

(2017) 01 MP CK 0097
MADHYA PRADESH HIGH COURT
Case No: 2548 of 2011

ANITA SANT

APPELLANT

Vs

STATE OF MADHYA PRADESH &
OTHERS

RESPONDENT

Date of Decision: Jan. 24, 2017

Acts Referred:

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

Hon'ble Judges: Sujoy Paul

Bench: Single Bench

Advocate: Sudha Gautam, Sonali Shrivastava

Final Decision: Disposed Of

Judgement

1. This petition filed under Article 226 of the Constitution of India, challenges the order dated 12.01.2011 (Annexure-P/3), whereby the petitioner's services were terminated without issuing any notice and without conducting any inquiry.

2. In short, the admitted facts between the parties are that by order dated 27.12.2008 (Annexure-P/1) the petitioner was appointed on contract/temporary basis for five years. The appointment of the petitioner was made subject to certain terms and conditions mentioned in the appointment order and the contract entered into between the parties (Annexure-R/2) dated 18.10.2008.

3. Ms. Sudha Gautam, learned counsel for the petitioner submits that impugned order dated 12.01.2011, shows that certain serious allegations were made against the petitioner. On the strength of these allegations, the petitioner was terminated. The said order is stigmatic in nature. For the same set of allegations, petitioner was subjected to a criminal case. The Competent Court in Criminal Case No.875/2011, by

its judgment dated 19.12.2014, acquitted the petitioner. Since, the petitioner stood acquitted on the same set of allegations, there was no justification in terminating the petitioner. She placed reliance on the document dated 23.07.2011 (Annexure-P/6) filed with I.A. No.13396/2011. By taking this Court to the statement of complainant, it is submitted that the petitioner was falsely implicated.

4. Ms. Gatuam, learned counsel for the petitioner by placing reliance on 2000 (2) SLR 772 [Chandra Prakesh Shahi vs. State of U.P. & others], 2001 (3) MPLJ 616 [Rahul Tripathi vs. R.G.S. Mission], 2013 (2) MPHT 412 [Prem Chand Yadav & other vs. The MP Poorva Kshetra Vidyut Vitaran Company, Ltd.] and order passed by this Court in W.P. No.2511/2015 [Ashok Kumar Dwivedi vs. State of M.P. & others] dated 03.03.2015,2 contented that principles of natural justice are required to be followed even in the cases of termination of the contractual employee. In the present case, without following the principles of natural justice, the petitioner was terminated and hence said order may be set aside.

5. The prayed is opposed by Ms. Sonali Shrivastava, learned P.L., by contending that a complaint containing very serious allegations was received by Senior Officers at the level of IAS, who conducted the inquiry and after medical examination of complaint, found that the petitioner is guilty of the charge. Hence, as per the terms and conditions of the appointment order and the contract entered into between the parties (Annexure-R/5) the petitioner's services were terminated. She submitted that the petitioner was exonerated by the trial Court by giving her benefit of doubt. Her acquittal is not on merits. In addition, it is submitted that as per the terms and conditions of the contract, no fault can be found in the action of the respondents in terminating the services of the petitioner. It is further submitted that by this time, the contractual period for which the petitioner was appointed (five years) is already been over and therefore the question of reinstatement does not arise. She further submitted that for the contractual employee, the remedy is else where.

6. No other point has been raised by the learned counsel for the parties.

7. I have heard the parties at length and pursued the record.

8. The petitioner was appointed on contract/temporary basis by order dated 27.12.2008 (Annexure-P/1) for a period of five years. The said period of five years is already over by now. Thus, no relief of reinstatement can be granted in this petition. The core issue is : whether this petition is tenable and whether any relief can be granted to the petitioner in the present case

9. The allegation against the petitioner was that she tortured a girl student of Class III and burnt her body parts by a hot iron piece. Various body parts of the said student were burnt including her private parts. Two senior officers conducted the

inquiry which was followed by medical examination of the said girl student. The report of the said officers was against the petitioner. However, in the criminal case, the petitioner was acquitted because the witness turned hostile against her. In the meantime, the term/contract period of the petitioner is over.

10. The order passed in Criminal Case No.875/2011 dated 09.12.2014 shows that the petitioner is acquitted by giving her benefit of doubt.

11. The question whether any relief is due to a contractual employee in writ jurisdiction has been dealt with by this Court in W.P. No.15502/2016 (Shivrati Barmaiya Vs. State of M.P. and others). This Court opined as under: -6. This is not in dispute between the parties that the petitioner is not holding any substantive or civil post in the Government department. She was admittedly a contractual employee. In *Rahul Tripathi and Ramraj Maran(Supra)*, this Court interfered with the termination order on the ground that such orders were stigmatic in nature and the same could not have been passed without following the principles of natural justice. However, later on, the Apex Court delivered the judgment reported in 2008 (8) SCC 92 (*State Bank of India vs. S.N. Goyal*) wherein the Apex Court opined that remedy for such employee is to file suit for damages. There are three exceptions to this rule namely (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 the 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. It was further held that to decide the nature of relief to be given, it is necessary to examine whether the employment is governed by contract or by a statute or by statutory rules. In 2013 (5) SCC 470 (*Rajasthan State Industrial Development and Investment Corporation and another vs. Diamond & Gem Development Corporation Limited and another*), the Apex Court opined that dispute relating to contract cannot be agitated nor terms of the contract can be enforced through writ jurisdiction under Article 226 of the Constitution. Thus, the writ court cannot be a forum to seek any relief based on terms and conditions incorporated in the agreement by the parties. See also (1989) 2 SCC 116 (*Bareilly Development Authority vs. Ajai Pal Singh*) and (1996) 6 SCC 22 (*State of U.P. vs. Bridge & Roof Co. (India) Ltd.*). In 2015 (7) SCC 728 (*Joshi Technologies International Vs. Union of India and others*), the Apex Court after considering various judgments held as under: -However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power. (See *Whirlpool Corporation vs. Registrar of Trade Marks*)

and this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction. The position thus summarised in the aforesaid principles has to be understood in the context of discussion that preceded which we have pointed out above. As per this, no doubt, there is no absolute bar to the maintainability of the writ petition even in contractual matters or where there are disputed questions of fact or even when monetary claim is raised. At the same time, discretion lies with the High Court which under certain circumstances, it can refuse to exercise. It also follows that under certain circumstances, "normally", the Court would not exercise such a discretion.... From para 69 onwards of the said judgment, the Court has laid down the parameters for examining the issues relating to contractual matters. It was further held that the court may not examine the issue unless the action has some public law character attached to it. The case of termination of a contractual employee may be his personal grievance but it does not involve any public law element in it. For this reason also, this petition cannot be entertained. 7. In the present case, the petitioner's services are not governed by any Statutory Rules. Thus, as per the judgment of S.N. Goyal (Supra), in cases of contractual appointment, the remedy of employee is only to seek damages and not specific performance. The Court will neither declare such termination as nullity nor declare that contract of employment subsists. Consequential relief or reinstatement cannot also be granted. In this view of the matter, I am not inclined to exercise writ jurisdiction in the present case. The petitioner can seek such relief before appropriate forum. In the said forum, petitioner can place reliance on the judgment of Rahul Tripathi and Ramraj Maran(Supra). With the aforesaid observation, this petition is disposed of. No cost....

12. In the light of the order passed in Shivrati Barmaiya (supra), I am of the view that the petitioner is not holding any substantive or civil post in the department. She was admittedly a contractual employee whose term is already over. In Shivratri Barmaiya (supra), this Court opined that the Court may not examine the issue unless the action has some public law character attached to it. It is further held that in cases where services are not governed by any statutory rules, the remedy for employee is to seek damages and not specific performance. The Court should not declare such termination as nullity nor declare that contract of employment subsists. No relief of reinstatement can be granted.

13. Accordingly, I am not inclined to exercise discretionary jurisdiction under Article 226 of the Constitution in the present case. The dispute relating to termination of petitioner does not have any public law element in it. The petitioner can seek relief of damages etc. before appropriate forum. In the said forum, the petitioner can place reliance on the judgment of Rahul Tripathi and other judgments cited before

this Court.

14. With the aforesaid observations, petition is disposed of. No cost.