

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKH AT SRINAGAR**

Reserved on: 09.06.2023
Pronounced on:11.07.2023

WP(C) No.3932/2019

ABID AHMAD GANAI

...PETITIONER(S)

Through: - Mr. Jahangir Iqbal Ganai, Sr, Adv. with
M/S Mehnaz Rather and Junaid Bin Azad, Advocates

Vs.

UT OF J&K & ORS

...RESPONDENT(S)

Through: - Mr. Mohsin S. Qadiri, Sr. AAG, with
Ms. Maha Majeed, Advocate.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The petitioner has challenged order No.64/ADPC/Ang of 2019 dated 07.12.2019 read with communication No.RD/MGNREGA/114/2019 dated 03.12.2019, whereby his engagement as Gram Rozgar Sahayak has been terminated.

2) Briefly stated, case of the petitioner is that in terms of order No.44/ACDA of 2014 dated 26.06.2014, he was engaged as a Gram Rozgar Sahayak for a period of one year for Panchayat Halqa Paibugh. In terms of order bearing No.KB 30708 dated 16.05.2018, issued by respondent No.5, the petitioner was assigned the additional charge of Halqa Aakura.

3) It appears that a news item was published in the newspaper "Daily Greater Kashmir" on 14th May 2019, wherein it was reported that brazen

irregularities and fake MGNREGA job card scam had taken place in district Anantnag, particularly in Halqa Aakura of Block Khoveripora. After the publication of aforesaid news item, respondent No.2 issued Order No.24 ACDA of 2019 dated 25th of May 2019, whereby the petitioner as also incharge Block Development Officer, Khoveripora and Panchayat Secretary Halqa Aakura, were, directed to report in the office of respondent No.2. On 04,06.2019, responded No.4 issued a show cause notice to the petitioner calling upon him to submit his written response within seven days as to why his services be not terminated. According to the petitioner, he responded to the show cause notice with a detailed reply, wherein he denied all the allegations levelled against him in the show cause notice. It has been contended that without adhering to the principles of natural justice and without considering the reply furnished by the petitioner, his services were terminated in terms of impugned order dated 07.12.2019.

4) The petitioner has challenged the impugned order of termination on the grounds that once he had denied the allegations levelled against him in the show cause notice, the respondents could not have terminated his services without holding a detailed enquiry in the matter. It has been submitted that the impugned order has been passed by the respondents in violation of principles of natural justice and that the petitioner has not been given a fair hearing. It has been contended that all the allegations levelled against him in the show cause notice were specifically replied and responded to by the petitioner and in this regard, he has also placed

on record copies of the documents to substantiate his contention. It has been further submitted that the petitioner has not been provided copy of the report of the Committee so as to enable him to submit his response. According to the petitioner, with the issuance of impugned order of termination, he has been visited with civil consequences without being heard in the matter.

5) The writ petition has been contested by the respondents by filing objections thereto. In their response, the responders have submitted that upon publication of news item in daily “Greater Kashmir” on 14th May 2019, wherein brazen irregularities and issuance of fake MGNREGA job cards were reported, a Committee of Officers was constituted by the respondents to enquire into these allegations. It has been submitted that the said Committee found certain deviations/discrepancies/irregularities and it was established that the job cards have been issued in violation of rules and norms of the scheme. On the basis of the preliminary enquiry report, Incharge Block Development Officer, Khoveripora, Panchayat Secretary, Aakura, and Gram Rozgar Sahayak i.e., the petitioner herein, were attached with the Director, Rural Development Department, Kashmir, in terms of order dated 23.05.2019. It has been further contended that the Committee submitted its final report and on the basis of the recommendations of the Committee, the impugned order of termination of the petitioner was issued. It has been contended that as per condition No.5 of the letter of engagement issued in favour of the petitioner, his services were terminable at any time on the basis of proven

misbehaviour and poor performance and, as such, once upon enquiry it was found that behaviour of the petitioner was not up to the mark, the order of his termination had to follow. It has also been contended that even as per condition No.7 of the engagement letter, any act of indiscipline renders the engage liable for termination without any notice. It has been contended that having regard to the fact that engagement of the petitioner was contractual in nature and was not against any permanent post, as such, he cannot insist upon adherence to the procedure contemplated under Article 311 of the Constitution of India prior to termination of his services.

6) I have heard learned counsel for the parties and perused the record including record of the enquiry produced by the respondents pursuant to directions of this Court.

7) A perusal of the record shows that after the publication of news item regarding irregularities in the functioning of MGNREGA scheme in Panchayat Halqa, Aakura of block Khoveripora District Anantnag, a Committee was constituted by the Government vide order No.163-RD&PR of 2019 dated 14.05.2019. The Committee comprised three officers, namely, Sh. Mohammad Ashraf Wani, Deputy Director (Planning), DRDK, Sh. Imtiyaz Ahmad Sofi, Divisional MIS Consultant, DRDK, and Shri Sudershan Kumar (KAS), Department of RD&PR, J&K Civil Secretariat, Srinagar. The Committee submitted its preliminary report wherein certain observations were made by the said Committee in respect of as many as seven allegations. The same are reproduced as under:

S. No.	Name of the job card holder and allegations thereof	Observations
1.	<i>Bashir Ahmad Tantray S/o Gh. Nabi is registered twice under job card No's 261 and 574</i>	As reported by the locals, there are 03 persons in the name of Bashir Ahmed Tantray out of which two are job card holders. One Bashir Ahmad Tantray was identified by the locals and Pyt. Secretary concerned having job card No. 261 in his name and the details of the other applicants willing to work include Bashir Tantray, Hajra, Arshid, Farooq, Dilshada and Shabroza. However, the daughter of Bashir Ahmed Tantray namely Shabroza has been married to Tariq Ahmad (Actual resident of bijbehra) who is now residing in the same village and is also having a job card in her name bearing No 657. Besides, one son namely Arshid Tantray is also having job card bearing No 510 who is living separately as verified from the Ration Card (copy enclosed) issued in his favour. Some of the family members of Bashir Ah Tantray have also been included in the job card of Aadil Bhat bearing job card No 216, as verified from MIS. However, the job cards of the beneficiaries were not made. available before the committee for cross examination.
2.	Tantray's son-in- aw of Bashir Ah. Tantray has also been issued job card bearing No. 658	The actual position in this regard could not be ascertained due to incomplete parentage entered in MIS report. However, as per local enquiry Tariq Ahmad bearing job card No. 658 resides in the same panchayat halqa which can only be authenticated after detailed enquiry.
3	Shabroza too has a separate job card bearing No. 657	As verified from the MIS and also confirmed from the locals that Shabroza W/o Tariq Ahmad son-in-law of Bashir Ahmad Tantray has a separate job card and is also an applicant of Job Card No 261.
4	RDD has even shown M. Maqbool Dar bearing job card No. 285 who died way back in 2014 having done 26 days of labour in October 2018	The locals in presence of BDO and Panchayat Secretary identified a person as Mohamad Maqbool Dar S/o Ali Mohammad Dar. When he was asked to produce his identity proof, he was not able to produce any document in proof of his identity stating that his ration card is in the Ration Depot, his Bank Pass Book is with his wife who was not present there. Only election card was produced before the committee which was ineligible and was without parentage. The statement clearly indicates that there is possibility of some other person also in the name of M. Maqbool Dar which can be traced out once the detailed enquiry is conducted.
5.	Separate job card has been issued in favour of a 5 year old	The Committee approached residence of the Issued in said job card holder and found that

	minor Zara Bint Rayees bearing job card No.615 who been shown as household head.	whole family was absent. Her aunt stated that she has gone to maternal home to attend the condolence ceremony of her grandmother who has expired recently. She also stated that Zara binti Rayees has passed 12 th Class examination recently. However, Panchayat Secretary could not confirm the statement.
6	Job card has been issued for a retired Lecturer Hamid ullah Wani and Serving Policeman Mushtaq Ah. Parray	Locals confirmed that a retired teacher Hamid ullah Wani is a job card holder while as Mushtaq Ahmed Parray is an auto driver. This needs to be enquired from the job card and some other documents which were not produced before the committee.
7	Job card has been issued twice in the name of Manzoor Ah Lone bearing No. 260 and 598	The locals as well as BDO and Panchayat Secretary could not identify the actual beneficiary. However, as per MIS, 02 No. Job cards have been issued in the name of Manzoor Ahmad bearing No. 260 and 598. Job Card No. 260 is having 04 applicants and job card No. 598 is having 02 and one applicant namely applicants and Shaista is existing in both the job cards.

8) On the basis of aforesaid observations, the Committee suggested that a detailed enquiry be conducted into the matter. It appears that for the purpose of holding the preliminary enquiry, the Committee had visited various residences of job card holders and interacted with local population. It also appears that at the relevant time, whole of the record was not provided to the Committee as some of the record was in custody of the petitioner who was on two day's leave. The preliminary enquiry report further recommended that a detailed enquiry into the matter was required to be made. Recommendation for attachment of the Block Development Officer, Khoveripora, Panchayat Secretary, Aakura and Gram Rozgar Sahayak was also made in the preliminary report dated 15.05.2019. Pursuant to the aforesaid report, the petitioner and other two officials/officers were attached to the office of Director, Rural Development Department, Kashmir, in terms of order dated 25.05.2019.

9) The record further suggests that the Committee visited the spot again on 24th July, 2019, and on the said date, the relevant record was made available to the Committee. After scrutinizing the records, it was observed by the Committee in its final report dated 17.09.2019 that the records were not maintained properly as per the guidelines of MGNREGA. It was also found that excepting allegations at serial Nos.4 and 5 of the preliminary report, all other allegations were established.

10) It seems that on the basis of the preliminary report, show cause notice dated 4th June, 2019, was issued to the petitioner whereby the observations recorded in the preliminary report of the Committee were conveyed to the petitioner and he was directed to submit his response within seven days of issuance of the notice. After the final report of the Committee dated 17.09.2019 was received by the respondents, the impugned communication dated 03.12.2019 was issued whereby a direction was issued for termination of services of the petitioner as also MIS Operator, Halqa Aakura. Accordingly, impugned order dated 07.12.2019 came to be issued whereby the services of the petitioner were terminated.

11) From the aforesaid sequence of events, it comes to the fore that the respondents issued show cause notice to the petitioner on the basis of findings made in the preliminary report of the Committee and the reply to the show cause notice submitted by the petitioner has been considered by the respondents in the light of the findings recorded by the Committee in its final report. It appears that the respondents did not find any substance

in the explanation tendered by the petitioner when the same was considered in the light of the observations made by the Committee in its final report, wherein it has been clearly indicated that after scrutinizing the record, all the allegations against the petitioner excepting allegation Nos.4 and 5 contained in the preliminary report were found to have been substantiated.

12) The question that arises for consideration is as to whether the petitioner was entitled to be subjected to a regular departmental enquiry before terminating his services as, admittedly, the order of his termination is stigmatic in nature. In this regard, it is to be noted that the petitioner was not working as a regular employee against a civil post but he was engaged on temporary basis on consolidated wages for one year and his engagement was continued after the expiry of initial period of one year and, therefore, the safeguards available to an employee appointed on a civil post as contained in Article 311 of the Constitution of India and the Jammu and Kashmir Civil Service (Classification, Control and Appeal) Rules, 1956, are not available to the petitioner. The terms and conditions of engagement of the petitioner are governed by the engagement letter dated 27th June, 2014. Condition No.5 of the said engagement letter provides that services of the engagee shall be terminable at any time on the basis of proven misbehaviour/poor performance. Similarly, condition No.7 of the conditions provides that any act of indiscipline shall render the engagee liable to termination without any notice. From a perusal of these conditions, it is clear that the petitioner's services were terminable at

any time on the basis of proven misbehaviour/poor performance and his services were also terminable without notice if any of his acts amounted to indiscipline.

13) The respondents have, before terminating the services of the petitioner, constituted a Committee of officers and the said Committee of officers has scrutinized the records and rendered its final report. After scrutinizing the records, the Committee has found that some of the allegations against the petitioner are substantiated. Even in the reply to show cause notice, the petitioner may have denied most of the allegations, but he has given unsatisfactory reply to the allegation regarding adding sons of Bashir Ahmad in the job card of Adil Ahmad and similarly, he has virtually admitted that the job cards have been issued in favour of minors. In the face of this reply to the show cause notice coupled with the findings of the Committee given in its final report after scrutiny of the records, the respondents were well within their rights to presume that the petitioner has indulged in misbehaviour and indiscipline while performing his functions, which entail termination of his services in terms of the conditions of the engagement letter.

14) Learned Senior counsel appearing on behalf of the petitioner has placed much reliance on the judgments of the Supreme Court in the case of **Radhey Shyam Gupta vs. U.P. State Agro Industries Corporation Ltd. and another**, (1992) 2 SCC 21, and **Nar Singh Pal vs. Union of India and others**, (2000) 3 SCC 588, to drive home the point that even a temporary employee is entitled to a full-fledged regular enquiry before

termination of his services in a case where his termination is stigmatic in nature.

15) So far as **Radhey Shyam Gupta's** case (supra) is concerned, the same related to an employee who was posted as Branch Manager in the UP State Agro Corporation. He was a permanent employee of the Corporation, and it is in those circumstances that the Supreme Court held that where the termination of an employee is stigmatic in nature and the same is done without holding a regular departmental enquiry, it would be bad in law.

16) In **Nar Singh Pal's** case (supra), the employee had acquired a temporary status and it was observed by the Supreme Court that once an employee attains temporary status, he becomes entitled to certain benefits, one of which is that he becomes entitled to Constitutional protection envisaged by Article 311 of the Constitution and other Articles dealing with services under the Union of India.

17) The ratio laid down in the above referred two judgments is not applicable to the facts of the instant case as the petitioner was neither a regular employee of the respondents nor had he acquired the temporary status. The engagement of the petitioner with the respondent department was purely contractual in nature governed by the terms and conditions of his engagement letter.

18) The Supreme Court in the case of **Union Public Service Commission v. Girish Jayanti Lal Vaghela**, (2006) 2 SCC 482, has held

that a person appointed on contractual basis does not enjoy the protection of Article 311(2) for the simple reason that he is not member of a civil service of the Union or an All India Service or a civil service of a State or holds a civil post under the Union or a State.

19) A Division Bench of Delhi High Court, in the case of **Ravinder Kaushik vs. Union of India and anr.** (WP(C) No.12186/2016 decided on 13.02.2018) has, in a case where the services of a driver, who had been engaged on contractual basis, were terminated, upheld the order of his termination in somewhat similar circumstances.

20) For what has been discussed hereinbefore, it is clear that termination of the petitioner from his services has been effected in accordance with the conditions of his engagement after following the principles of natural justice and after considering his reply to the show cause notice in the light of the final report of enquiry. The contention of learned senior counsel appearing for the petitioner that the petitioner was entitled to a full-fledged regular enquiry with a right to participate in the said enquiry, is misconceived having regard to the nature of engagement of the petitioner. The petition, therefore, lacks merit and is dismissed.

21) The record be returned to learned counsel for the respondents.

(Sanjay Dhar)
Judge

Srinagar,
11.07.2023
“Bhat Altaf, PS”

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No