

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWPOA No.2265 of 2020
Decided on: 12.08.2026

Yagya Dutt Sharma

...Petitioner

Versus

State of Himachal Pradesh and others

...Respondents

Coram

Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge

*Whether approved for reporting?*¹

For the petitioner:

Mr. Anshul Jairath, Mr. Piyush Mehta and Ms. Neha Thakur, Advocates.

For the respondents:

Mr. Amandeep Sharma, Additional Advocate General.

Jiya Lal Bhardwaj, Judge (Oral)

The petitioner, by way of present petition, has prayed for the following substantive reliefs:-

- “(a) *That annexure A-5, dated 3.9.2015 may kindly be quashed and set aside.*
- (b) *That the respondents may kindly be directed to renew the contract of the applicant, which was from 1.5.2015 to 31.10.2015.*
- (c) *That the respondents may kindly be directed to regularize the services of applicant as Peon/class IV employee as per policy of the State Government.”*

2. The facts as emerge from the pleadings are that

¹ *Whether reporters of Local Papers may be allowed to see the judgment?*

the petitioner was appointed as Helper, vide letter dated 20.07.2006 on contract basis, as per agreement entered into between the petitioner and respondent No.2 for 89 days, w.e.f. 31.08.2006 to 27.11.2006 and thereafter w.e.f. 06.12.2006 to 04.03.2007. He was paid the remuneration by respondent No.2. Thereafter he was again employed as part time temporary Peon in District E-Governance Society by respondent No.3, for various periods from 03.05.2008 till 30.04.2012. Thereafter he was engaged in the establishment of respondent No.2, w.e.f. 01.05.2012 till 30.04.2015. The petitioner was initially paid remuneration of Rs.2,000/- per month, which was later on increased to Rs.3,000/- per month. As per communication dated 08.05.2015 (Annexure A-3), respondent No.2 had written to respondent No.1 that the petitioner has been engaged as a part-time temporary Peon in District E-Governance Society by respondent No.3, w.e.f. 03.05.2008 to 30.04.2009 and thereafter on various dates up to 30.04.2012, who is working in the establishment of respondent No.2 from 01.05.2012 to 30.04.2015, requesting therein that his case may be considered for absorption in any Government Department.

3. However, vide office order dated 03.09.2015 (Annexure A-5), the services of petitioner were terminated with immediate effect, who had entered into a contract on 16.06.2015 with the Assistant Commissioner to Deputy Commissioner, Kullu for his engagement as part time Peon in the E-Governance Society, Kullu, for a period of 6 months, on the ground that he remained absent from his duties w.e.f. 01.07.2015. It has been averred in the petition that the wife of the petitioner had given birth to twins and due to this reason, he could not join his duties after 01.07.2015. His wife was having stone in gallbladder and she was advised operation, which was done in the month of August, 2015 and she was discharged on 31.08.2015. Thereafter, the petitioner went to join his duties, but his services came to be terminated vide office order dated 03.09.2015, on the ground that he remained absent without intimation. It has also been averred that petitioner had given intimation to the respondents regarding operation of his wife. The petitioner after termination of his services made a representation on 30.03.2016 (Annexure A-6) (wrongly mentioned as 30.03.2015) to offer him appointment keeping in view his services since 2007 to 2015. Thereafter, another

representation was made on 06.03.2017 (Annexure A-7), to consider his request for appointment, however, the respondents did not take any decision.

4. The petitioner, feeling aggrieved by the impugned action on the part of the respondents in not re-engaging his services as well as order of terminating his services, has approached this Court, *inter alia*, on the grounds that the impugned order terminating his services is without issuing any show-cause notice to him inasmuch as no explanation was sought from him which action on the part of the respondents is illegal, arbitrary, and unconstitutional. It has further been averred that the respondents were aware about the fact that the wife of the petitioner is to be operated and she was operated in the month of August, 2015 and due to that reason, the petitioner could not join his duties. It has also been averred that the action on the part of the respondents to terminate the services of the petitioner without affording opportunity of hearing to him is against the principles of natural justice and thus, has prayed for quashing the order of termination with a further prayer to renew his contract which was from 01.05.2015 to 31.10.2015. It has further been averred that

the petitioner had rendered nine years of service on part-time basis and further as per the policy of the State Government, employees who were working on daily-wage basis for a period of 8 years, their services were brought on contract basis and in the case of petitioner, he had rendered around nine years' service after 2006 and as such his services ought to have been regularized as Peon.

5. The respondents filed reply to the petition and raised preliminary submissions that the present petition is not maintainable, inasmuch as the petitioner has not approached the Court with clean hands and has concealed material facts. On merits, it has been submitted that after the expiry of the period in Blooming Highways Project where the petitioner had served for about two years on 89 days' basis contract period w.e.f. 31.08.2006 to 10.02.2008, he was again appointed as Part Time Peon by Member Secretary, E-Governance Society, Kullu, on his request dated 01.05.2008.

6. It has been admitted that on the representation of the petitioner received through higher authorities, the matter was examined in detail and a report was submitted to the Government for further consideration as per office

order dated 08.05.2015. However, the Government had referred his case back with the direction to examine/consider his case in the light of instructions/ policy of the Government. But in the absence of any policy for regularization of such employees, the matter could not be considered and intimation to this effect was given to the Government vide letter dated 02.07.2015. It has also been averred that the petitioner remained absent willfully from duties for about two months from 01.07.2015 without any intimation to competent authority. The petitioner neither joined his duties nor intimated about his absence from duties, after which the Member Secretary, E-Governance Society, Kullu, terminated his services on 03.09.2015 as per rules and as per the agreement made between the petitioner and E-Governance Society, Kullu. It was denied that the petitioner had given any intimation to the respondents regarding illness of his wife during that period. There is no provision to renew the contract and count the services rendered before termination for the purpose of regularization as claimed by the petitioner. The past service automatically entails forfeiture on termination for all purposes and as such prayed for dismissal of the petition.

7. The petitioner filed rejoinder to the reply and controverted the averments made in the reply. Further the petitioner has also placed on record the office order dated 11.10.2017 passed by respondent No.2, whereby four persons who were working in its office as E-Governance employees were absorbed in the establishment of the office as Junior Office Assistant (IT) in the pay scale of Rs.5910-20200 + 1950/-.

8. I have heard the learned counsel for the parties and also perused the record carefully.

9. Learned counsel for the petitioner vehemently argued that even if the petitioner had not remained present without any intimation, the respondents were at least required to follow the due process of law before passing the termination order. In the case of the petitioner, no show cause notice was ever issued to him before passing the impugned order, whereby his services came to be terminated. Learned counsel for the petitioner further argued that even as per the respondents, the petitioner had been working with the respondents w.e.f. 03.05.2008 and, therefore, before terminating his services, the respondents were bound to issue show cause notice to him. The

respondents while filing the reply have not stated that before terminating the services of the petitioner, he was issued the show cause notice.

10. No doubt the petitioner was working on contract basis, but the Court cannot even ignore the fact that even as per the respondents themselves, he was engaged as a part time temporary Peon for the District E-Governance Society by respondent No.3, w.e.f. 03.05.2008 and had worked till 30.04.2015, as evident from a perusal of communication dated 08.05.2015 (Annexure A-3), written by respondent No.2 to respondent No.1. As per the office order dated 03.09.2015, a fresh contract was executed on 16.06.2015 for engagement of the petitioner as part time Peon in the E-Governance Society, Kullu, for a period of 6 months and the petitioner in sequel to the said contract had served the respondents till 30.06.2016. Thereafter, he could not join his duties due to the adverse family circumstances. Even if it is assumed that the petitioner had not given any intimation in writing, the respondents before terminating his services were at least required to issue show-cause notice to him. However, in the present case, no notice has ever been issued to the petitioner before passing the order

terminating his services. It is by now settled in catena of judgments that before passing any order, which has civil/evil consequences, the least which is expected of an employer is to issue show cause notice to an employee. Admittedly in the present case, before passing the impugned order terminating the services of the petitioner, which had civil/evil consequences, the respondents did not issue show cause notice to him and thus, on this sole ground, the impugned order deserves to be quashed and set aside.

11. Learned Additional Advocate General has vehemently argued that as per the contract entered between the petitioner and Assistant Commissioner to Deputy Commissioner-cum-Member Secretary E-Governance, Society Kullu, dated 16.06.2015, a specific clause was there to terminate the services of the petitioner at any time without assigning any reasons thereof. It is true that there is such condition in the agreement entered between the petitioner and Assistant Commissioner to Deputy Commissioner-cum-Member Secretary E-Governance Society, but the petitioner, whose contract was being renewed w.e.f. 30.05.2015 had no option, but to

accept the terms and conditions of the agreement and in case he would not have agreed to the said terms and conditions, his contract could not have been renewed. The Hon'ble Supreme Court in **Central Inland Water Transport Corporation Limited and another vs. Brojo Nath Ganguly and another**, (1986) 3 SCC 156, has held that the employee has no equal bargaining power and thus, the clause in the agreement is bad in law and against the spirit of Article 14 of the Constitution of India.

12. It is settled law that the fundamental rights cannot be waived off. No doubt the petitioner was serving as Peon on contract basis, but he was serving with the respondents since 03.05.2008 and thus attained the temporary status and entitled to certain constitutional protection envisaged by Article 311 of the Constitution of India and other Articles dealing with the services under the State. As already observed above, before terminating the services of the petitioner no show cause notice was given to him. The similar preposition had come up before the Hon'ble Supreme Court in **Nar Singh Pal versus Union of India and others**, (2000) 3 SCC 588 wherein it has held that before terminating the services, regular enquiry ought

to have been held and since no enquiry was held, the termination was set aside with direction to reinstate the petitioner in service with back wages. Relevant paras of the judgment reads as under:

"6. 'The appellant, no doubt, was a casual labour but as observed by the Tribunal, he had acquired temporary status with effect from 1-10-1989. Once an employee attains the 'temporary' status, he becomes entitled to certain benefits one of which is that he becomes entitled to the constitutional protection envisaged by Article 311 of the Constitution and other Articles dealing with services under the Union of India. A perusal of the Impugned order by which the services of the appellant were terminated indicates that since the appellant had beaten one Mahender Singh with iron rod and had also bitten him with teeth on 20-4-1992 at 8,00 p.m. while the said Mahender Singh was on duty as Gateman, Tax Bhawan, Agra, therefore, his services were terminated with immediate effect. Thus the services were terminated on account of the allegation of assault made against the appellant. This Court on 24-1-2000 passed the following order:

Learned counsel appearing for the respondents is granted six weeks' time to seek instructions whether regular departmental proceedings were taken in this matter or not.

7. When the case was next taken up, the entire papers relating to the enquiry were placed before us by the counsel for the respondents which indicate that a regular departmental enquiry was not held and only a preliminary enquiry was held against the appellant on the basis of which his services were terminated. The letter dated 21-4-1992, from Assistant Engineer Trunks, TMX Tax Bhawan, Agra-3, to Shri Shital Din, Divisional Engineer, Phones (Planning and Administration), Agra, recites, Jitter

alia as under:

Shri Nar Singh Pal, Ty. Mazdoor of this unit assaulted on Shri Mahendra Singh. Gateman who was on duty at main gate of Tax Bhawan, Agra and was performing 1400 to 2200 hours duty on 20-4-1992. This mishappening occurred at 2000 hours on 20-4-1992. At the time of incident, I was in Trunk Exchange, Agra, when Shri Mahendra Singh, Gateman approached the undersigned in injured condition for help. I rushed to the gate of Tax Bhawan for spot verification and making detailed enquiry of the case. I found that the culprit Shri Nar Singh Pal was abusing Shri Mahendra Singh, Gateman, Shri Nar Singh Pal, Ty. Mazdoor not only assaulted Shri Mahendra Singh, Gateman but he also threatened to kill me when I was making spot enquiry. As per my observation Shri Nar Singh Pal, Ty. Mazdoor was under drunk condition. I immediately informed to you thereafter S.O. Rakabga Police Station on phone regarding this incidence.

The letter further recites as under:

I shall be grateful if you may kindly take a suitable action against Shri Nar Singh Pal, Ty. Mazdoor who has created hindrance in government work, damages of the government property and created the terror and horror amongst the staff due to his gunda activities and has threatened the undersigned.

8. The documents which have been placed before us pertain to the preliminary inquiry made against the appellant in which the statement of certain persons who had seen the incident was recorded. The services of the appellant were, thereafter, terminated by paying him the retrenchment compensation through a cheque along with the order dated 20-5-1992. The order having been passed on the basis of preliminary inquiry and not on the basis of regular departmental enquiry without issuing a charge-sheet

or giving an opportunity of hearing to the appellant, cannot be sustained."

13. In the present case, what to talk of holding an inquiry, even show cause notice was not given to the petitioner and, therefore, the order terminating the services of the petitioner is unsustainable in law. It is apt to note that the Division Bench of this Court in CWP No.1666 of 2017, titled, as ***State of Himachal Pradesh & others vs. Dr. Parvesh Thakur***, had not interfered with the order passed by the Tribunal, whereby the termination was set aside and reinstatement was ordered. Thereafter in CWP No.4886 of 2022, titled, ***Arun Kang vs. State of H.P. & Ors.***, where the services of an employee were terminated without holding a regular inquiry, the order was set-aside and the said decision was affirmed by the Division Bench in LPA No.816 of 2025, titled, ***State of Himachal Pradesh and Others vs. Arun Kang and Others***, wherein it was held that merely finding the reply unsatisfactory, the termination order could not have been passed and in the present case, as already discussed above, the respondents had not issued any show-cause notice before terminating services of the petitioner and, therefore, the impugned order is unsustainable in the eyes of law.

14. The petitioner has also placed on record the copy of office order dated 11.10.2017, whereby respondent No.2 had absorbed the employees, who were working in E-Governance Society as Junior Office Assistant (IT) and since the petitioner was serving the respondents w.e.f. 03.05.2008, even as per their own admission in the communication dated 08.05.2015, he ought to have also been considered for absorption in case his services were not terminated.

15. The petitioner has not placed on record any cogent material that after termination of his services, he has not served anywhere. Therefore, keeping in view the peculiar facts and circumstances of the present case, coupled with the fact that the petitioner had served the respondents-Society w.e.f. 03.05.2008 and further he was working as a Class-IV employee, the interest of justice will be met in case the termination order is quashed and set aside with a further direction to the respondents to re-engage him with continuity in service from the initial date of his engagement taken as 03.05.2008 without any financial benefits to him.

16. Consequently, the present petition is allowed and

the office order dated 03.09.2015 (Annexure A-5) is quashed and set aside with a further direction to the respondents to re-engage the petitioner on the post of Peon/Class-IV employee with all benefits such as seniority, regularization as per policy decision dated 06.03.2017, but without any monetary benefits. Since, the petitioner is out of job, the respondents are directed to re-engage him within three months from today. No order as to costs. Pending applications, if any, also stand disposed of.

12th August, 2026

(Anurag)

**(Jiya Lal Bhardwaj)
Judge**