

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI)

WRIT APPEAL No. 742 of 2020

Case Number	W.A. No.742/2020
Parties Name	1. STATE OF M.P. THROUGH WOMEN AND CHILD DEVELOPMENT DEPARTMENT PRINCIPAL SECRETARY VALLABH BHAWAN BHOPAL (MADHYA PRADESH) 2. THE ADDITIONAL COLLECTOR DHAR (MADHYA PRADESH) 3. THE PROJECT OFFICER INTEGRATED CHILD DEVELOPMENT SCHEME DHAR (MADHYA PRADESH) Vs 1. SMT. NIRMALA RAWAT W/O BATTU SINGH RAWAT OCCUPATION: UNEMPLOYED AMBEDKAR CHOWRAHA, MANAWAR (MADHYA PRADESH)
Date of Order	08/04/22
Bench	<u>Division Bench:</u> Justice Vivek Rusia Justice Amar Nath (Kesharwani)
Judgment delivered by	Justice Vivek Rusia
Whether approved for reporting	Yes
Name of counsel for parties	Shri Aditya Garg, learned counsel for the appellants/State. Shri L.C. Patne, learned counsel for the respondent/State.
Law laid down	In the present case, even if the petitioner was found absent from duty for which she has submitted an explanation with necessary documents, then enquiry ought to have been conducted. If after enquiry the charges are found proved, then only the punishment order ought to have been passed. The

	<p>clause 4-D of the circular dated 10.7.2007 specifically provides that:- “सुनवाई का अवसर देते हुए जांच में दोषी पाये जाने पर” it means there are two requirements i.e. No.1. the opportunity of hearing and No.2. if found guilty after enquiry. Hence Agwanwadi Workers/ Assistants can be terminated only after proving the charge after conducting an enquiry. Hence the contention of the learned Government Advocate cannot be accepted that there is no provision for conducting enquiry in the circular dated 1.07.2007. Hence in absence of following the provision, the writ court has rightly passed the impugned order and no interference is required.</p> <p>The State Government should think about providing some minor or other major punishments by amending the circular dated 10.07.2007. Even it is found that misconduct is minor but in the circular dated 10.07.2007 except for termination, no other punishment is there. In every service rule, there are two types of punishments minor and major and under these two broad categories other types of minor and major punishments are provided. Therefore, for these Aganwadi workers and Assistants, there should be a proportionality between misconduct and punishment.</p>
Significant paragraph numbers	11

(HEARD ON 29.03.2022)

(ORDER PASSED ON 08.04.2022)

PER: VIVEK RUSIA, J.

The appellant/State has filed the present writ appeal against the order

dated 18.06.2019 passed in writ petition no.1434/2019 whereby the writ petition filed by the respondent/writ petitioner has been allowed.

The facts of the case in short are as under:-

1. That vide order dated 11/03/2001 the petitioner was appointed on the post of Anganwadi Worker in Anganwadi Centre, Sala (Rajukhedi), Tehsil – Manawar, District- Dhar upon recommendation of a duly constituted Selection Committee. A show-cause notice dated 22/09/2017, was issued to the petitioner calling upon her to submit an explanation over the general allegation of not residing at the headquarters, and absenteeism on the dates of inspection, within a period of three days from the date of receipt of the show-cause notice. As the petitioner was suffering from viral fever, therefore, she was on leave w.e.f. 24/09/2017 to 28/09/2017, and thereafter, she was declared fit by the registered Medical Practitioner w.e.f. 29/09/2017, therefore, on the same day i.e.29/09/2017, she submitted her reply denying the allegations made in the show-cause notice. However, without holding any enquiry as contemplated under circular dated 10/07/2007, respondent no. 3 passed the order dated 27/09/2017.

2. Being aggrieved by that order, the petitioner filed a writ petition before this Court i.e. W.P no. 22351/2017, which was dismissed vide order dated 19/12/2017 with the direction to the petitioner to prefer an appeal against that order. In pursuance of the directions issued by this Court, the petitioner preferred an appeal, however, the said appeal was also dismissed by the Appellate Authority vide order dated 14/08/2018. Being aggrieved by that order, the petitioner has filed the writ petition before this Court.

3. The appellants/respondents filed the reply in the writ petition stating that the petitioner is not a government employee she was appointed on honorarium hence the service rules which apply to the government employees does not apply to the petitioners and has rightly been terminated under the clause 4-D of the appointment order and the guidelines of the circular dated 10.07.2007. The petitioner was given a show cause notice and she submitted a reply thereafter, which was not found satisfactory the services of the petitioner were terminated.

4. The Hon'ble writ court by placing reliance on the judgment passed by this court in the case of **Smt. Kansa Vs. State of M.P and other reported**

in 2015 (4) MPLJ 151 has set aside the order of termination as the principles of natural justice was not followed. Hence, this writ appeal before this court.

5. This writ appeal is barred by 318 days. Hence application for condonation of delay has been filed. The Petitioner has filed a reply to the aforesaid application seriously opposing the application for condonation of delay on the ground that no sufficient reason has been assigned for condoning the delay.

6. Ongoing through the averments made in the application it is apparent that it is a case of Aganwadi centre situated at Tehsil-Mandsaur District Dhar, the Office of Advocate General is situated at Indore and Law Department at Bhopal. The file was routed from Dhar to Indore and Indore to Bhopal and after obtaining the necessary approval from Law Department on 05.05.2020 the OIC was appointed and a writ appeal was filed. Although there is a delay in filing this writ appeal in view of the explanation given in the application which is duly supported by an affidavit the delay is hereby condoned.

Heard on the question of Admission.

7. Shri Aditya Garg, learned Govt. Advocate for the appellant/State submitted that services of the petitioner/respondent were governed under the circular dated 10.07.2007 in which clause 4-D mandates for giving an opportunity of hearing to Aganwadi Worker/Assistant before termination from service if she is found negligent in discharging the responsibility and duties. In the present case, the petitioner was found repeatedly absent from the centre and for every instance of absence a show-cause notice was issued. When she not did show any improvement hence the authorities had no option but to terminate her services. It is further submitted by the learned counsel that the petitioner was not residing nearby the Anganwadi centre but residing at Manawar and from where she was not reaching the centre at 8 A.M. On the basis of the report submitted by the concerned Gram Panchayat action has rightly been taken.

9. Shri Patne learned counsel for the respondent/writ petitioner argued that clause 4-D specific provides not for the grant of an opportunity of hearing but also provides that if the delinquent is found guilty after enquiry

then only, she can be removed. In the present case, only notices were issued, and a reply was submitted to the effect that she was not keeping well on the said dates of absence and she has been terminated. Before termination, she had rendered 17 years of unblemished service. Hence no interference is called for.

Heard and conclusions...

10. The respondent was appointed as Aganwadi Worker on 11.03.2001. First time in her entire service she was served with show-cause notice on 22.09.2017 calling upon her to explain the allegations that she is not residing at headquarters and was absent from 24.09.2017 to 28.09.2017. According to the petitioner, she was not keeping well hence she was absent and denied that she is not residing at headquarters. This allegation could have been proved only by conducting at least a summary enquiry, whether she was ill or whether she has a valid reason for absence. She has been terminated from the service only on the basis of an enquiry conducted behind her back. Hence writ court has rightly allowed the Writ Petition, hence writ appeal sans merit and is liable to be dismissed.

11. Before parting with the case we would like to observe that the appointment and service conditions of the Agwanwadi workers and assistants are governed under the circular dated 10.07.2007. The circular dated 10.07.2007 provides the qualification, eligibility, mode of appointment/ selection and procedure for removal. Under this circular, the Agwanwadi Workers/ Assistants are working for the last two decades without any element of permanency. This court has experienced in the number of cases that on surprise inspection if Agwanwadi Worker/ Assistant is found absent or there was some negligence in respect of maintenance of register distribution of meals etc. on one or two instances in the entire service career, the competent authority after issuing the notice terminate her services. Except for termination, no other punishment is provided in the circular dated 10.07.2007. Even though the appointment is not regular appointment like Government employees but this is the only source of income for the women workers in the rural area These Agwanwadi Workers/ Assistants work in the backward rural areas for the execution of beneficiaries schemes of the State government through women and child

department. Therefore, after rendering service for one or two decades termination from service by issuing show-cause notice would be too harsh. The State Government should think about providing some minor or other major punishments by amending the circular dated 10.07.2007. Even if it is found that misconduct is minor but in the circular dated 10.07.2007 except for termination, no other punishment is there. In every service rule, there are two types of punishments minor and major and under these two broad categories other types of minor and major punishments are provided. Therefore, for these Aganwadi workers and Assistants, there should be a proportionality between misconduct and punishment. In the present case, even if the petitioner was found absent from duty for which she has submitted an explanation with necessary documents, then enquiry ought to have been conducted. If after enquiry the charges are found proved, then only the punishment order ought to have been passed. The clause 4-D of the circular dated 10.7.2007 specifically provides that:-

“सुनवाई का अवसर देते हुए जांच में दोषी पाये जाने पर” it means there are two requirements i.e. No.1. the opportunity of hearing and No.2. if found guilty after enquiry. Hence Agwanwadi Workers/ Assistants can be terminated only after proving the charge after conducting an enquiry. Hence the contention of the learned Government Advocate cannot be accepted that there is no provision for conducting enquiry in the circular dated 1.07.2007. Hence in absence of following the provision, the writ court has rightly passed the impugned order and no interference is required.

Accordingly, the writ appeal is dismissed.

(VIVEK RUSIA)
JUDGE

(AMAR NATH (KESHARWANI))
JUDGE

Ajit/-