राधिकारी द्वारा संविदा नियुक्ति, बिना कोई कारण बताये तत्काल रद्द कर दी जावेगी । नियुक्ति संविदा कर्मचारी को कदाचार या किसी आपराधिक क्रियाकलाप में संलग्न होने पर नियुक्ति प्राधिकारी ऐसी संविदा नियुक्ति समाप्त कर सकेंगे।”

(emphasis supplied)

4. The aforesaid condition is very specific and if such situation arises, the right to terminate the contract is vested with the employer and as per the impugned order, the authority has referred the details of the offence registered and also the reasons for terminating the services of the petitioner.

5. Had it been a case that the reason of termination of contract is foreign to the terms and conditions of appointment or the facts not known to other or is also not known to the employee casting stigma then only the order can be considered to be stigmatic order and the situation would have been different. In the case in hand, the situation is altogether different. It is not a case that the petitioner’s contract appointment is being terminated on a wrong premise. Although, it is a case in which the involvement of the petitioner in the alleged offence which otherwise comes within the purview of moral turpitude then termination of contract was the consequence of registration of offence as per terms and conditions of appointment. Thus, in my opinion, since the reason assigned for termination of contract was factually correct and not denied by the petitioner, therefore, the order impugned cannot be said to be punitive and in such circumstances, regular enquiry is not necessary.

6. During the course of arguments and even in the averments

made in the petition, nowhere it is stated that the alleged offence was not registered against the petitioner and therefore, if enquiry is conducted the petitioner could have changed the situation. Undisputably, the order impugned does not contain any incorrect fact, in my opinion, granting an opportunity or conducting an enquiry would be nothing but a futile exercise. Every order containing adverse fact does not consider to be stigmatic or punitive. The Supreme Court in a case reported in **(2002) 1 SCC 520 (Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences and another)** relying upon a case of **Parshotam Lal Dhingra v. Union of India** reported in **AIR 1958 SC 36** has observed as under:-

“10. Since ‘*Dhingra* is the *Magna Carta* of the Indian civil servant, although it has spawned diverse judicial trends, difficult to be disciplined into one single, simple, practical formula applicable to termination of probation of freshers and of the services of temporary employees”, we have thought it best to refer to the facts of *Dhindra* case to understand what exactly was meant when the Court said: (AIR p.49, para 82)

“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*, 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.””

7. The Supreme Court in case of **Pavanendra Narayan Verma (supra)** has further observed as under:-

“21. One of the judicially evolved tests to determine whether in substance an order of termination is punitive is to see whether prior to the termination there was (a) a full-scale formal enquiry (b) into allegations involving moral turpitude or misconduct which (c) culminated in a finding of guilt. If all three factors are present the termination has been held to be punitive irrespective of the form of the termination order. Conversely if any one of the three factors is missing, the termination has been upheld.”

8. Thus, in view of the existing factual position in the case in hand, since the termination is based upon registration of offence which was one of the conditions of the order of appointment, the right of the employer has been exercised by them and, therefore, the impugned order is not stigmatic.

9. The petition being without any substance, is hereby **dismissed**.

(SANJAY DWIVEDI)
JUDGE