

(2023) 12 MP CK 0039
In the Madhya Pradesh High Court
Case No : Writ Petition No. 3267 Of 2021

Mamta Tirole

APPELLANT

Vs

Project Officer, Thr. Integrated Child And Others

RESPONDENT

Date of Decision : 06-12-2023

Acts Referred:

Citation : (2023) 12 MP CK 0039

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : Aditya Khandekar, Ayush Dev Bajpai

Final Decision : Allowed

Judgement

Sujoy Paul, J

1. With the consent, finally heard.
2. This petition assails the impugned order dated 27/01/2020 whereby petitioner was terminated from services. The petitioner has also assailed the appellate orders dated 29/07/2020 and 04/12/2020 whereby her appeals were dismissed by learned Additional Collector and the Commissioner.
- 3 . The admitted facts between the parties are that while working as Aaganwadi Worker, petitioner received a show cause notice dated 06/01/2020 wherein it was alleged that petitioner remained absent and accordingly, petitioner was directed to file reply. In turn, petitioner filed reply (Annexure P/5) and took a stand that because of some gynecological problem, she remained absent on 27/12/2019. Dissatisfied with the said reply, the Project Officer by order dated 10/01/2020 decided to deduct 08 days' honorarium of the petitioner and observed that henceforth, if any such misconduct is committed, the petitioner may be subjected to disciplinary proceedings. The Project Officer by order dated 27/01/2020 (Annexure P/8) again issued a show cause notice on the strength of a direction issued by the Collector Khandwa to terminate the petitioner and

decided to recall the previous order dated 10/01/2020 whereby honorarium was deducted. In turn, petitioner submitted her fresh reply. The Project Officer by order dated 27/01/2020 terminated the petitioner from service. The petitioner unsuccessfully challenged it by filing appeals before the Additional Collector and Commissioner, Revenue Division.

4. Criticising the disciplinary action, learned counsel for the petitioner contended that (i) after having passed the order dated 10/01/2020 whereby honorarium of 08 days was deducted, it was no more open to the respondents to take disciplinary action against the petitioner for the same misconduct. (ii) The order dated 27/01/2020 (Annexure P/8) and consequential proceedings were initiated at the dictate of Collector/appellate authority. Thus, Project Officer worked under dictate and did not apply his independent mind. For this reason alone, the order dated 24/01/2020 and all subsequent proceedings deserve to be set aside.

6. Shri Bajpai, learned Government Advocate opposed the prayer on the basis of reply and submits that the proceedings are in consonance with law and there is no infirmity in the same.

7. Learned counsel for the parties confined their arguments to the extent indicated above.

8. I have heard the parties at length and perused the record.

9. The factual backdrop of the matter shows that when petitioner submitted her reply (Annexure P/5) pursuant to the show cause notice dated 06.01.2020 (Annexure P/4), the competent authority i.e. Project Officer decided to deduct 08 days' honorarium from the petitioner with a clear finding that if henceforth petitioner commits similar misconduct, she may be terminated from service. However, this order dated 10.01.2020 (wrongly mentioned as 10.01.2019 in Annexure P/8) was withdrawn at the dictate of the Collector. The Collector further directed the Project Officer to terminate the services of the petitioner.

10. I find substantial force in the argument of learned counsel for the petitioner that after deciding to deduct 08 days honorarium, it was no more open to the respondents to punish the petitioner by proceeding further. Moreso, when such a decision was taken at the dictate of Collector who is not the disciplinary authority of the petitioner. It is profitable to see certain Supreme Court judgments on this point viz. Joint Action Committee of Air Line Pilots' Assn. of India vs. DG of Civil Aviation (2011) 5 SCC 435 & State of M.P. vs. Sanjay Nagayach (2013) 7 SCC 25 and also the judgment of this Court in Makhano Kori vs. State of M.P. and others 2011 SCC OnLine MP 127 and Dheerendra Pandey vs. State of M.P. 2012 SCC OnLine MP 6096 wherein this Court opined that any such order passed under dictate of higher authority runs contrary to the principles of natural justice and settled principles of Administrative Law. Thus, the impugned order of termination passed at the dictate of Collector, cannot sustain judicial scrutiny. The order dated 27.01.2020 deserves to be and accordingly annulled for this reason alone.

11. The matter may be viewed from another angle. As per scheme applicable to Anganwadi Worker, her services could not have been terminated without holding any enquiry. This Court after considering the judgments of this Court and Supreme Court in W.P. No.14108 of 2021 opined as under :-

" 10 . The scheme mentioned hereinabove makes it clear that in case of misconduct, an enquiry needs to be conducted even in cases of the 'Anganwadi' worker. This point is no more res integra in view of various judgments passed by this Court. Some of them are filed with the petition such as Women and Child Development vs. Mrs. Sunita Joshi (W.A. No.586 of 2020), Smt. Shakun Pandey vs. The State of Madhya Pradesh (W.P. No.22746 of 2017) and Smt. Savita Jharbade vs. The State of Madhya Pradesh (W.P. No.2453 of 2011). The Supreme Court in 2014 AIR SCW 1611 (Nisha Devi Vs. State of H.P. and others) took the similar view."

(Emphasis Supplied)

12. For this reason also, the impugned termination order cannot sustain judicial scrutiny. Even otherwise, the disproportionate severity of the punishment of termination from service for one days absence shocks the judicial conscience of this Court. The punishment is like killing a fly by using sledge hammer. For this reason also the punishment of termination and appellate orders are liable to be jettisoned.

13. In ordinary course, this Court would have remitted the matter back by reserving liberty to hold an enquiry in accordance with law. However, the peculiar factual backdrop of this case shows that petitioner was already punished by order dated 10.01.2020 (Annexure P/6). This order was cancelled under dictate of Collector and such cancellation by higher authority cannot sustain judicial scrutiny. Thus, liberty cannot be reserved to proceed against the petitioner from that stage. However, since Annexure P/6 is not under challenge and if 08 days' honorarium is already returned to the petitioner, liberty is reserved to the respondents to deduct the said honorarium for 08 days.

14. The impugned termination order dated 27/01/2020 and the appellate orders dated 29/07/2020 and 04/12/2020 are set aside. As a consequence, the petitioner shall be entitled to get all consequential benefits except honorarium of 08 days aforesaid. The petitioner be reinstated with the said benefits within 60 days from the date of production of copy of this order.

15. Petition is allowed to the extent indicated above.