



2025:CGHC:517

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 8212 of 2023

Yaad Das Sahu S/o Late Narad Das Sahu, Aged About 33 Years,
Rojgar Sahayak, Village Panchayat Maretha, Navagaon, P.S. Lalbagh,
Tehsil- Dongargaon, District : Rajnandgaon, Chhattisgarh.

... Petitioner

versus

1 - State of Chhattisgarh Through Secretary, Department of Panchayat
and Rural Development, Mahanadi Bhawan, Mantralaya, Capital
Complex, Atal Nagar, New Raipur, District : Raipur, Chhattisgarh.

2 - Commissioner Mahatma Gandhi NREGA, Vikas Bhawan, Third
Floor, Sector 19, North Block, Naya Raipur, Atal Nagar, Chhattisgarh.

3 - Collector District- Rajnandgaon, Chhattisgarh.

4 - Chief Executive Officer, Zila Panchayat, Rajnandgaon, District
Rajnandgaon, Chhattisgarh.

5 - Chief Executive Officer, Janpad Panchayat Dongargaon, District
Rajnandgaon Chhattisgarh.

... Respondents

For Petitioner	:	Mr. K.N. Nande, Advocate
For State/respondents No. 1 to 3	:	Mr. Prateek Tiwari, P.L.
For Respondents No.4 and 5	:	Mr. Akhilesh Kumar, Advocate

Hon'ble Shri Amitendra Kishore Prasad, Judge

Order on Board

03.01.2025

1. Heard Mr. K.N. Nande, learned counsel for the petitioner. Also heard Mr. Prateek Tiwari, learned Panel Lawyer, appearing for the State/respondents No.1 to 3 as well as Mr. Akhilesh Kumar, learned counsel appearing for respondents No.4 and 5.
2. By way of this petition, the petitioner is challenging the impugned order dated 23.06.2023 (Annexure P/1) passed by respondent No.5, i.e., Chief Executive Officer, Janpad Panchayat Dongargaon, District Rajnandgaon, Chhattisgarh, whereby the services of the petitioner as Gram Rojgar Sahayak, Gram Panchayat Maretha Navagaon, Janpad Panchayat Dongargaon, District Rajnandgaon (C.G.) has been terminated while giving him one month's notice.
3. Brief facts for disposal of this writ petition, are that, the petitioner was appointed on the post of Gram Rojgaar Sahayak ("GRS") on contractual basis under the Mahatma Gandhi National Rural Employment Guarantee Scheme ("MGNREGA") in Gram Panchayat Maretha Navagaon, Janpad Panchayat Dongargaon,

District Rajnandgaon (C.G.) on 17.06.2016. The petitioner joined the said post on 21.06.2016. The appointment was initially for the period of one year, however, looking to the capability and work of the petitioner, his service period was extended by the respondent authorities. The petitioner was posted as Gram Rojgar Sahayak in Gram Panchayat Maretha Navagaon, Janpad Panchayat Dongargaon, District Rajnandgaon (C.G.) and was carrying out his work to the best of his ability and there were no complaints from the Gram Panchayat Maretha Navagaon regarding his work or behaviour since his initial appointment. On 03.01.2023, respondent No. 4 issued a show- cause notice to the petitioner alleging, *inter alia*, that the petitioner failed to increase the number of labours in the Gram Panchayat by accepting wage-based employment despite orders from his superiors. The petitioner gave his reply to the show-cause notice on 09.01.2023 in which he stated his efforts for achieving the said targets.

4. Later, on 20.01.2023, respondent No. 5 issued a letter pressurizing all Gram Rojgar Sahayaks in Janpad Panchayat Dongargaon to achieve the targets given for increasing man- days and number of labours in order to increase the labour numbers to 10000 on the Janpad level. Additionally, the letter warned the Gram Sahayaks that if there is lack of progress as demanded in the letter, then the monthly salary withdrawal of Gram Rojgar Sahayaks will be stopped and enquiry will be conducted against

them. Previously one Daleshwar Sahu, Member of Legislative Assembly had also complained against the petitioner before respondent No. 4 on 25.11.2022 stating that the petitioner is not of a good character and female Panch and Sarpanchs have complained against the petitioner, he also alleged that the petitioner does not work properly hence he should be removed from post of Gram Rojgar Sahayak. On 27.12.2022, an Investigation Committee was constituted to look into the allegations made by MLA Daleshwar Sahu.

5. It is the case of the petitioner that the copy of complaints from female Panch and Sarpanch has not been served upon the petitioner despite repeated requests as well as report of the inquiry committee constituted on 27.12.2022 has also not been given to the petitioner. Furthermore, on 03.02.2023, two letters were issued to the petitioner on the same day from office of respondent No. 4. One letter was a show-cause notice no. 2589 alleging that the petitioner has not achieved the targets of MGNREGA Scheme in Gram Panchayat Maretha Navagaon and a clarification was demanded, else the petitioner would have to face enquiry. The petitioner submitted his reply to the above show cause notice on 10.02.2023.
6. In addition to the above, respondent No. 4 issued another letter dated 03.02.2023 informing the petitioner that a report was obtained on 19.12.2022 regarding the complaint by MLA

Daleshwar Sahu, and the Investigation team has recommended for removal or transfer of petitioner. Furthermore, the petitioner was called before the District Level Committee for hearing on 15.02.2023. The petitioner was never informed about the constitution of any investigation committee before 27.12.2022 and no report of the said Investigation team dated 19.12.2022 was shown to the petitioner nor it was provided to him when requested. Hence, the said investigation was done behind the back of the petitioner and without any public notice.

7. Again a show-cause notice was issued by respondent No.4 vide letter dated 15.03.2023 alleging that the petitioner has failed to achieve the targets and has under performed. Petitioner was also called upon to submit his response within a period of three days. At that relevant point of time, a meeting was convened on 12.11.2022 by Gram Panchayat Maretha Navagaon, Janpad Panchayat Dongargaon, wherein a resolution was passed at the conclusion of the meeting that due to insufficient space wage-based employment under MGNREGA Scheme could not be provided. It is evident that Gram Panchayat was unable to find work for wage-based employment under MGNREGA, hence the petitioner was not at fault, the petitioner's power is restricted in this regard, despite such limitation petitioner has been trying his best to achieve more man-days and number of laborers as is evident from his several explanations. However, the respondent

authorities have been continuously harassing the petitioner without any just cause or reason, with the intention to wrongfully remove him from the service.

8. It is further case of the petitioner that citing administrative reasons, the petitioner was transferred to Gram Panchayat Dhaurabhata on 08.05.2023 and on 23.06.2023, the termination order was passed behind his back without any enquiry into the alleged misconduct. Since at the time of his termination the petitioner was not posted at Gram Panchayat Maretha Navagaon, hence, his termination from post of Gram Rojgar Sahayak at Gram Panchayat Maretha Navagaon is illegal and wrongful.
9. Vide order dated 23.06.2023, the impugned order was passed by respondent No. 5 without giving any notice to the petitioner, and the same is illegal, arbitrary and contrary to law, and it is also stigmatic in nature which was issued to the petitioner without giving him opportunity of hearing and without any factual inquiry. Hence, this writ petition.
10. Mr. K.N. Nande, learned counsel for the petitioner submits that the order impugned is contrary to the settled law as the same has been passed in utter violation of principles of natural justice and the same is stigmatic in nature. However, neither any notice from removal has been issued to him nor any enquiry has been conducted while giving him proper opportunity of hearing. He

further submits that according to petitioner, the entire allegation levelled against him has not been found to be proved in the preliminary enquiry as conducted vide enquiry dated 30.12.2022. It has been contended that in the enquiry, everything was found in favour of the petitioner and a recommendation was made for transfer of the petitioner from Gram Panchayat Maretha Navagaon and accordingly, on the basis of said report, he has been transferred to Gram Panchayat Dhaurabhatha on 08.05.2023 where he was pursuing his duty. Subsequently, without any reason and only on the basis of some complaint made by some unknown person, the impugned order has been passed which is *prima facie* illegal and arbitrary and deserves to be set-aside.

11. On the other hand, Mr. Akhilesh Kumar, learned counsel for the respondents No.4 and 5 vehemently argued that in each and every point of time, the petitioner has been given notice as well as given opportunity to rectify himself and to do the work in accordance with law, however, it has not been given heed by the petitioner, as such, respondents No. 4 and 5 are having no other option except to remove the petitioner from services, which is contractual in nature. It has been contended that in a contractual appointment, petitioner is not required to be given opportunity of hearing, which is mentioned in the appointment order itself that he can be removed from service while giving one month's prior notice

or one month's salary. It is further contended that since the appointment is of contractual nature and the impugned order does not go to show that it is a stigmatic order, as such, the order impugned has rightly been passed and nothing requires to be interfered with.

- 12.** I have heard learned counsel for the parties and perused the material available on record with utmost circumspection.
- 13.** From the perusal of the impugned order, it seems that the stigmatic order has been passed levelling allegation against the petitioner that the petitioner was reluctant in performing his duty and he has disobeyed the instructions of the respondent authorities as he has failed to give 100 days employment to the labourers. There are several allegations made by the Sarpanch against the petitioner as also, a criminal case was registered against the petitioner. As such, he has been removed from services by giving one month's prior notice.
- 14.** From the aforesaid order, it reflects that several allegations have been levelled against the petitioner, upon which certain enquiry has been conducted, and in enquiry report dated 30.12.2022, nothing was found against the petitioner. In fact, the charges levelled against the petitioner were not found to be proved. But instead of that, the petitioner has been removed from service

without conducting any enquiry much less giving any proper opportunity of hearing.

15. The Hon'ble Supreme Court in the matter of **Swati Priyadarshini vs. State of Madhya Pradesh and Others** reported in **2024 SCC OnLine SC 2139** decided on **22.08.2024**, in which the ratio laid down by the Hon'ble Supreme Court is to the fact that even if for contractual appointment, if any stigmatic order is to be passed, it is to be passed after holding proper enquiry and after giving due opportunity of hearing to the concerned delinquent/employee. The Co-ordinate Bench of this Court in **WPS No. 4969/2015** in the matter of **Digambar Chandrakar vs. State of Chhattisgarh and others** decided on **22.08.2024** and in the said case also, this Court of the view that in order to pass a stigmatic or cumulative order, the concerned authorities are required to hold a departmental enquiry after giving due opportunity of hearing to delinquent/ employee.
16. The view taken by the Hon'ble Supreme Court in the matter of **Swati Priyadarshini (supra)** goes to show that before passing any stigmatic order for removal of any employee from service, a departmental enquiry is required to be done, which has not been done in this case. In para 34 of the said judgment, the Hon'ble Supreme Court has held as under:-

“34. It is profitable to refer to what five learned Judges of this Court laid down in Parshotam

Lal Dhingra v. Union of India, 1957 SCC
OnLine SC 5:

"28. The position may, therefore, be summed up as follows: Any and every termination of service is not a dismissal, removal or reduction in rank. A termination of service brought about by the exercise of a contractual right is not per se dismissal or removal, as has been held by this Court in *Satish Chander Anand v. Union of India* [(1953) 1 SCC 420: 1953 SCR 655]. Likewise the termination of service by compulsory retirement in terms of a specific rule regulating the conditions of service is not tantamount to the infliction of a punishment and does not attract Article 311(2), as has also been held by this Court in *Shyam Lal v. State of Uttar Pradesh* [(1954) 1 SCC 572: (1955) 1 SCR 26]. In either of the two abovementioned cases the termination of the service did not carry with it the penal consequences of loss of pay, or allowances under Rule 52 of the Fundamental Rules. It is true that the misconduct, negligence, inefficiency or other disqualification may be the motive or the inducing factor which influences the Government to take action under the terms of the contract of employment or the specific service rule, nevertheless, if a right exists, under the contract or the rules, to terminate the service the motive operating

on the mind of the Government is, as Chagla, C.J., has said in *Shrinivas Ganesh v. Union of India*, [58 Bom LR 673: AIR 1956 Bom 455] wholly irrelevant. In short, if the termination of service is founded on the right flowing from contract or the service rules then, prima facie, the termination is not a punishment and carries with it no evil consequences and so Article 311 is not attracted. But even if the Government has, by contract or under the rules, the right to terminate the employment without going through the procedure prescribed for inflicting the punishment of dismissal or removal or reduction in rank, the Government may, nevertheless, choose to punish the servant and if the termination of service is sought to be founded on misconduct, negligence, inefficiency or other disqualification, then it is a punishment and the requirements of Article 311 must be complied with. As already stated if the servant has got a right to continue in the post, then, unless the contract of employment or the rules provide to the contrary, his services cannot be terminated otherwise than for misconduct, negligence, inefficiency or other good and sufficient cause. A termination of the service of such a servant on such grounds must be a punishment and, therefore, a dismissal or removal within Article 311, for it

operates as a forfeiture of his right and he is visited with the evil consequences of loss of pay and allowances. It puts an indelible stigma on the officer affecting his future career. A reduction in rank likewise may be by way of punishment or it may be an innocuous thing. If the government servant has a right to a particular rank, then the very reduction from that rank will operate as a penalty, for he will then lose the emoluments and privileges of that rank. If, however, he has no right to the particular rank, his reduction from an officiating higher rank to his substantive lower rank will not ordinarily be a punishment. But the mere fact that the servant has no title to the post or the rank and the Government has, by contract, express or implied, or under the rules, the right to reduce him to a lower post does not mean that an order of reduction of a servant to a lower post or rank cannot in any circumstances be a punishment. The real test for determining whether the reduction in such cases is or is not by way of punishment is to find out if the order for the reduction also visits the servant with any penal consequences. Thus if the order entails or provides for the forfeiture of his pay or allowances or the loss of his seniority in his substantive rank or the stoppage or postponement of his future chances of promotion, then that

circumstance may indicate that although in form the Government had purported to exercise its right to terminate the employment or to reduce the servant to a lower rank under the terms of the contract of employment or under the rules, in truth and reality the Government has terminated the employment as and by way of penalty. The use of the expression "terminate" or "discharge" is not conclusive. In spite of the use of such innocuous expressions, the court has to apply the two tests mentioned above, namely, (1) whether the servant had a right to the post or the rank, or (2) whether he has been visited with evil consequences of the kind hereinbefore referred to? If the case satisfies either of the two tests then it must be held that the servant has been punished and the termination of his service must be taken as a dismissal or removal from service or the reversion to his substantive rank must be regarded as a reduction in rank and if the requirements of the rules and Article 311, which give protection to government servant have not been complied with, the termination of the service or the reduction in rank must be held to be wrongful and in violation of the constitutional right of the servant."

17. Considering the overall facts and circumstances of the case as

well as after hearing learned counsel for the parties as also considering the facts of the case in the light of abovequoted judgments, I am of the view that the impugned order dated 23.06.2023 has been passed in a very harsh manner without granting opportunity of hearing to the petitioner. If any stigmatic order is to be passed then the foremost thing which has to be done by the employer is to give a notice levelling specific allegation against the petitioner and by holding an enquiry after giving due opportunity of hearing to the petitioner. The order, if any, can be passed, it may be passed, after holding enquiry and by giving due opportunity of hearing to the employee/delinquent which is lacking in this case.

18. Taking into consideration of the law laid down by the Hon'ble Supreme Court as well as by this Court and for the reasons and discussions made here-in-above, the impugned order dated 23.06.2023 (Annexure P/1) is hereby quashed. The petitioner is entitled for all the benefits following from quashment of impugned order dated 23.06.2023. However, liberty is reserved to the respondent authorities to hold proper enquiry, if so advised.
19. In the result, the writ petition is allowed with the aforesaid observations/directions. There shall be no order as to costs.

Sd/-

**(Amitendra Kishore Prasad)
Judge**