

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKH AT SRINAGAR**

Reserved on: 23.07.2025

Pronounced on: 01.08.2025

WP(C) No.494/2023

DR. SHAZIA SALAM

... PETITIONER(S)

Through: - Mr. Taha Khalil, Advocate.

Vs.

UT OF J&K AND OTHERS

...RESPONDENT(S)

Through: - Mr. Waseem Gul, GA.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The petitioner, through the medium of present petition, has challenged communication dated 20.02.2023 addressed by respondent No.2 to respondent No.1, whereby a request has been made to cancel the engagement of the petitioner as Anaesthetist on contract basis in DRDO Hospital, Srinagar, with effect from 31.12.2022. A further direction for reinstatement of the petitioner to the contractual post of Anaesthetist has also been sought. Besides this, the petitioner has sought a direction upon the respondents that his legitimately earned wages/salary from the month of July, 2022 to February, 2023 be released in her favour.

2) As per case of the petitioner, pursuant to notice bearing No.GS-MC/walkinintv/DRDO/991-95 dated 31.05.2021, she along with other eligible candidates participated in the selection process for engagement for the post of Anaesthetist (Assistant

Professor Pay Level 11). Upon qualifying the interview, the petitioner was selected and engaged by respondent No.1 as Anaesthetist on contract basis for a period of one year in terms of Government Order No.438(JK)HME of 2021 dated 14.06.2021. The petitioner is stated to have joined the service on 16.06.2021. Her services are stated to have been extended from the month of July, 2022 upto 31.12.2022 in terms of the approval accorded by respondent No.1 vide his letter dated 08.08.2022. The petitioner was asked to report to respondent No.3 for her further posting as Anaesthetist in Intensive Care Unit of Chest Disease Hospital, Srinagar.

3) It has been submitted that despite the contractual engagement of the petitioner coming to an end on 31.12.2022, respondents No.2 and 3 sought approval from respondent No.1 for further extension of contractual engagement of the petitioner. Accordingly, the petitioner continued to perform her duties as Anaesthetist in Intensive Care Unit of Chest Disease Hospital, Srinagar, till 20.02.2023 when the impugned communication came to be issued by respondent No.2.

4) It has been submitted that respondent No.6 has not released salary of the petitioner from July, 2022 to February, 2023, for the period for which she has actually worked and discharged her duties as Anaesthetist.

5) The petitioner has challenged the impugned action of the respondents on the grounds that her contractual services could

have been terminated only by respondent No.1 and not by respondent No.2 because it is respondent No.1 who is the appointing authority of the petitioner. It has been further contended that as per the terms and conditions of engagement of the petitioner, her services could have been terminated only on issuance of one month's prior notice from either side or on payment of one month's salary in lieu of notice by the appointing authority but in the instant case, no such procedure has been adopted by the respondents. It has been further contended that the impugned communication has been issued by respondent No.2 without adhering to the principles of natural justice as the petitioner has not been given an opportunity of being heard. According to the petitioner, the impugned communication attaches a stigma to the petitioner, as such, without holding an enquiry and without giving an opportunity of hearing to the petitioner, the same could not have been issued by the respondents. It has been further contended that once it is shown that the petitioner has discharged her duties, it is not open to the respondents to deny her the wages for the period she has worked.

6) The respondents have filed their reply to the writ petition in which it has been submitted that the decision to terminate services of the petitioner was taken after due consideration of her performance and other relevant factors. It has been submitted that the decision to extend or terminate the contract of the petitioner lies within the discretionary powers of the respondents and that the impugned communication was issued

after thorough evaluation of suitability of the petitioner. It has been contended that the petitioner has no right to remain in service after her term of engagement had expired.

7) The respondents have contended that case of the petitioner was sent to CID for clearance and vide communication dated 13.02.2023, verification report about character and antecedents of the petitioner was forwarded to the respondents and as per this report, the petitioner was found to be vulnerable and not suitable for government job, hence security clearance was denied to her. Accordingly, in terms of the impugned communication, the respondents decided to disengage the services of the petitioner.

8) The respondents, in their reply, have admitted that the petitioner continued to work with Chest Disease Hospital, Srinagar, till 20.02.2023, when, due to security concerns highlighted in the CID verification report, her services were terminated. However, the respondents have denied claim of the petitioner that her salary for the period July, 2022, to February, 2023, has not been released in her favour.

9) I have heard learned counsel for the parties and perused record of the case

10) The admitted facts which emanate from pleadings of the parties are that the petitioner was engaged as Anaesthetist by the respondents on contractual basis for a period of one year in terms

14.06.2021. It is not in dispute that her engagement on contractual basis came to be extended from time to time until 31.12.2022. The respondents also do not dispute the fact that the petitioner continued to work with Chest Disease Hospital, Srinagar, upto 20.02.2023, when the impugned communication came to be issued. The respondents, however, dispute the contention of the petitioner that she has not been paid wages/salary from July, 2022 till February, 2023.

11) If we have a look at the conditions attached to the engagement of the petitioner as are contained in Government Order dated 14.06.2021, it is revealed that the contractual engagement of the petitioner was initially for a period of one year which was extendable by another two years. In the engagement order, it is provided that the terms and conditions as envisaged in Government Order No.398-JK(HME) of 2021 dated 18.05.2021 shall apply in toto. As per Clause (XII) of Government Order dated 18.05.2021, the contractual appointment was made terminable on one month's notice from either side or on payment of one month's salary in lieu of notice by the appointing authority. Clause (XIII) of the said order provides for termination of contractual appointee without notice in case such appointee wilfully neglects or refuses to perform his duties.

12) In the present case, admittedly, the respondents have not issued any prior notice before terminating services of the petitioner nor have they paid one month's salary in lieu of notice.

The termination of the petitioner is clearly in violation of Clause (XII) of Government Order dated 18.05.2021. The same is, therefore, not sustainable in law.

13) Apart from the above, as is clear from the impugned communication dated 20.02.2023, services of the petitioner have been terminated on the ground that her character antecedents are not upto the mark, inasmuch as she was found to be vulnerable and not suitable for Government job. It is not the case of the respondents that they have, at any point of time, issued any show cause notice to the petitioner or that they have held any enquiry against her before terminating her services.

14) It is true that a contractual employee can be terminated on expiry of the term of contract or in accordance with the procedure prescribed in the contract of service and such a contractual employee does not have a right to continue in service beyond the period of his/her contract but then in the instant case, termination of contractual service of the petitioner is stigmatic in nature, inasmuch as she has been terminated on the ground that she is not suitable for government job and that she is vulnerable.

15) The Supreme Court has, in the case of **U.P State Road Transport Corporation & Ors. Vs. Brijesh Kumar & anr.**, 2024 SCC OnLine SC 2282, while dealing with the issue whether the principles of natural justice ought to be adhered to

before terminating services of a contractual employee, observed as under:

“19.The services of the respondent have been determined solely on the ground of misconduct as alleged but without holding any regular inquiry or affording any opportunity of hearing to him. The termination order has been passed on the basis of some report which probably was not even supplied to the respondent. No show cause notice appears to have been issued to the respondent. Therefore, the order of termination of his services, even if on contractual basis, has been passed on account of alleged misconduct without following the Principles of Natural Justice. The termination order is apparently stigmatic in nature which could not have been passed without following the Principles of Natural Justice.”

16) A similar view has been taken by a Coordinate Bench of this Court in the case of **Feroz Ahmad Sheikh & Ors. Vs. UT of J&K & Ors.** (WP(C) No.2260/2022 decided on 16.12.2023). While noticing various precedents of the Supreme Court on the subject, this Court held that if an order is founded on allegations, the order is stigmatic and punitive and, therefore, services of an employee cannot be dispensed with without affording him an opportunity of defending the accusation/allegations made against him in a full-fledged enquiry. The Court further went on to hold that even a contractual appointment cannot be terminated without affording an opportunity of hearing, if founded on allegation and/or misconduct, which casts a stigma on such an employee.

17) In the face of aforesaid position of law, the impugned order of termination of contractual engagement of the petitioner is clearly in teeth of the legal position discussed hereinbefore. Not only the respondents have flouted Clause (XII) of Government
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Order dated 18.05.2021 but they have also observed the principles of natural justice in breach while terminating services of the petitioner on the basis of her alleged stigmatic conduct. The impugned order of termination is, therefore, not sustainable in law.

18) There is, however, yet another aspect of the matter which is required to be noticed. It has been informed by learned counsel for the parties during the course of arguments that the scheme under which the petitioner was engaged as a contractual employee has been wound up and, as such, the relief of reinstatement claimed by the petitioner has been rendered impossible. In view of this development, the petitioner cannot be granted the relief of reinstatement. However, she is certainly entitled to claim that the impugned communication should not come in her way while seeking employment in future. She is also entitled to salary in lieu of one month's notice as contemplated in Clause (XII) of Government Order dated 18.05.2021 (supra)

19) That takes us to the claim of the petitioner for salary with effect from July, 2022 to February, 2023. The petitioner has specifically pleaded that she has not been paid salary/wages for the aforesaid period, which fact is being denied by the respondents in their reply. The respondents were asked to produce record before this Court to substantiate their stand that they have actually disbursed salary/wages in favour of the petitioner for the aforesaid period. The record produced by the

respondents does not contain anything to even remotely suggest that salary for the aforesaid period has been paid to the petitioner. Therefore, it can be inferred that the claim of the petitioner that she has not been paid salary from July, 2022 to February, 2023 is factually correct.

20) It is not in dispute that the respondents have extracted work from the petitioner upto 20.02.2023, when the impugned termination order came to be issued against her. Therefore, they are legally bound to pay the legitimately earned salary to the petitioner for the period for which she has actually worked. The stand of the respondents in availing the services of the petitioner on one hand and denying salary to her on the other is nothing but an exploitation which amounts to infringement of right to livelihood of the petitioner guaranteed under Article 21 of the Constitution. Article 23 of the Constitution has prohibited 'begaar', which means labour or service without paying remuneration for it. It is not open to an employer, particularly to a model employer like the Government, to extract work from its employees without paying remuneration for it as the same is violative of Article 23 of the Constitution. Thus, the petitioner cannot be denied salary/wages for the period she has actually worked.

21) For the foregoing reasons, the petition is allowed in the following terms:

- (I) The impugned communication dated 20.02.2023, whereby services of the petitioner have been

terminated, shall not come in the way of the petitioner's getting employment in future.

- (II) The respondents are directed to pay one month's salary in lieu of notice to the petitioner and besides this, they are also directed to pay wages/salary to her from July, 2022 to February, 2023, within a period of two months from the date of this judgement, failing which the same shall carry interest @6% per annum from the date of this judgment till its realization.

22) The record be returned to the learned counsel for the respondents.

Srinagar,
01.08.2025
"Bhat Altaf-Secy"



(Sanjay Dhar)
Judge

Whether the **JUDGMENT** is reportable: **YES/NO**