

THE HIGH COURT OF MADHYA PRADESH 1
WP 21814 of 2018
Sinnam Singh vs. State of MP and Ors.

Gwalior, Dated :23/03/2021

Shri Prashant Sharma, Counsel for the petitioner.

Shri Varun Kaushik, Govt. Advocate for the respondents/
State.

This petition under Article 226 of the Constitution of India has been filed against the order dated 02/01/2018 passed by Commandant, 2nd Battalion, SAF, Gwalior thereby putting the services of the petitioner to an end under Regulation 59 of the Madhya Pradesh Police Regulations.

(2) Against the said order, the petitioner had preferred an appeal which has been dismissed by order dated 09/04/2018 passed by Inspector General of Police, SAF, Gwalior Range, Gwalior. Thereafter, the petitioner preferred a mercy appeal which too has been dismissed by the respondents by the impugned order dated 30/08/2018.

(3) It is the case of the petitioner that an advertisement was issued in the year 2014 for recruitment on the post of Constable and after due medical and character verification, the petitioner was granted appointment by appointment order dated 01/01/2014 (Annexure P4). The petitioner was appointed on probation of two years. One of the conditions of the appointment order was that in the light of Rule 12 of the Madhya Pradesh Government Servants

THE HIGH COURT OF MADHYA PRADESH 2
WP 21814 of 2018
Sinnam Singh vs. State of MP and Ors.

(Temporary and Quasi-permanent Service) Rules, 1960 (in short "the Rules,1960"), the services of the petitioner can be discontinued by giving one month's notice or one month's advance salary in lieu thereof.

(3) It is submitted that on account of sickness of the father of the petitioner, he remained absent from his duties w.e.f. 15/04/2017 and did not submit his joining thereafter. Therefore, the services of the petitioner were discontinued by order dated 02/01/2018 as per the provisions of Regulation 59 of the Madhya Pradesh Police Regulations. It is the case of the petitioner that since the father of the petitioner was of old-age and had fallen sick which was in the knowledge of the Department, yet the services of the petitioner were put to an end. The petitioner preferred an appeal along with medical documents of the sickness of the father of the petitioner but the same was not taken into consideration and the appeal was rejected. The copy of the medical certificates of the sickness of the father of the petitioner have been filed as Annexure P5. Thereafter, the mercy appeal has also been dismissed.

(4) It is submitted by the Counsel for the petitioner that in the impugned order dated 02/01/2018, the respondent No.4 did not disclose the reasons for putting the services of the petitioner to an

THE HIGH COURT OF MADHYA PRADESH 3
WP 21814 of 2018
Sinnam Singh vs. State of MP and Ors.

end but in the appeal, it was specifically mentioned that the petitioner was in habit of remaining on unauthorized absence and on one occasion, one minor penalty was also imposed. Multiple opportunities were given to the petitioner to improve his conduct but he did not improve. The petitioner had remained on unauthorized absence for 102 days from his Training Institute and when he was sent back to his original Unit, then again he remained on unauthorized absence for 54 days and accordingly, it was held that from 15/04/2017 the petitioner remained on unauthorized absence till passing of the impugned order dated 02/01/2018. It is submitted that the reason assigned by the Appellate Authority is stigmatic in nature and, therefore, a Departmental Enquiry should have been conducted against the petitioner. It is further submitted that the original period of probation was for two years and according to Regulation 59 of Madhya Pradesh Police Regulations, the period of probation can be extended by further period of six months for two times. It is submitted that since the petitioner was appointed in the year 2014 and although no specific order was issued thereby confirming him in service but as the probation period of the petitioner was not extended after completion of his three years (including the extension period), therefore, it has to be presumed that the

THE HIGH COURT OF MADHYA PRADESH 4
WP 21814 of 2018
Sinnam Singh vs. State of MP and Ors.

petitioner was confirmed in the service and accordingly, his services could not have been terminated without holding a Departmental Enquiry.

(5) *Per contra*, the petition is vehemently opposed by the Counsel for the State. It is submitted that in the impugned order dated 02/01/2018, no reasons were assigned, therefore, it was a discontinuation simplicitor without any allegation/stigma. Only in the memo of appeal, as the petitioner had raised a question of absence of reasons, therefore, in order to consider the grounds raised in the appeal, the Appellate Authority has considered the previous conduct of the petitioner, which cannot be said to be stigmatic in nature. It is further submitted that there is no provision of law which provides that if order of extension of probation is not passed after completion of probation period, then an employee shall be treated to be confirmed in the service.

(6) Heard the learned Counsel for the parties.

(7) So far as the factual aspects are concerned, it has not disputed by the petitioner that he remained on unauthorized absence for a period of 102 days in the Training Institute. When he was sent back, he also did not attend in his Unit for a period of 54 days and from 15/04/2017 till passing of the impugned order dated 02/01/2018, the petitioner was on unauthorized absence.

THE HIGH COURT OF MADHYA PRADESH 5
WP 21814 of 2018
Sinnam Singh vs. State of MP and Ors.

The only explanation which he has given for his unauthorized absence is that the father of the petitioner was sick. The petitioner has filed the medical certificates purportedly issued by Medical Officer (issued by Gazetted /Non-Gazetted Government Servant of Madhya Pradesh). Undisputedly, the father of the petitioner was not a Government employee. The petitioner has not filed any medical prescriptions of his father to show that his father was seriously sick. The petitioner also could not point out any legal provision of law which authorizes an employee to remain on unauthorized absence without informing and seeking leave from the Department on any ground. The Government employee cannot be permitted to remain on unauthorized absence without informing the Department and specifically when the petitioner was a Constable in SAF, which is a uniform disciplined force.

(8) Accordingly, in absence of any medical prescriptions and receipts of medicines, this Court is of the considered opinion that the petitioner has failed to make out a *prima facie* case to show that his father had fallen seriously sick. Even otherwise, in absence of any prior sanction, the petitioner could not have remained on unauthorized absence from 15/04/2017. Furthermore, from the medical documents, it appears that the father of the petitioner was suffering from joint pain, thus, it

THE HIGH COURT OF MADHYA PRADESH 6
WP 21814 of 2018
Sinnam Singh vs. State of MP and Ors.

cannot be said that the father of petitioner was suffering from any serious ailment.

(9) The counsel for the petitioner could not point out any provision of law which provides that in case if the probation period is not extended after the period of three years (including two extensions) from the date of appointment, then the petitioner has to be treated as a confirmed employee.

(10) The Supreme Court in the case of **Tarsem Lal Verma vs. Union of India and Others**, reported in (1997) 9 SCC 243 has held that mere expiry of one year beyond the original two-year period of probation would not result in automatic confirmation.

(11) The Supreme Court in the case of **Registrar, High Court of Gujarat vs. C.G. Sharma**, reported in (2005) 1 SCC 132, has held that even if the period of two years of probation expires and the probationer is allowed to continue after a period of two years, automatic confirmation cannot be claimed as a matter of right because in terms of the Rules, the confirmation order can be passed only if there is vacancy and the work is found to be satisfactory, which are the prerequisites or preconditions for confirmation.

(12) The Supreme Court in the case of **C. V. Satheeshchandran vs. General Manager, UCO Bank and Others**, reported in

THE HIGH COURT OF MADHYA PRADESH 7
WP 21814 of 2018
Sinnam Singh vs. State of MP and Ors.

(2008) 2 SCC 653, has held that expiry of the probation period does not necessarily mean confirmation and at the end/ expiry of the period of probation, normally an order confirming the officer is required to be passed and if no such order is passed, he shall be deemed to have continued on probation unless the terms of appointment or the relevant rules governing the service conditions provide otherwise.

(13) Under these circumstances, it would be appropriate to consider the Service Rules governing the service conditions of the employees of the State Government.

(14) Rule 8 of Madhya Pradesh Civil Services (General Conditions of Services) Rules, 1961 [in short " the Rules, 1961"] reads as under:-

"8.Probation.- (1) A person appointed to a service or post by direct recruitment shall ordinarily be placed on probation for such period as may be prescribed.

(2) The appointing authority may, for sufficient reasons, extend the period of probation by a further period not exceeding one year.

(3) A probationer shall undergo such training and pass such departmental examination during the period of his probation as may be prescribed.

(4) The services of a probationer may be terminated during the period of probation if in the opinion of the appointing authority he is not likely to shape into a suitable Government servant.

(5) The services of a probationer who has not passed the departmental examination or who is found unsuitable for the service or post may be

THE HIGH COURT OF MADHYA PRADESH 8
WP 21814 of 2018
Sinnam Singh vs. State of MP and Ors.

terminated at the end of the period of his probation.

[(6) On the successful completion of probation: and passing of the prescribed departmental examination, if any, the probationer shall, if there is a permanent post available, be confirmed in the service or post to which he has been appointed, either a certificate shall be issued in his favour by the appointing authority to the effect that the probationer would have been confirmed but for the non-availability of the permanent post and that as soon as a permanent post becomes available he will be confirmed].

[(7) A probationer, who has neither been confirmed, nor a certificate issued in his favour under sub-rule (6), nor discharged from service under sub-rule (4), shall be deemed to have been appointed as a temporary Government servant with effect from the date of expiry of probation and his conditions of service shall be governed by the Madhya Pradesh Government Servants (Temporary and Quasi-Permanent Service) Rules, 1960]."

Rule 2(d) and Rule 12 of Rules, 1960 read as under:-

"2. In these rules, unless there is anything repugnant in the subject or context-

(a) xxx xxx xxx

[(b) xxx xxx xxx

[(c) xxx xxx xxx

(d) "Temporary service" means officiating or substantive service in a temporary post, and officiating service in a permanent post, under State Government and also includes the period of leave with allowance taken while on temporary service and complete years of approved war-service, which have been counted for fixation of pay and seniority.

xxx xxx xxx

12.(a) Subject to any provision contained in the order of appointment or in any agreement between the Government and the temporary Government servant who is not in quasi-permanent service shall be liable to termination at any time by notice in writing given either by the Government servant to the appointing authority or by the appointing authority to the

THE HIGH COURT OF MADHYA PRADESH 9
WP 21814 of 2018
Sinnam Singh vs. State of MP and Ors.

Government servant:

[Provided that the services of any such Government servant may be terminated forthwith and on such termination, the Government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before such termination or, as the case may be, for the period by which such notice falls short of one month :]

Provided further that the payment of allowances shall be subject to the conditions under which such allowances are admissible.

(b) The period of such notice shall be one month unless otherwise agreed between the Government and the Government servant."

(15) Rules 8(7) of the Rules, 1961 provides that a Probationer, who has neither been confirmed, nor a certificate issued in his favour under sub-rule (6), nor discharged from service under sub-rule(4), shall be deemed to have been appointed as a temporary Government servant with effect from the date of expiry of probation and his conditions of service shall be governed by the Rules, 1960.

(16) From the plain reading of Rule 12 of the Rules, 1960, it is clear that the services of a temporary Government employee are liable to be terminated at any time by notice in writing given either by the Government servant to the appointing authority or by the appointing authority to the Government servant. Provided that the services of any Government servant may be terminated forthwith and on such termination, the Government servant shall

THE HIGH COURT OF MADHYA PRADESH 10
WP 21814 of 2018
Sinnam Singh vs. State of MP and Ors.

be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before such termination or as the case may be, for the period by which such notice falls short of one month.

(17) Thus, it is clear that the services of temporary employee can be terminated by issuing one month's notice or by making payment of one month's advance salary in lieu of notice. If the order dated 02/01/2018 is tested in the light of Rule 12 of the Rules, 1960, then it is clear that neither one month's notice has been given nor one month's salary in advance has been paid in lieu of the notice as required under Rule 12 of the Rules, 1960.

(18) As per Rule 12(b) of the Rules, 1960, the period of notice shall be one month notice unless otherwise agreed between the Government and Government servant.

(19) Now the next question for consideration is as to whether the order dated 02/01/2018 is bad in law in absence of one month's notice or advance salary of one month or not?

(20) Rule 12 of the Rules, 1960, provides that in case of immediate termination, an employee can claim a sum equivalent to the amount of his pay of one month. The use of words "is entitled to claim" clearly indicates that the instant termination

THE HIGH COURT OF MADHYA PRADESH 11
WP 21814 of 2018
Sinnam Singh vs. State of MP and Ors.

without one month's salary would be an irregularity and can be rectified by directing the respondents to pay one month's salary in lieu of one month's notice.

(21) Under these circumstances, this Court is of the considered opinion that the impugned order dated 02/01/2018 (Annexure P3) passed Commandant, 2nd Battalion, SAF, Gwalior is required to be modified and accordingly, it is directed that the petitioner shall be entitled for one month's salary in lieu of one month's notice. With aforesaid modification, the orders dated 02/01/2018, 09/04/2018 and 30/08/2018 are hereby affirmed. It is directed that the petitioner shall be entitled for one month's salary in lieu of one month's notice as provided under Rule 12 (b) of the Rules, 1960. Let one month's salary be paid to the petitioner within a period of **three months** from today.

(22) With aforesaid observations, this petition is **finally disposed.**

(G.S. Ahluwalia)
Judge