



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

BEFORE

**HON'BLE SHRI JUSTICE VISHAL MISHRA
ON THE 24th OF FEBRUARY, 2025**

WRIT PETITION No. 4627 of 2025

PRAHLAD AHIRWAR

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri L. C. Chourasiya – Advocate for the petitioner.

Shri B. D. Singh – Dy. Advocate General for the respondents / State.

ORDER

The present petition has been filed assailing the order dated 31.1.2025 passed by respondent no. 6 Chief Health and Medical Officer, Tikamgarh, District Tikamgarh, whereby the services of the petitioner have been directed to be dispensed with w.e.f. 2.3.2025.

2. It is the case of the petitioner that he was working as a Driver in Vaccine Vehicle in the Health Department, Niwari, District Niwari under the Head Department, Tikamgarh. The petitioner was working with utmost devotion and sincerity. Thereafter, Chief Medical Officer, Tikamgarh issued an order of shifting Vaccine Vehicle from Niwari to Annuppur vide order dated 10.10.2022 and asked consent from the petitioner who was appointed as a Driver in the said Vaccine Vehicle to



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work on the said post at Annuppur. The petitioner had given a letter to the Collector for permitting him to discharge his duties at Niwari vide application / letter dated 12.10.2022. Thereafter, Chief Medical Officer passed the transfer order against the petitioner on 17.10.2022 on the ground that the petitioner was the Driver in the said Vaccine Vehicle at Niwari, district Niwari which has been shifted to Annuppur from Niwari and the petitioner has also given his consent on 18.10.2022 and he is ready to join at new place of posting, the transfer order has been passed. A writ petition was filed by the petitioner being W.P. No.23483/2022 against the transfer order which was disposed of directing the respondents to consider and decide the representation of the petitioner. Thereafter, the Block Medical Officer, Niwari has passed an order of attachment of the petitioner at Niwari, District Niwari and the petitioner was directed to continue working in the previous Vaccine Van on his previous place by order dated 7.1.2023. Thereafter, a letter has been issued to the petitioner seeking his presence along with records on 25.7.2024 at 11 AM in the office of the respondents, to which, the petitioner duly responded and also appeared along with entire documents and thereafter, the Director of Madhya Pradesh Vaccination Centre (NHM) has passed an order dated 19.9.2024 and rejected the representation of the petitioner without considering the material documents submitted by the petitioner on 25.7.2024. Thereafter, a notice dated 20.9.2024 was issued to the petitioner and finally an order dated 31.1.2025 terminating the services of the petitioner has been passed w.e.f. 2.3.2025. The reasons assigned for terminating the services of the petitioner are that owing to the fact that



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AVD system has begun in the district Niwari and Vaccine Vans have been transferred / shifted to Annuppur, therefore, the services of the petitioner is no more required at Niwari coupled with the fact that budget is not being allotted for vaccination by the Government.

3. It is argued by counsel for the petitioner that once he has given his consent for working at Anuppur, then despite of the same the authorities have not considered the request of the petitioner and terminated the services of the petitioner by the impugned order. Counsel appearing for the petitioner has submitted that the services of the petitioner being contractual in nature cannot be terminated in the manner in which the impugned order has been passed. Once the authorities themselves have given proposal to the petitioner asking him to work at Anuppur and the petitioner is keenly eager to work at Anuppur, then the authorities in all fairness should have transferred the services of the petitioner at Anuppur but instead of considering the same, on one hand, they have rejected the representation of the petitioner and in other hand, terminated the services of the petitioner vide order dated 31.1.2025, therefore, the present petition has been filed.

4. Counsel for the petitioner has filed an IA No.3193/2025 for taking the documents on record pointing out the fact that the petitioner has rendered his services in the respondents department from 2013 till passing of the impugned order terminating his services. There is no complaint against working of the petitioner; therefore, the services of the petitioner cannot be terminated.



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5. Per contra, counsel appearing for the State has vehemently opposed the contentions raised by counsel for the petitioner pointing out the fact that the petitioner's appointment was temporary in nature on a fixed rate of Rs.250/- per day as a driver in the vaccine vehicle. Subsequently, vide order dated 24.11.2016 his salary was fixed at the rate of Rs.7707/- per month and thereafter, it was increased to Rs.10,935/- per month as a Driver on a fixed salary. His services were never made permanent. He was working as daily rated employee. He was granted salary of Semi-skilled worker on collector rate in terms of the policy of the Government. The appointment of the petitioner was for a particular project of Vaccination at Niwari and he was appointed as a driver in the Vaccine Vehicle but the entire Vaccination drive has been shifted from Niwari to Anuppur as well as the vaccine vehicle has also been sent to Anuppur from Niwari, therefore, there was no requirement of the petitioner to work at Niwari. Under these circumstances, as the services of the petitioner were totally temporary in nature, the petitioner cannot claim any right asking for continuation of his services at Annupur, therefore, the impugned order has rightly been passed. Hence, prayed for dismissal of the petition.

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

7. On perusal of the record it is clear that the appointment of the petitioner was purely on temporary basis on the post of Driver in vaccine vehicle initially at the fixed rate of Rs.250/- per day and subsequently, in terms of the Policy of the Government, he was extended the salary of Semi skilled worker on collector rate. As the services of the petitioner



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were totally temporary in nature subject to availability of work, the petitioner cannot ask for extension of his period on temporary basis. The fact remains that Condition no. 12 of the advertisement, on the basis of which, the petitioner was inducted in service, points out that the appointment is totally temporary and can be terminated at any point of time after taking approval from the District Health committee. Condition no. 12 reads as under :-

“12. यह नियुक्ति पूर्णतया अस्थायी है एवं इसे किसी भी समय जिला स्वास्थ्य समिति के अनुमोदन उपरांत समाप्त किया जा सकता है।”

8. The reason assigned in the impugned order shows that the petitioner's services have been terminated because they are no more required and as the vaccination drive has been shifted from Niwari to Anuppur along with the vaccination van, there was no work available at Niwari for the petitioner coupled with the fact that the funds are also not being allotted for the said work. Termination order has been passed by the Chief Medical and Health Officer and the same has been approved by the Collector, District Tikamgarh. The petitioner's appointment was under the vaccination drive introduced by the National Health Mission and all the employees appointed under the National Health Mission for vaccination drive are contractual employee or temporary employee, they do not have any right to ask for continuation of their services subject to availability of work their appointments were made.



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9. It is true that the appointment of the petitioner was made on contractual basis. It was for a fixed term. This is settled in law that in such cases remedy of the employee is to claim damages for wrongful dismissal or for breach of contract. Writ petition cannot be entertained. It is profitable to refer certain Supreme Court judgments, which are reproduced hereinunder:

10. In 1969 (2) SCC 838 (Executive Committee, U.P. Warehousing Corporation Vs. Chandra Kiran Tyagi), the Apex Court has held as under:

“20. The law relating to master and servant is clear. A contract for personal service will not be enforced by an order for specific performance nor will it be open for a servant to refuse to accept the repudiation of a contract of service by his master and say that the contract has never been terminated. The remedy of the employee is a claim for damages for wrongful dismissal or for breach of contract. This is the normal rule and that was applied in Barber's case (2) and Francis' case (2). But, when a statutory status is given to an employee and there has been a violation of the provisions of the statute while terminating the services of such an employee, the latter will be eligible to get the relief of a declaration that the order is null and void and that he continues to be in service, as it will not then be a mere case of a master



terminating the services of a servant. This was the position in Vine's case.

23. From the two decisions of this Court, referred to above, the position in law is that no declaration to enforce a contract of personal service will be normally granted. But there are certain well-recognized exceptions to this rule and they are: To grant such a declaration in appropriate cases regarding (1) A public servant, who has been dismissed from service in contravention of Article 311; (2) Reinstatement of a dismissed worker under Industrial Law by Labour or Industrial Tribunals; (3) A statutory body when it has acted in breach of a mandatory obligation, imposed by statute.”

(Emphasis supplied)

11. Even otherwise, the rights of a contract employee are limited as held by the Supreme court in the case of **State Bank of India and others vs. S. N. Goyal**, reported in **(2008) 8 SCC 92** 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 recognized 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 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 : [Dr. S. Dutt vs. University of Delhi](#); [Executive Committee of UP State Warehousing Corporation Ltd. Vs. Chandra](#)



[Kiran Tyagi, Sirsi Municipality vs. Cecelia Kom Francies Tellis and Executive Committee of Vaish Degree College vs. Lakshmi Narain.](#)”

Thus, it is clear that it is not a case of termination of a contractual employee rather it is a case where a decision has been taken by the authorities not to extend the contract period of the employee like the petitioner.

12. The Division Bench of this Court in the case of **Brijendra Gupta Vs. State of M.P. and others** passed in Writ Appeal No.617of 2015 decided on 18.3.2016 has considered the similar analogy and has held as under :-

"Each of the appellants accepted these conditions and were fully aware that their services would be continued on contract basis only for a period of 2 years. It is a different matter that the appellants were continued in service, but, by extending contract period, their appointment nevertheless, shall remain on contract basis. No document or Regulation has been filed by the appellants and at least brought to our notice, which may even remotely suggest that there was an agreement reached between the parties that on completion of 5 years of contractual service the concerned employee would be regularized in service. The fact that the appellants have now become over age and will not be eligible for appointment elsewhere, cannot be the basis to answer the controversy. The matter has to be answered keeping in mind that the contractual employee cannot insist for regularization in absence of policy, scheme or regulation having the backing of law and enforceable against the employer. In the present case, no such document has been brought to our notice. As a result, it is not open to this Court to issue writ to direct the respondents to regularize the appellants in service. The fact that the



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appellants have served the respondent/Company for almost five years, by itself, cannot be the basis to issue such direction unless it is a case of legally enforceable right which has enured in favour of the appellants. That is not the case at hand."

13. If the aforesaid principles are applied in the facts and circumstances of the present case, no relief can be extended to the petitioner. It is for the employer to continue the services of the petitioner at Niwari or not. The services of the petitioner have been terminated mentioning the reason that the entire vaccination drive has been shifted to Anuppur along with the vaccine van. Under these circumstances, no relief can be extended to the petitioner. It is not a case wherein the petitioner has been illegally terminated. The petitioner was well aware of the fact regarding nature of his employment to be temporary in nature. Therefore, the petitioner is not entitled for any relief. Accordingly, the petition is **dismissed**.

(VISHAL MISHRA)
JUDGE

JP