
(2019) 04 MP CK 0063

In the Madhya Pradesh High Court

Case No : Writ Petition Nos. 9376 Of 2014, 8226 Of 2017

Mahendra Kori

APPELLANT

Vs

State Of Madhya Pradesh & Ors

RESPONDENT

Date of Decision : 04-04-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 200

Citation : (2019) 04 MP CK 0063

Hon'ble Judges : Nandita Dubey, J

Bench : Single Bench

Advocate : N.S. Ruprah, Devika Singh

Final Decision : Dismissed

Judgement

With the consent of learned counsel for the parties, heard finally.

Regard being had to the similitude of the question involved, on the joint request of the parties, the matters are analogously heard and decided by this common order. The facts are taken from W.P. No.8226/2017.

The petitioner has filed the instant petition challenging the orders dated 02.03.2016 and 30.05.2015 passed by respondent No.2, Collector and District Programme Co-Ordinator, M.P. Rural Employment Guarantee Scheme, Chhatarpur.

The brief facts of the case are that the petitioner was appointed as Sub-Engineer, on contract basis, on 06.11.2006, for a period of one year. The same was extended from time to time as per requirement till 2014.

The petitioner filed a representation before respondent No.2 regarding the behavior and harassment by respondent No.4 and simultaneously filed a private complaint under Section 200 Cr.P.C. against respondent No.4 before the Judicial Magistrate, Chhatarpur.

Pursuant to his representation, respondent No.2 directed the S.D.O., Lavkushnagar to conduct an enquiry. The S.D.O. after taking the statement of

witnesses by both the parties, submitted his enquiry report on 29.03.2014. As per the enquiry report, both petitioner as well as respondent No.4 were found guilty of misconduct and disciplinary action was suggested against both of them.

It is stated that respondent No.4 also made a complaint against the petitioner and on the said basis a show cause notice dated 13.03.2014 was issued to the petitioner, which was replied in detail by the petitioner on 19.03.2014. However, not satisfied with the reply, the appointment of petitioner was cancelled with immediate effect by the Collector vide order dated 09.04.2014 on the ground of negligence towards his duties, misbehavior and indiscipline with the controlling officer.

Being aggrieved by the aforesaid order, the petitioner filed an appeal before the Commissioner, which was dismissed for want of authority and jurisdiction.

The aforesaid two orders dated 09.04.2014 and 09.05.2014 were assailed by way of W.P. No. 9376/2014. By order dated 17.09.2014, this Court stayed the order of termination and pursuant to which the petitioner was reinstated on 19.09.2014.

It is stated that thereafter another show cause notice was issued to the petitioner on 18.03.2015, which was replied to by the petitioner on 23.03.2015. The said show cause notice was challenged in W.P. No. 4304/2015, which was disposed of on 27.03.2015 with a direction to the respondents to decide the case after considering the reply of the petitioner. Pursuant to the aforesaid order, passed in W.P. No.4304/2015, the authority considered the reply filed by the petitioner, however, the same was not found satisfactory and consequently extension of the contract period was denied vide order dated 30.05.2015.

The aforesaid order was challenged by way of W.P. No.8741/2015. The petition came up for hearing on 01.07.2015, wherein the petitioner made a prayer that with regard to his grievance, he be granted liberty to file an application for appointment on contract basis to the Collector, who is the competent authority and the writ petition be disposed of with the direction to the aforesaid authority to decide the same expeditiously.

The Court in view of the aforesaid submission made by the petitioner, disposed of the writ petition with the direction that in case the petitioner files an application before the Collector within a period of one week from the date of receipt of certified copy of the order passed, the Collector shall consider and decide the same expeditiously, preferably within a period of two months from the date of receipt of such application in accordance with law.

Since the application for appointment on contractual basis of the petitioner was not decided within a period of two months, the petitioner preferred a contempt petition No.1822/2015, after which the authority vide order dated 02.03.2016, dismissed the application of the petitioner.

I have heard the learned counsel for the parties at length and perused the record.

The orders impugned have been challenged mainly on the two grounds:-

(i) that respondent No.2 ignored that the then CEO Shri Nirdeshak Sharma had enmity with the petitioner and the petitioner had even lodged a criminal complaint against him under Section 200 Cr.P.C. Hence, Shri Nirdeshak Sharma deliberately spoiled the ACR of the petitioner and

(ii) the order Annexure P-2 is stigmatic in nature which has not been preceded by any enquiry as per the law laid down in the case of Rahul Tripathi Vs. Rajiv Gandhi shiksha Mission 2001(3) MLPLJ 616 and Makhanlal Ahirwar Vs. State of M.P. and others.

A perusal of the appointment order shows that the petitioner was appointed as Sub-engineer by order dated 6.11.2006. His appointment was contractual and for a period of one year, extendable by further year as per the requirement on the basis of his work evaluation. The terms and conditions of the agreement order are reproduced as under :-

"नियुक्ति की शर्तें निम्नानुसार रहेंगी:-

1. इस संविदा नियुक्ति पर शासन द्वारा जारी आरक्षण नियमों एवं रोस्टर का पालन किया गया है ।
2. मध्य प्रदेश शासन द्वारा समय-समय पर संविदा नियुक्ति के संबंध में जारी आदेश/संशोधन इस नियुक्ति पर लागू बंधनकारी होंगे ।
3. संविदा पर नियुक्त व्यक्ति को मूल वेतन के साथ मंहगाई भत्ता जोड़कर संविदा पारिश्रमिक देय होगा । सेवानिवृत्त अधिकारी (अधिकतम आयु 65 वर्ष तक) को संविदा पर नियुक्ति की दशा में संविदा वेतन के रूप में उसे प्राप्त अंतिम वेतन के बराबर देय राशि में से प्राप्त हो रही पेंशन की राशि को कम कर भुगतान की जावेगी ।
4. संविदा के अंतर्गत नियुक्त व्यक्ति की नियुक्ति केवल विशिष्ट स्थान के लिए होगी । संविदा में नियुक्त व्यक्ति का संविदा अवधि में अन्यत्र स्थानांतरण नहीं किया जाएगा ।
5. संविदा पर नियुक्त व्यक्ति म.प्र. सिविल सेवा आचरण नियम 1965 और उसमें किये गये अद्यतन संशोधन द्वारा शासित होगा ।
6. संविदा की कालावधि नियुक्ति तिथि से एक वर्ष के लिए रहेगी । परिषद आवश्यकता के आधार पर संविदा अवधि में वृद्धि कर सकेगी ।
7. संविदा नियुक्त अधिकारी/कर्मचारी को कार्यभार ग्रहण करते समय सक्षम अधिकारी को शैक्षणिक योग्यता, अनुभव प्रमाण पत्र, स्थायी निवास प्रमाण पत्र, जाति प्रमाण पत्र संबंधी मूल अभिलेख एवं दो फोटो प्रस्तुत करना होगी ।
8. संविदा नियुक्त अधिकारी/कर्मचारी को कार्यभार ग्रहण करते समय सक्षम अधिकारी का स्वास्थ्य प्रमाण पत्र प्रस्तुत करना अनिवार्य होगा ।
9. संविदा पर नियुक्त उम्मीदवार नियुक्ति प्राधिकारी के साथ रुपये 50 का नान ज्यूडिशियल स्टॉप पर करार निष्पादित करेगा (करार के निष्पादन पर होने वाले समस्त व्यय उम्मीदवार द्वारा वहन किए जाएंगे) इस नान ज्यूडिशियल स्टॉप पेपर के साथ ही साथ चयनित उम्मीदवारों को उसकी 3 माह के वेतन की धनराशि के समतुल्य राशि का बांड भी भर कर कार्य पर उपस्थित होने के 7 दिन के भीतर मुख्य कार्यपालन अधिकारी जनपद पंचायत को प्रस्तुत करना होगा । इस बांड के आधार पर उम्मीदवार को शासन को यह गारंटी देनी होगी कि यदि वह संविदा नियुक्ति काल पूरा होने के पूर्व पद से त्याग

पत्र देकर अन्यत्र कोई पद ग्रहण करता है तो वह उक्त बांड में उल्लेखित धनराशि का देनदार होगा ।

10. संविदा पर नियुक्त उम्मीदवारों का चरित्र सत्यापन शासकीय सेवकों को लागू नियमों या अनुदेशों के आधार पर किया जाएगा। चरित्र के संबंध में किसी प्रतिकूल निष्कर्ष की दशा में नियुक्त अधिकारी द्वारा की गई नियुक्ति बिना कोई कारण बताए रद्द कर दी जाएगी ।

11. संविदा अवधि पूर्ण होने के उपरांत कार्य कुशलता एवं किए गए कार्य के मूल्यांकन के आधार पर यदि आवश्यक हुआ तो आगामी वर्ष के लिए संविदा नियुक्ति बढ़ाने पर विचार किया जा सकेगा ।

12. संस्था नियमानुसार एक वर्ष में 13 दिवस के आकस्मिक अवकाश तथा 15 दिन के चिकित्सा अवकाश की पात्रता होगी ।

13. संविदा नियुक्ति आदेश दिनांक से 10 दिवस की अवधि में कार्यभार ग्रहण करना होगा, अन्यथा नियुक्ति आदेश निरस्त माना जाएगा ।

14. संविदा पर नियुक्त अधिकारी को आधारभूत एवं जाब से संबंधित प्रशिक्षण में अनिवार्यता: भाग लेना होगा । प्रशिक्षण अवधि में आयोजित परीक्षा में उत्तीर्ण होना अनिवार्य होगा । प्रशिक्षण अवधि में आयोजित परीक्षा में उत्तीर्ण नहीं होने पर संविदा सेवाएं समाप्त की जाएगी ।

15. संविदा पर नियुक्त व्यक्ति के कदाचार या किसी आपराधिक क्रियाकलाप में संलिप्त पाए जाने पर नियुक्ति प्राधिकारी उसे सुनवाई का युक्तियुक्त अवसर देने के पश्चात ऐसी संविदा नियुक्ति समाप्त कर सकेगा ।

16. संविदा नियुक्ति पर नियुक्त अधिकारी/कर्मचारी की सेवाएं निर्धारित अवधि के पूर्व संस्था द्वारा बिना किसी नोटिस के समाप्त की जा सकेगी ।

17. संविदा पर नियुक्त अधिकारी/कर्मचारी को समय-समय पर सौंपे गए अन्य समस्त कार्यालयीन कार्य भी संपादित करने होंगे ।

18. कार्यालय में संविदा सेवा अवधि के दौरान अन्य किसी भी प्रकार के संस्थानों/कार्यालयों में कार्य करने अथवा व्यक्तिगत तौर पर किसी भी प्रकार के व्यापार करने पर प्रतिबंध लागू रहेगा ।

19. संविदा पर नियुक्त अभ्यर्थी सक्षम अधिकारी की पूर्वानुमति/निर्देश के कोई भी सूचना/जानकारी किसी अन्य व्यक्ति अथवा अन्य विभाग को किसी भी माध्यम से नहीं देगा तथा कार्यालयीन गोपनीयता भंग नहीं करेगा ।

20. संविदा पर नियुक्त व्यक्ति को केवल यात्रा भत्ते की सुविधा शासन के नियमानुसार देय होगी ।

21. एक वर्ष सफलतापूर्वक सेवा पूर्ण करने के बाद संविदा पर नियुक्त अधिकारी/कर्मचारी की सेवाएं नियोजक/नियोक्ता के एक माह के पूर्व नोटिस के आधार पर अथवा एक माह का पारिश्रमिक नगद जमा/भुगतान कर समाप्त हो सकेगी ।

22. चयनित उम्मीदवार, उसकी पदस्थापना के स्थान पर कार्यभार ग्रहण करने की तिथि से संविदा में माना जावेगा, यदि संविदा पर नियुक्त कोई व्यक्ति बिना किसी विशिष्ट कारण और बिना किसी सूचना के अपने कर्तव्य से 01 माह से अधिक के लिए अनुपस्थित रहता है तो उसकी संविदा नियुक्ति ऐसी अनुपस्थिति तिथि से स्वतः समाप्त मानी जाएगी तथा उसकी कंडिका 9 में दर्शाई गई बांड राशि राजसात हो जाएगी ।

23. संविदा पर नियुक्त कोई भी उम्मीदवार उसकी संविदा कालावधि के लिए किन्ही पेंशन संबंधी सुविधाओं का हकदार नहीं होगा ।

24. उसे ऐसी कालावधि के लिए कोई बोनस आदि की पात्रता नहीं होगी ।

25. किसी भी विवाद की स्थिति में मध्य प्रदेश राज्य रोजगार गारंटी परिषद का निर्णय अंतिम एवं मान्य होगा ।
26. संविदा पर नियुक्त अधिकारी/कर्मचारी भविष्य में नियमितीकरण संबंधी कोई दावा नहीं कर सकेगा ।
27. चयनित उम्मीदवार को योजना के अंतर्गत आहूत किए गए विज्ञापन में दर्शाई गई संविदा राशि का भुगतान किया जावेगा ।""

It is also seen from the record that this is the fourth round of litigation by the present petitioner and the petitioner is claiming almost the same relief, taking the same grounds. I do not find any merit in the contention of learned counsel for the petitioner that the CEO has deliberately spoiled the ACR of the petitioner because he has filed a criminal complaint against him under Section 200 of the Cr.P.C. It is obvious from the enquiry report dated 29.03.2014 that the petitioner as well as respondent No.4 was equally found guilty of misconduct and disciplinary action was suggested against both of them. It is an admitted fact that the petitioner has not challenged this enquiry report any further and has accepted the findings of the enquiry report.

As far as the contention that the order of termination is stigmatic, it is seen that the order dated 30.05.2015 is not an order of termination but is an order refusing to extend the contract of petitioner for another year. Moreover, this order has already been challenged in W.P. No. 8741/2015 (Annexure P-16), wherein the petitioner has sought a liberty to file an application for appointment on contractual basis to the Collector, who is the competent authority and this Court vide order dated 01.07.2015 had directed the competent authority to decide the application of petitioner within a period of two months. Since the petitioner has sought a liberty to file an application for appointment on contractual basis and not for extension of the earlier contract meaning thereby that he has already abandoned his challenge to the order dated 30.05.2015, which is again the subject matter of this petition.

As regard W.P. No.9376/2014, it is evident that the petitioner was reinstated and continued on the post pursuant to order dated 17.09.2014. However, as the terms of contract has come to an end and the contract was not renewed/extended any further, the same has rendered infructuous.

As regard the challenge to the order dated 02.03.2016, whereby the application for appointment on contract basis has been dismissed by the competent authority, i.e., the Collector, it is seen that the Collector has considering the earlier conduct of petitioner and the finding of enquiry report, wherein he was found guilty. He has also observed that the ACR in question was for the financial year 2013-2014 and was required to be produced on 31st of March, 2014, however, the same was not produced by the petitioner till June, 2014, though he was having the charge from 01.04.2013 to 31.03.2014 and despite being given a show cause notice and after giving a proper hearing, no document was produced to substantiate his case.

Under the facts and circumstances, the judgment cited and relied on by the

learned counsel for the petitioner are not applicable to the facts of the present case.

Considering the aforesaid and in the light of terms and conditions of his appointment order, I do not find any infirmity in the order passed by the respondent authorities.

As a result, these petitions fail and accordingly dismissed. No order as to costs.

Copy of this order be placed in the record of W.P.No.9376/2014.