
(2022) 06 MP CK 0020
In the Madhya Pradesh High Court
Case No : Writ Petition No. 4534 Of 2016

Seema Jatav

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 09-06-2022

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Citation : (2022) 06 MP CK 0020

Hon'ble Judges : Anand Pathak, J

Bench : Single Bench

Advocate : Rajnish Sharma, Sanjay Kumar Sharma, Rishi Kumar Soni

Final Decision : Allowed

Judgement

Anand Pathak, J

1. The present petition has been filed by the petitioner under Article 226/227 of the Constitution of India seeking following reliefs:-

“(a) That, the order Annexure P/1 may kindly be quashed.

(b) That, any other just and proper relief, warranting under the facts and circumstances of the case be also given to the petitioners, including cost, in the ends of justice.

7.1 (a) That, the respondent be directed to reinstate the petitioner in service with all consequential benefits.”

2. Present petition is preferred against the order dated 07.10.2015 passed by the Project Officer, Integrated Child Development Scheme, Gohad, District Bhind (respondent No.3 herein), whereby services of petitioner from the post of Anganwadi Sahika have been terminated.

3. Precisely stated facts of the case are that petitioner was appointed as Anganwadi Sahika vide order dated 19.03.2010 and worked for more than 5

years on the said post. It appears from the impugned order that on 07.10.2015, Commissioner, Chambal Division, Morena (respondent No.2 herein) visited Anganwadi Kendra No.3 at Gurikha where petitioner was posted and found her absent. Therefore, he instructed the Project Officer to take instant action by way of removal of service of petitioner. In response to the said instruction, respondent No.3 immediately removed the petitioner from service as per the policy dated 10.07.2007 (Annexure P/5). Being aggrieved by the said order of termination, petitioner, without resorting to appeal before the Collector, approached this Court and vide order dated 12.07.2016, this Court issued notice to the respondents that any appointment made subsequent to passing of that order will be subject to final outcome of the writ petition.

4. From submissions and record, it appears that respondent No.4 was appointed in place of petitioner vide appointment order dated 30.12.2016 admittedly after the passing of order dated 12.7.2016. Meanwhile, one more petition preferred by similarly placed Anganwadi Sahika who also suffered removal because of instruction of Commissioner, Chambal Division, vide Writ Petition No.7591/2015 (Smt. Rajkumari Sharma Vs. The State of M.P. & Others) which was allowed vide order dated 15.07.2016 by the Coordinate Bench of this Court on the ground of non-affording of any opportunity of hearing, but somehow this petition kept pending.

5. It is the submission of learned counsel for petitioner that case suffers from non-compliance of principles of natural justice, because at the first instance no opportunity of hearing was given to petitioner and inspection carried out on 07.10.2015 and on same day i.e. 7.10.2015, impugned order has been passed. He relied upon the judgments in the cases of Nisha Devi Vs. State of Himachal Pradesh & Others, 2014 (16) SCC 392 and Kansa Vs. State of M.P. and others, 2015 (4) MPLJ 151.

6. It is further submitted that since Commissioner instructed the Project Officer to proceed against petitioner for termination, therefore, appeal before the Collector, District Bhind (as appellate authority) who happens to be under the administrative jurisdiction of Commissioner, Chambal Division, would not have been an effective remedy and it would have been an empty formality. He also raised the point that second appeal would go ultimately before the same authority (i.e. Commissioner Chambal Division) who instructed the Project Officer to remove petitioner. Therefore, at second appeal stage also, she would not have got fair hearing. He relied upon the judgment in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and others, 1998 (8) SCC 1 to meet out the argument of alternative remedy.

7. It is also the submission of learned counsel for the petitioner that when the Court granted interim order with a word of caution about any appointment subsequent to filing of petition, and if any, appointment is made then it shall be subject to the final outcome of writ petition and when on the same set of facts, case of another similarly placed candidate like petitioner vide W.P.No.7591/2015

is being allowed vide order dated 15.07.2016 by the Coordinate Bench of this Court on the ground of denial of opportunity of hearing, then, case of petitioner also deserves to be allowed and she ought to be reinstated. According to him, petitioner is made out her case therefore respondent No.4 ought to go, making way for petitioner for reinstatement.

8. Per contra, learned counsel for the respondents No.1 to 3/State opposed the prayer on the ground that Commissioner had no personal bias against petitioner and it was her casualness which adversely affected her because Commissioner found her absent from the place where she had to perform duty, therefore, plea of bias is misplaced. He also raised the question of alternative remedy as according to him, petitioner has remedy of preferring appeal before the Collector, District Bhind rather than approaching this Court. She deserves to be relegated to the appellate authority.

9. Learned counsel for the respondent No.4 also opposed the prayer on the ground that now she has been appointed and since no stay was granted in specific term, therefore she has rightly been appointed. Petition deserves dismissal because of the fact that respondent No.4 is working at her place.

10. Heard the learned counsel for the parties at length and perused the documents appended thereto.

11. This is the case where petitioner, who was working as Anganwadi Sahayika at the relevant point of time, was terminated vide the impugned order dated 7.10.2015. From perusal of the impugned order, it appears that Commissioner, Chambal Division, Morena made a surprise inspection on 7.10.2015 at Anganwadi Kendra No.3 Gurikha in which petitioner was found absent. Commissioner directed the S.D.O., Gohad to direct the Project Officer about removal of petitioner and in consequence thereof, vide order dated 7.10.2015, she was removed. Incidentally, inspection was carried out on 7.10.2015 and instructions were issued by Commissioner to S.D.O. (Revenue) on the same date i.e. 7.10.2015 who further communicated the directions of Commissioner on same date to Project Officer, Integrated Child Development Project and resultantly Project Officer removed the petitioner on same date. Therefore, it can be safely inferred that no opportunity of hearing was given to the petitioner and undue haste is shown in the case in hand.

12. When such prompt action is being taken for removal of petitioner then it violates not only principles of natural justice but also the guidelines issued in this regard vide order dated 10.7.2007 (Annexure P-5) issued by Women and Child Development Department, Government of Madhya Pradesh in which provision of opportunity of hearing is provided before removal of post. Said aspect has been considered by this Court in the case of Kansa vs. State of Madhya Pradesh and others, 2015 (4) M.P.L.J. 151 in detail. The Coordinate Bench, after considering different judgments of the Apex Court, came to the conclusion that opportunity of hearing is required to be given before terminating the services of Anganwadi

Sahayika.

13. The Apex Court in the case of Nisha Devi (supra) also considered the principle of audi alteram partem in this regard.

14. Not only this, one more aspect deserves consideration is the fact that Project Officer has passed the impugned order at the instance of S.D.O. and the S.D.O. directed the Project Officer at the instance of Commissioner, Chambal Division, Morena, therefore it was the case where competent authority i.e. Project Officer did not decide the case on his own but he acted as per the directions of Commissioner who happens to be the superior and appellate authority of the Project Officer (as well as the Collector). Therefore, at the instance of appellate authority, the decision of removal of petitioner had been taken. The Apex Court in the case of State of U.P. and Others vs. Maharaja Dharmender Prasad Singh and Others, 1989 (2) SCC 505 has given guidelines in such circumstances as under:-

"55. It is true that in exercise of powers of revoking or cancelling the permission is akin to and partakes of a quasi-judicial complexion and that in exercising of the former power the authority must bring to bear an unbiased mind, consider impartially the objections raised by the aggrieved party and decide the matter consistent with the principles of natural justice. The authority cannot permit its decision to be influenced by the dictation of others as this would amount to abdication and surrender of its discretion. It would then not be the authority's discretion that is exercised, but someone else's. If an authority "hands over its discretion to another body it acts ultra vires". Such an interference by a person or body extraneous to the power would plainly be contrary to the nature of the power conferred upon the authority. De Smith sums up the position thus:

The relevant principles formulated by the courts may be broadly summarised as follows. The authority in which a discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, a discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it: it must not act under the dictation of another body or disable itself from exercising a discretion in each individual case. In the purported exercise of its discretion it must not do what it has been forbidden to do, nor must it do what it has not been authorised to do. It must act in good faith, must have regard to all relevant considerations and must not be swayed by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously. Nor where a judgment must be made that certain facts exist can a discretion be validly exercised on the basis of an erroneous assumption about those facts. These several principles can conveniently be grouped in two main categories: failure to exercise a discretion, and excess or abuse of discretionary power. The two classes are not, however, mutually exclusive."

15. Same spirit has been echoed in the case of Pancham Chand and Others vs. State of Himachal Pradesh and Others, 2008 (7) SCC 117. This Court in the case of Smt. Makhano Kori vs. State of Madhya Pradesh and others, 2011 (2) M.P.H.T. 118 allowed the writ petition filed by then petitioner on same ground wherein authority did not exercise the discretion independently on its own. Here in the present case, Project Officer acted on the directions of Commissioner and the S.D.O.. He did not exercise the discretion and jurisdiction vested into him independently on his own. He acted at the behest of the superior authority.

16. So far as plea of alternative remedy is concerned, where from the facts, it is revealed that appeal would be an empty formality than bar of alternative remedy does not haunt the petitioner. Here, first appeal would go before Collector, Bhind who is subordinate to Commissioner, Chambal Division, Morena, therefore, filing of appeal before the Collector would be a futile exercise. Not only this, after Collector, second appeal would go before same authority namely Commissioner, Chambal Division. Therefore, person, at whose behest this order has been passed (Commissioner, Chambal Division) would hear the second appeal arising out of order of Collector. Therefore, appeal would not be an effective and efficacious remedy available to petitioner. In the case of Whirlpool Corporation (supra), three contingencies have been described wherein alternative remedy would not operate as a bar. Three contingencies are :- (i) Where the writ petition seeks enforcement of any of the fundamental rights. (ii) Where there is violation of principles of natural justice. (iii) Where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

17. This principle has further reiterated in Harbanslal Sahnia and Another vs. Indian Oil Corporation Limited and Others, 2003 (2) SCC 107 and recently in the case of Radha Krishan Industries Vs. State of Himachal Pradesh and Others, 2021 (6) SCC 771 wherein the Court has given guidelines as under :-

"27. The principles of law which emerge are that :

27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.

27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.

27.3. Exceptions to the rule of alternate remedy arise where: (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.

27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a

writ petition should not be entertained when an efficacious alternate remedy is provided by law.

27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.

28. These principles have been consistently upheld by this Court in *Chand Ratan v. Durga Prasad, Babubhai Muljibhai Patel v Nandlal Khodidas Barot and Rajasthan SEB v. Union of India* among other decisions.”

18. Therefore, considering all these facts and circumstances of the case and taking cue from the judgments referred above, it is apparently clear that in the present case, not only fundamental rights of petitioner to pursue occupation is violated but the impugned order violates principles of natural justice also. On close scrutiny, it is also apparently clear that discretion vested into Project Officer was virtually usurped by the superiority authority/appellate authority, therefore on this count also, case suffers from jurisdictional error also because jurisdiction is not exercised independently. Therefore, bar of alternative remedy does not come to the rescue of respondents.

19. In the considered opinion of this Court, impugned order suffers from vice of opportunity of hearing and violates the fundamental and statutory rights of the petitioner.

20. Now the question is the grant of relief.

21. From perusal of the order sheet, it appears that on 12.07.2016 while issuing notice to the respondents, it was made clear that any appointment made subsequent to passing of this order will be subject to final outcome of the writ petition. Incidentally, another writ petition of one similarly placed employee was allowed after three days on 15.07.2016 in W.P.No.7591/2015 (*Smt. Rajkumari Sharma Vs. The State of Madhya Pradesh*) but the case of the petitioner kept pending. Respondents filed reply on 3.8.2021 when they were imposed cost of Rs.10,000/- due to non-filing of reply and personal appearance of respondent No.2 (Commissioner, Chambal Division, Morena) was sought by this Court. Thereafter, reply was filed on 3.8.2021. Incidentally, after issuance of notice and order dated 15.07.2016 of another similarly placed employee, on dated 30.12.2016, private respondent namely Smt. Pooja W/o. Shri Jayendra Singh was appointed as Anganwadi Worker. Therefore, intention of respondents is apparent on record just to subterfuge the prospects of petitioner for

reinstatement. Same deserves deprecation.

22. Even otherwise, in the case of Swapna Mohanty Vs. State of Odisha & Ors., 2019 (2) SCC (L&S) 119, the Apex Court has considered the aspect of resultant vacancy and opined that if a person is appointed on the resultant vacancy of another employee whose case is pending before the Court then natural consequence of the order of termination of services of employee being set aside is that the new incumbent has to make way for him.

23. Cumulatively, this Court has no hesitation to hold that since the petitioner succeeds in her case, therefore, Law should lead to Justice, resultantly the private respondent i.e. respondent No.4 Smt. Pooja shall have to make way for petitioner.

24. Consequently, petition stands allowed and petitioner is directed to be reinstated as Anganwadi Sahayika at Anganwadi Kendra No.3 Gurikha and respondent No.4 stands ousted on account of reinstatement of petitioner. Respondents No. 1 to 3 may accommodate respondent No.4 to some other place if law and rules permit so, otherwise not. Since the petitioner did not serve during that period and in her place, respondent No.4 worked and received salary, therefore, reinstatement cannot be followed by back wages. Petitioner shall not be entitled for the same except reinstatement. However for other notional benefits her services of this period shall be counted.

25. However, it is expected that petitioner shall perform her duty sincerely and diligently as per the rules and guidelines and different duties.

26. Petition stands allowed and disposed of in above terms.