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

**BEFORE
HON'BLE SHRI JUSTICE MANINDER S. BHATTI**

ON THE 25th OF AUGUST, 2023

WRIT PETITION No. 14808 of 2022

BETWEEN:-

.....PETITIONER

*(BY SHRI K.C. GHILDIYAL-SENIOR ADVOCATE ASSISTED WITH SHRI
H.C.SINGH-ADVOCATE)*

AND

1. THE STATE OF MADHYA PRADESH THROUGH THE PRINCIPAL SECRETARY PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT VALLABH BHAWAN BHOPAL M.P. (MADHYA PRADESH)
2. M.P. STATE RURAL LIVELIHOOD MISSION THROUGH ITS COMMISSIONER BHOPAL M.P. (MADHYA PRADESH)
3. THE COLLECTOR B H I N D DISTRICT BHIND (MADHYA PRADESH)
4. THE CHIEF EXECUTIVE OFFICER ZILA PANCHAYAT BHIND DISTRICT BHIND (MADHYA PRADESH)
5. THE CHIEF EXECUTIVE OFFICER JANPAD PANCHAYAT BHIND DISTRICT SATNA (MADHYA PRADESH)

.....RESPONDENTS

*(BY SHRI MANAN AGRAWAL-ADVOCATE FOR RESPONDENT NOS.2,4 & 5
AND SHRI B.K. KUSHWAHA-ADVOCATE FOR RESPONDENT NO.1 &
3/STATE)*

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This petition coming on for admission this day, the court passed the following:

ORDER

The petitioner has filed this petition while praying for the following reliefs:

"i. A writ order of direction in the nature of certiorari thereby quashing the orders dated 30/11/2021 (Annexure P/10) issued by respondent No.2 and order dated 08/12/2021 issued by respondent No.4.

ii. A writ order or direction in the nature of mandamus thereby directing the respondents to reinstate the petitioner in service with all consequential benefits such as arrears of salary, continuity in service, future career growth etc.

iii. Any other appropriate writ order or direction which this Hon'ble Court may deem just and proper in the nature and circumstances of the case including cost of the litigation."

2. The petitioner herein was initially appointed as *Samooh Prerak* vide order dated 01/09/2015 for a period of 1 year. After joining, the petitioner was posted at Bhind and was subsequently transferred to Rewa. The petitioner worked at Rewa till 07/03/2020. Vide order dated 07/03/2020, the petitioner was transferred from Rewa to Bhind. The said order of transfer was challenged by the petitioner by filing a petition before this Court vide WP No.7072/2020. This Court vide order dated 26/05/2020 stayed the operation of transfer order dated 07/03/2020. The writ petition was ultimately disposed of vide order dated 10/08/2020 with a direction to the respondents to take decision on petitioner's representation. A decision on petitioner's representation was taken on 30/09/2020 (Annexure P/5) and it was rejected. The said order was challenged by the petitioner by filing a petition vide WP No.16433/2020. The said petition was dismissed vide order dated 27/02/2020.

3. Thereafter the petitioner made an effort to join in terms of transfer order dated 07/03/2020 at Block Bhind but the petitioner was not allowed to join, accordingly the petitioner filed an another petition vide WP No.25598/2021. This Court vide order dated 30/11/2021 directed the respondent No.6 to accept the joining of the petitioner, if there was no legal impediment. The respondents after passing of the order, has passed the impugned order dated 30/11/2021 (Annexure P/10) by which it has been informed to the petitioner that his contractual appointment had already come to an end in terms of Clause 17 of the Contract which is contained in Annexure P/1 as the petitioner remain unauthorizedly absent for more than one month.

4. Learned Senior Counsel submits that the impugned order passed by the authority is unsustainable and deserves dismissal. It is contended by the counsel that the petitioner herein was transferred and the order of transfer dated 07/03/2020 was assailed before this Court by filing WP No.7072/2020 wherein Interlocutory order was passed in the writ petition on 26/05/2020. The Interlocutory order remained in force till the decision on the petitioner's representation in terms of final order dated 30/09/2020. The said order was again assailed by the petitioner by filing a petition before this Court vide WP No.16433/2020. This Court dismissed the said petition on 27/02/2020. Thereafter, the petitioner made an effort to join accordingly, the petitioner's joining ought to have been accepted. The authorities were required to appreciate that there was Interlocutory order 26/05/2020 therefore, the petitioner ought to have been permitted to join.

5. It is contended by the counsel that the reliance of Clause 17 of the contract (Annexure P/1) is misconceived. It is not a case where the petitioner remain unauthorizedly absent, on the contrary, the respondents were well aware

that the petitioner was agitating his grievance as regards his transfer order dated 07/03/2020. Therefore, the petitioner ought to have been permitted to join, thus, submits that the petition deserves to be allowed.

6. Per contra, learned counsel for the respondents submits that the present petition deserves to be dismissed. It is contended by the counsel that in terms of Clause 8.2 framed under the Madhya Pradesh Rural Livelihood Mission (MPRLM), the petitioner has no right to claim joining. It is contended by the counsel that the present petition is not maintainable in view of Clause 8.2 of the said policy which provides that there is an alternative remedy to take recourse with Appellate Authority and if such recourse is taken, it is the Appellate Authority which is empowered to take decision. It is also contended by the counsel effect of Clause 17 has also been taken note of by this Court in WP No.29/2023 decided on 16/03/2023. Accordingly, learned counsel submits that the present petition deserves dismissal.

7. No other point is pressed by the parties.

8. Heard rival submissions of the parties and perused the record.

9. A perusal of the record reflects that the petitioner herein was appointed as *Samooch Prerak* vide order/contract dated 01/09/2015 (Annexure P/1). Clause 17 of the said agreement provides that the candidate remains unauthorizedly absent for more than 1 month, the contract appointment would automatically terminated. The petitioner in the present case vide order dated 17/03/2020 was transferred. The order of transfer dated 07/03/2020 was assailed by the petitioner and the operation of the order was stayed by this Court on 26/05/2020. In the said petition, the petitioner had not disclosed that on which date the petitioner was relieved after passing of order dated

07/03/2020. This fact was important inasmuch as the interim order was passed by this Court in WP No.7072/2020 on 26/05/2020 and by 26/05/2020, more than two months and fifteen days had already elapsed from the order of transfer dated 07/03/2020. Be that as it may, the writ petition filed by the petitioner vide WP No.7072/2020 was ultimately disposed of with a direction to the respondents to take decision on petitioner's representation and till decision on representation, the interim order was directed to be operative. The representation of the petitioner was rejected vide order dated 30/09/2020 (Annexure P/5). The said order was assailed by the petitioner by filing WP No.16433/2020. The said writ petition was dismissed on 27/02/2021. It is again at this juncture relevant to take into consideration the pleadings. After rejection of the petitioner's representation on 30/10/2020, as to whether the petitioner made any effort to join duties is not clarified and the period commencing from 13/10/2020 i.e the date of rejection of representation till 27/02/2021 i.e the date of dismissal of writ petition ie WP No.16433/2020 again is unexplained and this period is undoubtedly much more than three months.

10. Therefore, the respondents while passing the order impugned, rightly concluded that the having remained unauthorizedly absent for more than 1 month, the services of the petitioner stood terminated automatically and the such a decision taken by the respondents in absence of any infirmity does not require any interference. There is failure on the part of petitioner to demonstrate the aforesaid detailed period of absence and accordingly the respondents did not commit any error while rejecting the petitioner's representation. This Court in **WP No.29/2023 (Purushottam Suryabanshi Vs. The State of Madhya Pradesh and Ors.)** has placed reliance on the decision of the Apex Court in the case of **State Bank of India Vs. S.M. Goyal** reported in **2008 (8) SCC**

92 wherein the Apex Court held that when the relationship of master and servant is purely contractual, the contract of service is not enforceable, and the employment is governed purely by contract and if there is no element of statutory governance, the contract of personal service will not be specifically enforceable.

11. This Court in the case of Purushottam Suryabanshi (Supra) held in paragraph 10 as under:

"10. The aforesaid makes it clear that the contractual appointee has very limited rights to ask for continuation of his services. In absence of any cogent reason given by the petitioner regarding his unauthorized absence and considering the fact that the authorities have considered Clause-17 of the appointment order, no illegality appears to have been committed by the authorities. The petitioner was relieved on 16.10.2020 and thereafter, he has submitted his joining on 21.09.2020. Therefore, it is almost after one year from his relieving, he has approached the department for joining. In these circumstances, Clause-17 of the appointment order is clearly attracted. The authorities have not committed any illegality in passing the impugned order of termination. The petitioner could not make out a case for seeking interference in the well reasoned termination order." सत्यमेव जयते

12. In view of the aforesaid, in the considered view of this Court, the respondents did not commit any error while passing the impugned order dated 30/11/2021 and 08/12/2021.

13. Accordingly, the petition devoid of merit stands dismissed.

(MANINDER S. BHATTI)
JUDGE