

(2017) 03 MP CK 0047
MADHYA PRADESH HIGH COURT
Case No: 7328 of 2013

Nitesh Jha

APPELLANT

Vs

State of MP & Others

RESPONDENT

Date of Decision: March 28, 2017

Acts Referred:

- Constitution of India, Article 226 - Power of High Courts to Issue certain writs

Hon'ble Judges: S.A. Dharmadhikari

Bench: Single Bench

Advocate: Amit Lahoti, Kamal Jain, S.K. Sharma

Final Decision: Allowed

Judgement

1. By filing of this petition Under Article 226 of the Constitution of India, the petitioner has assailed the order of termination dated 10/09/2013 passed by respondent No.3(Chief Executive Officer) Janpad Panchayat Vijaypur District Sheopur.

2. The brief facts leading to filing of this case are that the petitioner was appointed as Gram Rozgar Sahayak vide order dated 08/03/2011 passed by respondent No.3 on the basis of recommendation of the Committee headed by respondent No.2. The order of appointment was on contractual basis and initially it was for a period of one year. The said appointment was extended to be continued from time to time on the basis of good performance of the petitioner.

3. Contention of learned counsel for the petitioner is that impugned order of termination could not have been issued without issuing any show cause notice or granting opportunity of hearing. It is a settled proposition of law that if the service of an employee is to be terminated or dispensed with on account of certain allegations then under such circumstances at least show cause notice is required to be given which is to be followed by a duly constituted enquiry and after affording opportunity of hearing to such incumbent the order can be passed. In the instant

case, no such procedure was followed, no show cause notice was issued and no enquiry was conducted. On leveling various allegation against the petitioner straight away order of termination was issued, meaning thereby, the order suffers from flagrant violation of the principle of natural justice and as such the same is liable to be quashed.

4. Second contention of learned counsel for the petitioner is that the order of termination is without jurisdiction. The termination order has been issued by respondent No.3 Chief Executive Officer who is not the competent authority to issue such orders but in fact respondent No.2/ Collector is the competent authority and on these grounds also the order is liable to be set-aside.

5. Learned counsel for the petitioner has drawn attention of this Court on the policy dated 02/06/2012 issued by the State Government with regard to Gram Rojgar Sahayak. Para 15 of the said policy provides that if the service of contractual employee is to be terminated on account of disciplinary action or involvement in criminal offences then the appointing authority shall afford opportunity of hearing to the concerned employee before passing order of termination.

6. On the other hand, learned counsel appearing on behalf of respondent Nos. 1 to 3 and 5 has filed the return and it is contended that Sarpanch Gram Panchayat and Assistant Engineer Manrega has made complaint in respect of working of the petitioner for the year 2012-2013 and 2013-2014. On the basis of aforesaid complaints, respondent No.3/CEO has rightly terminated the service of the petitioner. It is further contended that petitioner was engaged on contractual basis and the petitioner always used to remain absent from duty without any prior information and did not comply with the orders of the higher authorities. Looking to the negligent attitude of the petitioner, he has been rightly terminated from service. In these circumstances, the termination order does not call any interference and as such the petition deserves to be dismissed.

7. Heard the learned counsel for the parties.

8. Assailing the order of termination dated 10/09/2013, Mr. Amit Lahoti, learned counsel for the petitioner has raised a solitary contention that on a bare reading of the said order it is perceivable that stigma is cast on the petitioner and without conducting any enquiry he has been removed that too by the incompetent authority. The learned counsel has further canvassed that if the language employed in the impugned order is read conjointly with the assertions made in the counter reply, it becomes graphically clear that these allegations form the "foundation" for termination of the services of the petitioner.

9. The Hon"ble Apex Court in the case of State of UP and another Vs Chandrapal Singh & another reported in (2003)4 SCC 670 has held that in terms of Article 311 of the Constitution of India, no person who is a member of the civil service of the Union on All-India Service or civil service of a State or holds a civil post under the

Union or the State, shall be dismissed or removed by an authority subordinate to that by which he was appointed.

10. In the present case in hand, on bare perusal of the impugned order it becomes graphically clear that allegations with regard to habitual absentism is reflected and accordingly he has been removed. This fact also finds mention in the counter reply filed by the respondents. Secondly, the impugned order is issued by the respondent No.3 Chief Executive Officer who is not his appointing authority. As per Chandrapal Singh (Supra), only the appointing authority is authorized to dismiss or remove the petitioner. Further, as per the policy dated 02/06/2012, para 15 provides that if any employee is to be terminated on account of disciplinary action then opportunity of hearing shall be afforded to the concerned employee before passing the order of termination.

11. On a scrutiny of the entire factual scenario, there remains no scintilla of doubt that the order of termination passed against the petitioner is stigmatic. The allegations incorporated in the order clearly establish that stigma been cast which would effect the future prospects of the petitioner. The order is passed by the incompetent authority.

Accordingly, the order dated 10/09/2013 (Annexure P/1) deserves to be quashed and accordingly, it is quashed. Needless to emphasis, the petitioner shall be entitled to all the consequential benefits.

12. Resultantly, the writ petition is allowed without any order as to costs.