

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR  
BEFORE  
HON'BLE SHRI JUSTICE SANJAY DWIVEDI  
ON THE 22<sup>nd</sup> OF OCTOBER, 2024  
WRIT PETITION NO. 9544 of 2022  
*VINEET KUMAR TRIPATHI*  
VS.  
*THE STATE OF MADHYA PRADESH AND OTHERS***

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**Appearance:**

*Shri Sanjay K. Agrawal – Senior Advocate assisted by Shri Anas Hasan Khan – Advocate for the petitioner.*

*Shri Anvesh Shrivastava – Advocate for the respondents.*

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**Reserved on: 05.08.2024**

**Pronounced on : 22/10/2024**

**ORDER**

Petitioner has filed this petition under Article 226 of the Constitution of India assailing the order dated 18.04.2022 (Annexure P/6) passed by the respondent No. 2 whereby the services of the petitioner have been terminated w.e.f. 12.04.2022 on the ground that he has been caught red handed while accepting bribe.

2. The facts leading to the case are that the petitioner was appointed as Junior Assistant Grade-III on contract basis pursuant to his selection in the

respondent-department vide order dated 25.07.2011 (Annexure P/1). Thereafter, an agreement was executed between the petitioner and respondent Corporation containing the terms and conditions of the appointment vide Annexure P/2. The petitioner submitted his joining and continued in service and his contract appointment was last renewed up to December, 2022, but vide impugned order dated 18.04.2022 (Annexure-P/6), the services of the petitioner have been terminated for the reason that he was trapped by Lokayukt Establishment while he was taking bribe and in consequence to the same, a criminal case is pending before the competent Court of law.

**3.** Learned senior counsel for the petitioner has submitted that merely because a criminal case is pending against the petitioner, his services, though he is a contractual employee, cannot be terminated in the manner in which it has been terminated. He submits that the conditions of service, which govern the petitioner, are mentioned in the agreement itself. Clause-13 of the said conditions provides that for taking any such action, the respondents are required to follow the procedure as has been prescribed under the MPRDC Rules i.e. Madhya Pradesh Sadak Vikas Nigam (Sewa Bharti Tatha Sharten) Niyam, 2016 and as per Rule 11 of the said Rules, for any such conduct or disciplinary action, Madhya Pradesh Civil Services (Conduct) Rules, 1965 and Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 shall be applicable. He has further submitted that the services of the petitioner cannot be terminated without conducting an enquiry and giving opportunity of hearing, especially under the circumstance when the impugned order itself is a stigmatic order. He has placed reliance upon a judgment passed by the Division Bench of this Court

in **Writ Appeal No.1166 of 2017 [Malkhan Singh Malviya Vs. State of M.P.]** and also upon a judgment of the Supreme Court reported in **(2022) 6 SCC 346 [K. Ragupathi Vs. State of Uttar Pradesh & Others]**.

4. On the contrary, learned counsel for the respondents has submitted that the services of the petitioner, being a contractual employee, can be terminated in pursuance to the Condition No. 11 of the agreement. He has submitted that the petitioner was granted personal hearing and since he was a contractual employee, his services will not be governed with the provisions of the Madhya Pradesh Civil Services (Conduct) Rules, 1965, and also Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966. In support of his contention, counsel has placed reliance upon the order passed in **Writ Petition No.5013 of 2017 [Sanjay Upadhyay Vs. The State of Madhya Pradesh & Others]** and also the order passed in **Writ Petition No.24692 of 2021 [Anil Patel Vs. State of Madhya Pradesh & Others]**.

5. I have considered the submission made by the learned counsel for the parties and perused the record.

6. From perusal of the record it is clear that by order dated 25.07.2011 (Annexure P/1) the petitioner was appointed on the post of Junior Assistant Grade III on contractual basis in pursuance to an advertisement issued for recruitment and in pursuance to the said appointment order, the petitioner submitted his joining on 06.09.2011 (Annexure P/3) and he was given posting in the Head Office of the Corporation at Bhopal and thereafter he was transferred to the Office of Divisional Manager, Madhya Pradesh Road Development Corporation, Divisional Office, Rewa by order dated 10.02.2012 (Annexure P/4). Where-after, by the impugned order dated

18.04.2022 (Annexure P/6), The services of the petitioner have been terminated mentioning therein that on 12.04.2022 when a raid was conducted by the Office of Lokayukt, Rewa he was caught red handed while taking bribe and as such his service have been terminated w.e.f. 12.04.2022.

7. From perusal of the record and the stand taken by the respondents in their reply, it is clear that the services of the petitioner are governed by Rules of 2016, which are known as Madhya Pradesh Sadak Vikas Nigam (Sewa Bharti Tatha Sewa Sharten) Niyam, 2016 (For the sake of convenience, hereinafter referred to as 'Rules, 2016'). Rule 4 of the Rules, 2016 deals with the constitution of service in which Category No. 3 prescribes that a person will be an employee of the Corporation, who will be recruited as per the provisions of Rules, 2016 and as such the petitioner was an employee of the respondents-Corporation governing with the terms and conditions of the said Rules. Rule 6 authorizes the Managing Director of the Corporation to determine the selection process and thereafter obtain approval of the Board of Directors. The appointment of the petitioner was made in pursuance to the selection process conducted. The appointment order reveals that it was issued by the Dy. General Manager of the respondent-Corporation and was approved by the Managing Director. The Rules further provides that so far as disciplinary proceedings are concerned, the provisions of M.P. Civil Services (Conduct) Rules, 1965 (hereinafter referred to as the 'Rules, 1965') and M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 (For brevity 'Rules, 1966') shall be applicable upon the petitioner. Along-with Rules, 2016, Schedule-2 is appended in which source of appointment/procedure is shwon contractual. Under such a circumstance, there is no dispute that the petitioner was appointed under the provisions of Rules, 2016 and his service conditions

shall be governed with the provisions of said Rules. In the Rules there is no provision that only on registration of offence, the services can be terminated. As such the reason contained in the impugned order for terminating the services of the petitioner is apparently stigmatic and would come in the way of future employment. Therefore, an enquiry needs to be conducted after affording proper opportunity to the petitioner. Indisputably a condition is mentioned in the agreement that services of the petitioner can be terminated by giving one month's notice or one month's salary in lieu thereof, but, at the same time, it cannot be ignored that the services of the petitioner govern with the provisions of Rules, 1966 as is evident from Rules, 2016 and if any decision of major penalty like termination is required to be taken, the same shall be taken by following the provision of Rule 11 of the Rules, 2016. In my opinion, it is a drastic step taken by the authority for terminating the services of the petitioner only because a criminal case has been registered against him. The provisions of Rules, 1966 are very specific in this regard which provide that a major punishment like dismissal/termination can be imposed only after conviction in criminal case but registration of criminal case is no ground for taking such a drastic step. For the purpose of clarity, it would be appropriate to reproduce to the Condition No.11 of the agreement and Rules 4, 6 and 11 of the Rules, 2016, which are as under:-

“Condition No.11: The agreement can be terminated by serving one month's notice in writing or one month's pay in lieu thereof from either side without assigning any reason.

4. सेवा का गठन :-

सेवा में निम्नलिखित व्यक्ति होंगे, अर्थात् :-

(1) वे व्यक्ति, जो इन नियमों के प्रारंभ होने के समय विनिर्दिष्ट पद मूल रूप से धारण कर रहे हैं।

(2) वे व्यक्ति, जो इन नियमों के प्रारंभ होने से पूर्व सेवा में भर्ती किये गये हो।

(3) वे व्यक्ति, जो इन नियमों के उपबंधों के अनुसार सेवा में भर्ती किए गये हों।

6. भर्ती का तरीका:-

शासन द्वारा निगम के लिए स्वीकृत पदों के संबंध में भर्ती के स्रोत/पदों की पूर्ति हेतु प्रबंध संचालक, मध्यप्रदेश सडक विकास निगम, अधिकृत होंगे। प्रबंध संचालक, भर्ती की प्रक्रिया निर्धारित कर संचालक मण्डल से इसका अनुमोदन प्राप्त कर सकेंगे। भर्ती की प्रक्रिया तथा आवश्यक अर्हता में किसी भी प्रकार का परिवर्तन संचालक मण्डल के अनुमोदन से किया जा सकेगा।

11. आचरण नियम एवं अनुशासिक कार्यवाहियों :-

मध्यप्रदेश सिविल सेवा (आचरण) नियम, 1965 तथा मध्यप्रदेश सिविल सेवा (वर्गीकरण, नियंत्रण तथा अपील) नियम, 1966 के उपबंधों के अनुसरण में कार्यवाही की जायेगी। अनुशासनात्मक कार्यवाही हेतु अनुशासिक अधिकारी अनुलग्नक-छह अनुसार।

8. The respondents have stressed upon the decision rendered in the case of **Sanjay Upadhyaya (supra)** in which the petitioner was appointed as a Swimming Trainer on contract basis and an agreement was executed between him and the respondents containing a condition that his services can be terminated by giving one month's notice or salary in lieu thereof and finally the Court observed that if termination of contract is done, the same will be governed with the conditions of agreement. The Court further observed that the only remedy available to the petitioner is to file a civil suit claiming damages.

9. Likewise in case of **Anil Patel (Supra)**, the services of the employee were terminated because of registration of a case by Lokayukt. In the said case the employee was terminated in pursuance to the provisions of circular dated 21.02.2018, which provides that if any serious offence is registered against the employee working on contract basis then his services can be

terminated by giving notice to him and as such the petition was found without any substance and finally it got dismissed, but, in my opinion, the cases relied upon by the respondents are not applicable in the facts and circumstances of the case in hand for the reasons that the petitioner was an employee of respondent-Corporation and his services were governed with the provisions of Rules, 2016 of which Rule 11 provides that any disciplinary action would be as per the provisions of Rules, 1966.

**10.** *In re Malkhan Singh Malviya (supra)* relied upon by the petitioner, the Division Bench has also considered this aspect whether a stigmatic order terminating the services of an employee can be given seal of approval, if the same has been passed by issuing notice. The Division Bench has observed that misconduct, as alleged, has to be proved by conducting a proper enquiry, although, in my opinion, unless the petitioner is held guilty of taking bribe, it is not proper to consider him to be a person who has committed misconduct. If this situation is approved then it will cause a great prejudice to the contractual employees and their services can be terminated on mere registration of criminal case without considering the outcome of the said case. In such a circumstance, the situation can be exploited otherwise. Only because a false complaint made and offence got registered that can be a ground of termination of an employee but that would not be proper in the eye of law. The Supreme Court in case of **K. Ragupathi (supra)** observed as under:-

“10. It is thus clear that the appellant was appointed after he underwent the entire selection process. Even as per the University, though the appointment shows that it is on a contractual basis, for all the purposes, it is on a regular basis. It could thus be seen that even for the appointment on a contractual basis in the said University, a candidate is required to undergo the entire

selection process. Though he is appointed on a contractual basis, his terms and conditions are almost like a regular employee. It will be relevant to note that the Annual Performance Assessment Report (for short "APAR") of the appellant during the period 2012-2013 show his performance to be outstanding. Every other parameter in his APAR is shown as excellent. With regard to his integrity, it is mentioned that there is nothing against the appellant adversely reflecting his integrity. It is further stated in his APAR that he enjoys a good reputation and his integrity is good.

11. It will be further relevant to refer to the counter-affidavit filed before this Court on behalf of Respondents 2 to 4. It is stated in para (4) that the reasons for the appellant not being continued in the service are at Annexure P-9 (pp. 116-120) and Annexure P-26 (pp. 165-166).

12. Insofar as Annexure P-9 is concerned, it is an APAR to which we have already referred hereinabove. As such, the same cannot be a ground for non-continuation of the services of the appellant. As a matter of fact, thereafter, the appellant's services have been continued for another one year vide order dated 7-8-2013.

13. Insofar as the document at Annexure P-26 is concerned, it is an administrative warning issued to the appellant by the Dean of the said University on 10-1-2014, which reads thus:

"office of dean, planning & research

GBU-013/Dplng/09/2014-21

Dated: 10-1-2014

#### Administrative Warning

It has been observed that you write on files simply "Put up file on such and such date". You have been continuing to do this even after my several verbal



communications and warning against this. This is not only against ethics and official decorum but also against administrative norms. In response to my objections you told me that you have been instructed by the finance officer and the earlier officiating Registrar, Mr Pankaj Sharma to do so. You have put this noting even on dates when I have been on leave. Photocopies of such recent notings are being attached herewith as evidence. There is also an overwriting in the date mentioned in one of the notings. All your abovementioned activities amount to gross irregularity in your work and also expose your conspirational character. This definitely makes you unfit to work on any responsible position.

You are being served this warning in writing to provide you an opportunity to improve your official working and conduct.

Sd/-  
Anuradha Mishra  
Dean P & R

14. It could thus be seen that though the communication of the said University dated 12-8-2014 states that the appellant's contractual period has expired, in the facts of the present case, it would reveal that his services were discontinued on account of the allegation made against him by the Dean of the said University. Since even according to the said University, though the employment was contractual but the employee was entitled to get all the benefits of a regular employee, we find that in the facts of the present case, the appellant's services could not have been terminated without following the principles of natural justice. We therefore find that the present appeal deserves to be allowed on this short ground.”

**11.** Here in this case, as has been observed hereinabove, the petitioner was appointed after due process of selection and his services were governed with the provisions of Rules, 2016 that do not provide termination only

because of registration of a criminal case. In the present scenario the Court cannot ignore the situation when maximum appointments in the State and other authorities are being made on contract basis. Not only the State but other organizations of the State are avoiding regular appointments and in every agreement executed between the employee and employer a condition is imposed that the services can be terminated by giving one month's notice or salary in lieu thereof, but imposing that condition does not mean that the same can be used arbitrarily. After rendering sufficient period of service, merely because employer does not like a particular employee and taking shelter of that clause/condition terminates services of the employee and that cannot be challenged, the claim of the employee cannot be rejected because there is such a condition in the contract. The said condition cannot be interpreted in such a manner. Terminating services of an employee without reason does not mean that the situation could be exploited by the employer, there must be some reason that would be governed with the principles of natural justice. I can understand the situation when regular appointment used to be made and when very few appointments used to be given on contract basis and those appointments were temporary and containing such a condition so that employee cannot claim his regularization in the employment or if his services are not found satisfactory only then he can be removed from the employment, but in the present scenario applying the same analogy when maximum appointments are being made on contract basis is purely unethical. Accordingly, in the present case, the order of termination is contrary to the provisions of Rules, 2016, because as per the said Rules, the petitioner was an employee of the respondent-Corporation and his services are governed with the Disciplinary Rules i.e. Rules, 1966 and as such termination only because a criminal case has been registered

against him is not permissible.

**12.** The **petition is allowed**. The impugned order dated 18.04.2022 (Annexure P/6) is therefore set aside. The petitioner shall be allowed to continue in service and if any disciplinary action is required to be taken, the respondents may proceed with the provisions of Rules, 1966. The petitioner shall also be entitled to get wages for the period he remained out of service because of his termination.

No order as to costs.

**(SANJAY DWIVEDI)**  
**JUDGE**

**Raghvendra**