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**HIGH COURT OF CHHATTISGARH, BILASPUR**

**WPS No. 1910 of 2015**

1. Shesh Narayan Sahu S/o Shri Sahdev Ram Sahu Aged About 32 Years R/o Village Aamri, (Aabadi) Post Nikum, P.S. Anda, District Durg Chhattisgarh

**---- Petitioner**

**Versus**

1. State Of Chhattisgarh Through The Secretary Panchayat Department Mantralaya New Raipur, Police Station Rakhi Civil & Revenue District Raipur Chhattisgarh
2. The Collector & District Programme Coordinator, District Dhamtari Chhattisgarh
3. The Chief Executive Officer Zila Panchayat Dhamtari, District Dhamtari Chhattisgarh
4. The Janpad Panchayat Kurud Through The Chief Executive Officer, District Dhamtari Chhattisgarh

**---- Respondent**

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| For Petitioner        | Mr. Prateek Sharma, Advocate          |
| For Respondent /State | Mr. P.K. Bhaduri, Government Advocate |
| For respondent no.3.  | Mr. Shashank Thakur, Advocate         |

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**Hon'ble Shri Justice Prashant Kumar Mishra**

**C.A.V. Order**

**15/9/2015**

1. The petitioner has called in question the order dated 25.04.2015 (Annexure P/1), whereby the Collector-cum-District Programme Coordinator, Mahatma Gandhi National Rural Employment Guarantee Act (for short 'MGNREGA'),

District Dhamtari, has refused to renew the contract service of the petitioner after 28.02.2015.

2. Facts of the case, briefly stated, are that : the petitioner was appointed as Program Officer, MGNREGA, Block Kurud District Dhamtari in the year 2006. According to the petitioner, the said appointment continued till March 2015, as he has been paid salary till March 2015. For renewal of contract, for the each succeeding year, the authorities assess the performance of the candidate in the preceding year and based on the appraisal, the contract is extended for the following year.
3. Shri Prateek Sharma, learned counsel for the petitioner, would argue that the Chief Executive Officer, Janpad Panchayat, Kurud apprised the performance of the petitioner as good and despite the fact that the contract period which was valid till February 2015, was continued till March 2015, the petitioner has been discontinued by the impugned order, which is stigmatic in nature. It is projected that nothing adverse was noticed in the working of the petitioner till 30.03.2015 when a note was appended by the Collector that services of all other employees except the petitioner deserves to be extended. Learned counsel would further submit that the return filed by the respondents would disclose an enquiry into the allegations made against the petitioner by some of his subordinates, therefore, non

renewal of the contract service is a result of the outcome of the enquiry and thus, comment on his work not being satisfactory as is reflected from the impugned order, is stigmatic.

4. Per contra, Mr. P.K. Bhaduri, learned Government Advocate and Mr. Shashank Thakur, Counsel for respondent No.3. would submit that the petitioner was a temporary/contract appointee, therefore, he has no right to hold the post; the impugned order is innocuous casting no stigma on the petitioner; the petitioner was found to have harassed women employees at the work place, which would amount to violation of the guidelines of the Supreme Court in **Vishaka and others v. State of Rajasthan and others**<sup>1</sup>, therefore, refusal to extend the contract service period is in accordance with law.
5. Mr. P.K. Bhaduri would read the enquiry report and elaborate the above contention. According to him, the State was benevolent in not initiating any criminal proceeding against the petitioner due to violation by the petitioner of the Supreme Court guidelines in **Vishaka** (supra).
6. Concededly, the petitioner was a contract appointee and has no right to hold the post. The issue concerning his extension for the each succeeding year depends on his performance in the preceding year. Two subordinate women

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<sup>1</sup> (1997) 6 SCC 241

employees namely Smt. Roshni Gupta and Smt. Priyanka Deshmukh have lodged a complaint against the petitioner vide Annexure R-1, on which, an enquiry was constituted against the petitioner by issuing show cause notices to him on 4.2.2014 and 23.01.2015. The petitioner replied to the show cause notices and participated in the enquiry by cross examining the witnesses. Apart from the allegation of harassment of women employees, the petitioner was also found to have made forged valuation. He was also found to have demanded 30% commission for clearing the bills of traveling allowances of the employees.

7. It is settled proposition of law that the High Court cannot judicially review as an appellate authority to unsettle the findings recorded in an in-house enquiry. The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches, on a matter which it is authorized or enjoined by law to decide for itself, a conclusion which is correct in the eyes of the court. Judicial Review is always to review of the manner in which the decision was arrived at, the Court while exercising the power of Judicial Review must remain conscious of the fact that if the decision has been arrived at by the Administrative Authority after following the principles established by law and the rules of natural justice and the individual has received a fair treatment to meet the case against him, the

Court cannot substitute its judgment for that of the Administrative Authority.

8. Even if the petitioner was allowed to continue till March, 2015, the fact remains that there is no order of extension after 28-2-2015. If the matter was under consideration before the authorities and during this period the petitioner, like other contract appointees under the MGNREGA, was allowed to continue, it would not improve his status and in any case it will not influence the decision of this Court that since he was allowed to continue for a month even after 28-2-2015 his contract service would be deemed to have been extended for the next one year. For extension of the service of a contract appointee there has to be an express order. Thus, in the absence of any express order, the petitioner would not be in a more advantageous position than the status of a contract appointee.
9. It is the well settled principle of law that if it is a contract appointment, the appointment comes to an end at the end of the contract. (See: **Secretary, State of Karnataka and Others v. Umadevi (3) and Others**<sup>2</sup> para 43 pg. 36).
10. In the case at hand, the authorities have enquired the complaint against the petitioner in which he was issued a show cause notice and he participated in the enquiry. There is no challenge to the finding recorded in the said enquiry.

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2 (2006) 4 SCC 1

At the time of appraisal of the performance by the appointing authority, all obtaining facts need to be considered and when there is a report wherein the petitioner has found to have committed serious lapses, the petitioner cannot be permitted to agitate that his performance was good or satisfactory. In the teeth of material available on record, the decision taken by the Collector not to continue the contract service of the petitioner is found unexceptionable.

11. The issue as to non-confirmation of a probationer would amount to stigma has been considered by the Supreme Court in **Krishnadevaraya Education Trust and Another v. L.A. Balakrishna**<sup>3</sup>. In the said case a committee was constituted for assessing the suitability of a probationer for continuing in the service and the said committee came to the conclusion that the job proficiency of the employee was not up to the mark and that would be a valid reason for terminating the services and the said reason cannot be cited and relied upon by contending that the termination order was passed by way of punishment.
12. In **Krishnadevaraya Education Trust** (supra), the Supreme Court held thus :

5. There can be no manner of doubt that the employer is entitled to engage the services of a person on probation. During the period of probation, the suitability of the recruit/appointee has to be seen. If his services are not satisfactory which means that he is not

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3 (2001) 9 SCC 319

suitable for the job, then the employer has a right to terminate the services as a reason thereof. If the termination during probationary period is without any reason, perhaps such an order would be sought to be challenged on the ground of being arbitrary. Therefore, naturally services of an employee on probation would be terminated, when he is found not to be suitable for the job for which he was engaged, without assigning any reason. If the order on the face of it states that his services are being terminated because his performance is not satisfactory, the employer runs the risk of the allegation being made that the order itself casts a stigma. We do not say that such a contention will succeed. Normally, therefore, it is preferred that the order itself does not mention the reason why the services are being terminated.

6. If such an order is challenged, the employer will have to indicate the grounds on which the services of a probationer were terminated. Mere fact that in response to the challenge the employer states that the services were not satisfactory would not ipso facto mean that the services of the probationer were being terminated by way of punishment. The probationer is on test and if the services are found not to be satisfactory, the employer has, in terms of the letter of appointment, the right to terminate the services.

7. In the instant case, the second order which was passed terminating the services of the respondent was innocuously worded. Even if we take into consideration the first order which was passed which mentioned that a Committee which had been constituted came to the conclusion that the job proficiency of the respondent was not up to the mark, that would be a valid reason for terminating the services of the respondent. That reason cannot be cited and relied upon by contending that the termination was by way of punishment.

13. In **Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences and Another**<sup>4</sup>, the following has been

held by the Supreme Court :

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4 (2002) 1 SCC 520

29.....Generally speaking when a probationer's appointment is terminated it means that the probationer is unfit for the job, whether by reason of misconduct or ineptitude, whatever the language used in the termination order may be. Although strictly speaking, the stigma is implicit in the termination, a simple termination is not stigmatic. A termination order which explicitly states what is implicit in every order of termination of a probationer's appointment, is also not stigmatic. The decisions cited by the parties and noted by us earlier, also do not hold so. In order to amount to a stigma, the order must be in a language which imputes something over and above mere unsuitability for the job.

14. In **Rajesh Kumar Srivastava v. State of Jharkhand and Others**<sup>5</sup>, the Supreme Court examined challenge to the termination of the services of employee, who was a Probationer Munsif. After examining the record placed before it, the Supreme Court held that the competent authority had terminated the services of the employee because his work was not satisfactory and such decision cannot be termed as stigmatic or punitive.
15. In **State Bank of India and Others v. Palak Modi and Another**<sup>6</sup>, the Supreme Court held thus :

25. The ratio of the abovenoted judgments is that a probationer has no right to hold the post and his service can be terminated at any time during or at the end of the period of probation on account of general unsuitability for the post held by him. If the competent authority holds an inquiry for judging the suitability of the probationer or for his further continuance in service or for confirmation and such inquiry is the basis for taking decision to terminate his service, then the action of the competent

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5 (2011) 4 SCC 447

6 (2013) 3 SCC 607

authority cannot be castigated as punitive. However, if the allegation of misconduct constitutes the foundation of the action taken, the ultimate decision taken by the competent authority can be nullified on the ground of violation of the rules of natural justice.

16. Thus, the law is well settled that when considering the confirmation of a probationer, the competent authority records his satisfaction or dissatisfaction about the performance or suitability of a probationer, merely because, an opinion is recorded about unsatisfactory services, the same does not amount to stigma nor the order is punitive. Although the present case is about extension of a contract appointment, however, when the satisfaction is followed by an enquiry, the same principle would apply and observation concerning unsatisfactory service would not amount to stigma.
17. *Ex-consequenti*, the writ petition, *sans substratum*, is liable to be and is hereby dismissed, leaving the parties to bear their own costs.

Sd/-

Judge

Prashant Kumar Mishra

Gowri