

(2001) 11 MP CK 0084
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1433 of 2000

Umesh Kumar Trivedi

APPELLANT

Vs

State Committee, Rajiv Gandhi Prathmik Shiksha Mission and
Others

RESPONDENT

Date of Decision : 19-11-2001

Acts Referred:

Citation : (2001) 11 MP CK 0084

Hon'ble Judges : Arun Mishra, J.

Bench : Single Bench

Final Decision : Allowed

Judgement

Arun Mishra, J.

The petitioner was appointed as Block Resource Centre Co-ordinator Sohawal, District-Satna in Rajiv Gandhi Prathmik Shiksha Mission. He was appointed on 5-10-1995 on contract basis initially for a period of one year. The services of the petitioner were continued after expiry of one year and he continued to work till date of his removal i.e. 9-2-2000 on which date District Mission Director terminated the services of the petitioner owing to his work being not satisfactory. Petitioner submits that his annual confidential reports are good; his services were satisfactory; no enquiry was pending against him; he was never informed of dereliction of duty. Thus, order of termination dated 9-2-2000 is illegal, arbitrary and be quashed. By way of amendment, it has been incorporated that after filing of the petition a revision was preferred before the Commissioner, Rewa which has been dismissed by the Commissioner on the ground of want of jurisdiction. It has been held that Commissioner has no jurisdiction to entertain the revision pertaining to a matter of Rajiv Gandhi Shiksha Mission.

In the return filed by the respondents Nos. 2 and 3, it is contended that appointment was contractual; it was to be reviewed after a period of one year. The petitioner did certain irregularities such as appointing two teachers without

sanction and paying them salary for a period of six months from the budget allotted by Rajiv Gandhi Prathamik Shiksha Mission. Further that he did not distribute the written material and the books sent for circulation amongst the students. An enquiry was conducted and the petitioner was found irregular; hence it was decided not to extend the contract of the petitioner. No meeting took place in the month of October, 1999. The period of contract which was initially for one year had already lapsed; thus, it is a case of non-extension of the term mentioned in the contractual appointment. No stigma was cast on the petitioner, hence no show cause notice was required to be given.

Learned counsel for petitioner submits that termination is contrary to the General Service Conditions for the Contractual Employees of the Mission. He places reliance on condition No. 4 of the conditions relating to termination, which reads as under:-

Persons working on contract can be terminated with one month notice if found inefficient. In case of persons found indulged in undesirable activities amounting to degradation of dignity of Mission, Mission Director shall reserve right to terminate him/her with immediate effect.

His further submission is that enquiry should have been conducted in case there was allegations; the petitioner was never warned about his unsatisfactory performance and unilateral decision was taken to dispense with his service.

Learned counsel for respondents Shri Singh submits that it is a case of non-extension of contractual appointment. The original contract stood expired in 1996. Thereafter there was general extension for one year. Thereafter no further extension was made. His service period was assessed and as irregularities were found as mentioned in the return, services of the petitioner were rightly removed in accordance with condition No. 4 relating to termination.

Bare perusal of the impugned order of removal which was passed on 9-2-2000 (Annexure P/2) records a categorical finding that the petitioner continued on contractual basis; his work was not found satisfactory; hence a decision was taken not to extend the period of contract; hence the contractual appointment was terminated forthwith and petitioner was ordered to be removed.

The petitioner was working from the year 1995 and it does not appear that he was issued any warning or any show cause notice requiring his explanation. Condition No. 4 relating to termination of an employee of Rajiv Gandhi Prathamik Shiksha Mission provides safeguard of one month's notice if the service of an employee is found inefficient. No such notice of one month was given to the petitioner. It is not the finding recorded in impugned order (Annexure P/2) that petitioner indulged in undesirable activities amounting to degradation of dignity of mission; hence his services could not be terminated with immediate effect.

The ground taken that decision is taken not to extend the contractual period; hence services are dispensed with forthwith has to be read in consonance with

condition No. 4 relating to termination. In case of inefficiency to terminate a contract, one month's notice is required which was not given. When condition specifically provides of service of notice of one month in the case of inefficiency, this condition cannot be get rid of under the guise of non-extension of contractual period. The removal, thus, was contrary to condition contained in clause 4 relating to termination and the same is held to be illegal.

In the return, there are serious allegations levelled against the petitioner of making appointment in an illegal manner and not distributing the books. As a matter of fact, petitioner ought to have been required to show cause and a by-party enquiry should have been conducted into the allegations if the services of the petitioner were to be dispensed with on that basis. The misconduct alleged in the return was the "foundation" and not merely a "motive". Thus, it was necessary to have conducted an enquiry. In *Jarnail Singh and Others Vs. State of Punjab and Others*, , the Supreme Court held that in such circumstances, it is imperative to conduct an enquiry even where the services are ad hoc in its nature. No enquiry was conducted and outrightly the petitioner was given march order, that too after rendering the services for about a period of five years. His services shall be deemed to be extended for want of specific order of extension and if termination was to be made, clause 4 containing the condition relating to termination should have been complied with. The impugned order Annexure P/2, thus, cannot withstand the judicial scrutiny. The same is liable to be quashed and is hereby quashed. The petitioner is directed to be reinstated along with back wages.

Writ petition is allowed. Annexure P/2 is quashed. Reinstatement of the petitioner is directed along with back wages. Principle of "no work no pay" is not applicable as the petitioner's removal has been found to be illegal and contrary to rules and without following the principles of natural justice.