IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI SANJEEV SACHDEVA,

ACTING CHIEF JUSTICE

&

HON'BLE SHRI VINAY SARAF

WRIT APPEAL No. 607 of 2023

State of Madhya Pradesh & Ors.

Versus

Rajeev Singh & Ors.

Appearance:

Shri Bramha Datt Singh- Deputy Advocate General for Appellant/State.

Shri Praveen Verma-Advocate for respondents.

Reserved on : 26.07.2024

Pronounced on : 12.08.2024

ORDER

Per: Vinay Saraf, J

1. Instant *intra* court appeal filed under Section 2(1) of *Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyarn,* 2005 (hereinafter referred as "2005 Act") assails the final order dated 02.02.2023 passed in W.P. No.21766/2018, whereby the learned single judge while exercising the writ jurisdiction under Article 226 of the

Constitution of India has allowed the petition filed by the respondents/ petitioners and quashed the order dated 09.08.2018 issued by the Commissioner, Planning, Economics and Statistics Department, Bhopal and further directed to reinstate the petitioners with a direction to the appellant/State to decide the question of back-wages in accordance with directions issued by the Division Bench vide order dated 30.06.2022 passed in W.A.No. 661/2022.

2. It is not in dispute in the present case that on 29.05.2010, M.P. State Government created 50 posts of Data Entry Operators on contractual basis on fixed pay scale for a period of two years as per the directions/regulation of General Administration Department/Finance Department and an advertisement was issued on 11.11.2010 inviting the applications from the aspirants. The respondents/petitioners appeared in the process and on being successful, they were appointed for a period of two years as Data Entry Operator on contractual basis. It is also not in dispute that by order dated 24.09.2013, the period of aforesaid appointments was further extended for a period of two years. Thereafter, on 23.06.2016 out of 50 posts, 29 posts were not continued and the period of contract of 21 incumbents posts including the petitioners were extended for further two years from 01.09.2015. On 09.08.2018, the Commissioner, Planning, Economics and Statistics Department, Bhopal issued an order for not extending the contract period of Data Entry Operators and ordered to discontinue them from 01.09.2017. However, they continued till passing of the order dated 09.08.2018 without any extension of contract after 01.09.2017. The respondents/petitioners approached Writ Court by preferring W.P.No.21766/2018 seeking directions for regularization on the post of Data Entry Operator or on any other equivalent post w.e.f. the date of initial appointment and for

restraining the Commissioner from replacing the petitioners by out sourcing.

3. Upon issuance of notice, return was filed on behalf of the appellants/respondents on 20.09.2019 denying the claim of petitioners mainly on the ground that the contractual employees cannot claim their services to be regularized on account of rendering services for long time or they fulfill the eligibility and possessing the educational qualification. Thereafter, the petitioners therein moved I.A. No.11872/2018 for amendment on the basis of the subsequent events and stated that without any inquiry, the services of the petitioners have been put to an end by order dated 09.08.2018 and therefore, the order dated 09.08.2018 whereby the Commissioner decided not to extend the period of contract, be quashed. The application was allowed and amendment was incorporated. After hearing the parties, learned writ court by order dated 02.02.2023 allowed the petition mainly on the ground that the petitioners were appointed on contractual basis for two years against the sanctioned vacant post and therefore, Rule 11(2) of the M.P. Contractual Appointment to Civil Post Rules, 2017 comes to rescue of the petitioners and therefore, before taking any drastic step like removal of petitioners from services, opportunity of the hearing ought to have been afforded to the petitioners.

4. Learned Writ Court relied on the judgment delivered by the Supreme Court in the matter of **Ku. Shrilekha Vidyarthi etc. vs. State of U.P. & others reported in AIR 1991 SC 537** and further held that petitioners who were contractual employees required to be given an opportunity of hearing, which was denied and therefore, the whole proceedings stand vitiated on the point of principles of natural justice and order impugned i.e. 09.08.2018 has to relegate into oblivion.

5. With the consent of parties, the matter is heard finally.

6. The appellants/State assailed the order mainly on the ground that respondents/petitioners were rendering contractual services and period of contract had already come to an end on 31.08.2017 and, thereafter the period was not extended therefore, petitioners could not be permitted to continue the work. It is further submitted that petitioners were appointed against the sanctioned contractual vacant posts and they were not removed during the period of contract, and as their contract period was not extended, the provisions of Rules, 2017 are not applicable and learned writ court has wrongly relied upon the Rules, 2017 in reaching to conclusion that petitioners were required to be heard before discontinuing their services.

7. Shri Bramha Datt Singh, learned Deputy Advocate General appearing on behalf of the appellant has relied on order dated 27.11.2007 filed for the first time in the present appeal to bolster his submission that by the said order, all the departments of State were notified that the posts of Data Entry Operator were contractual and never sanctioned and were not part of the departmental setup of establishment. He further submits that petitioners were not appointed under Rules, 2017 and therefore the said Rules, which were notified on 28.09.2017 are not applicable to the present case as the contract of the petitioners had already came to an end on 31.08.2017. He further submits that the judgment of Supreme Court relied upon by the learned Writ Court delivered in the case of **Ku. Shrilekha (supra)** is not applicable to the present case as the issue involved in that case was termination of contractual appointment whereas in the present matter, contract period was over and same was not continued. He prayed for setting aside the order dated 02.02.2023 passed

by the learned Writ Court and for dismissal of the writ petition filed by the respondents/petitioners.

8. Shri Praveen Verma, learned counsel for the respondents opposed the stand of the appellant and submits that it was never argued before the Writ Court that Rules of 2017 are not applicable to the present matter and the order dated 27.11.2017 was filed for the first time before this Court at appellate stage without obtaining any leave of the court, therefore, the same cannot be considered. He relied on the order passed by the coordinate Bench in **W.A. No. 56/2014 (State of M.P. Vs. Bhagirath Prajapati) on 01.02.2017,** wherein the coordinate Bench has held that new ground taken by the State in appeal and not raised before the writ court cannot be adjudicated upon for the first time in writ appeal and State in this regard is free to file appropriate review petition and satisfy the writ court about existence of prerequisites for invoking the review jurisdiction.

9. Learned counsel for the respondents supported the order passed by learned writ court and further submits that learned writ court by order dated 29.01.2019 directed to allow the petitioners to continue on their post in question till the next date of hearing, but the said direction was also not complied with by State and therefore, State is not entitled to address in the present appeal as State has violated the interim order. He further submits that normal rule is that an application filed by a party, who has deliberately violated order passed by Court, will not be entertained. He relied on the judgment of Supreme Court delivered in the matter of **M/S Prestige Ligths Ltd. Vs. State Bank of India** reported in **(2007) 8 SCC 449**.

10. Shri Verma, learned counsel for the respondents further submits that the respondents/petitioners were appointed against the sanctioned

post after following the due process and the period of contract was continued time to time, therefore, the petitioners were entitled for seeking regularization in view of the decision of the Cabinet dated 29.05.2018, whereby the general decision was taken to give a chance of regular appointment to the contractual employees. He further submits that without affording any opportunity of hearing to the petitioners, the services of the petitioners could not be terminated and the order dated 09.08.2018 was passed in violation of principles of natural justice and therefore, same was rightly quashed by writ court. He further submits that order passed by the writ court is in consonance with provisions of law and no circumstances are available in present case to interfere in the order passed by the learned writ court in present appeal. He prays for dismissal of instant appeal.

11. Considering the arguments advanced by learned counsel for the rival parties and after perusal of documents available on record, it appears that 50 new posts of Data Entry Operator were created on contractual basis for a period of two years by State of M.P. on 29.05.2010 and applications were invited by issuing advertisement. After following the process, 50 aspirants were appointed on the post of Data Entry Operator for a period of two years on contract. Thereafter, the period of contract was further extended for two years by order dated 29.04.2013. Out of 50 posts, 29 posts were abolished and 21 posts were continued including petitioners by order dated 23.05.2016 for further period of two years from 01.09.2015. Thereafter, by order dated 09.08.2018 a decision was taken by the State Government for not extending period of contract for services of Data Entry Operator including petitioners.

12. It appears that the petitioners were not appointed against any regular vacant post and the posts were created for a period of two years

only for the purpose of appointing Data Entry Operators. Meaning thereby, initial appointments of petitioners were on temporary basis for a period of two years and by mere extending the period of contract, conditions of employment were not changed. It is not a case where the petitioners were removed or terminated during the contract period and therefore, there was not need to hold any inquiry or proceedings for not continuing the services of petitioners. The contract period was already over on 31.08.2017 and thereafter contract was not renewed or extended. The petitioners worked till 09.08.2018 without any extension of contract. By order dated 09.08.2018, Government has taken conscious decision for not continuing contract of remaining 21 Data Entry Operators including petitioners. The petitioners were not removed therefore, there was no need to grant any opportunity of hearing to petitioners.

13. The judgment delivered in the matter of **Ku. Shrilekha Vidyarthi (supra)** is not applicable to the present case as in the said matter, Supreme Court was considering drastic step of replacing all the District Government Counsels appointed in State of U.P. during the contract period without affording any opportunity of hearing and without following the principles of natural justice, whereas in the present matter, the contract period was already over and the contract was not extended or renewed. The facts of present case are not similar to the case of **Ku. Shrilekha (Supra).** Similarly, the provisions of Rule, 2017 are also not helpful to the petitioners and in the present matter by order dated 29.05.2010, 50 posts were created for a period of two years only, to be filled up on contract basis and appointments were not made against any regular sanctioned vacant posts on contract basis.

14. In the matter of **GRIDCO Limted vs. Sri Sadananda Doloi (2011) 15 SCC 16** Supreme Court considered the circumstances under

which judgment of **Ku. Shrilekha (Supra)** was delivered and it is observed in para 26 as follows :

> *"**26.** In Shrilekha Vidyarthi v.State of U.P.[Shrilekha Vidyarthi v. State of U.P., (1991) 1 SCC 212 : 1991 SCC (L&S) 742] the State Government had by a circular terminated the engagement of all the Government Counsel engaged throughout the State and sought to defend the same on the ground that such appointments being contractual in nature were terminable at the will of the Government. The question of reviewability of administrative action in the realm of contract was in that backdrop examined by this Court. The Court also examined whether the personality of the State Government undergoes a change after the initial appointment of the Government Counsel so as to render its action immune from judicial scrutiny. The answer was in the negative. "*

15. In **GRIDCO (supra)** it is further held by Supreme Court that a writ court can judicially review the action and determine whether there was any illegality, perversity, unreasonableness, unfairness or irrationality, but should not enter into service condition of employee of State. It is also held that renewal of contract of employee depend upon the perception of the management as to the usefulness of the employee. Relevant para nos. 37 to 40 are as under :

> *"**37.** To the same effect was an earlier decision of this Court in Central Inland Water Transport Corpn. Ltd. v. Brojo Nath Ganguly [(1986) 3 SCC 156 : 1986 SCC (L&S) 429 : (1986) 1 ATC 103] where the Court had refused to enforce an unfair and unreasonable contract or an unfair and unreasonable clause in a contract entered into between parties who did not have equal bargaining power.*
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> ***38.** A conspectus of the pronouncements of this Court and the development of law over the past few decades thus show that there has been a notable shift from the stated legal position settled in earlier*

decisions, that termination of a contractual employment in accordance with the terms of the contract was permissible and the employee could claim no protection against such termination even when one of the contracting parties happened to be the State. Remedy for a breach of a contractual condition was also by way of civil action for damages/compensation. With the development of law relating to judicial review of administrative actions, a writ court can now examine the validity of a termination order passed by public authority. It is no longer open to the authority passing the order to argue that its action being in the realm of contract is not open to judicial review.

39. *A writ court is entitled to judicially review the action and determine whether there was any illegality, perversity, unreasonableness, unfairness or irrationality that would vitiate the action, no matter the action is in the realm of contract. Having said that we must add that judicial review cannot extend to the Court acting as an appellate authority sitting in judgment over the decision. The Court cannot sit in the armchair of the Administrator to decide whether a more reasonable decision or course of action could have been taken in the circumstances. So long as the action taken by the authority is not shown to be vitiated by the infirmities referred to above and so long as the action is not demonstrably in outrageous defiance of logic, the writ court would do well to respect the decision under challenge.*

40. *Applying the above principles to the case at hand, we have no hesitation in saying that there is no material to show that there is any unreasonableness, unfairness, perversity or irrationality in the action taken by the Corporation. The Regulations governing the service conditions of the employees of the Corporation, make it clear that officers in the category above E-9 had to be appointed only on contractual basis.* ''

16. It is trite law that contractual employee cannot claim regularization or permanent status and his services are *co-terminus* with the period of contract. If it is contractual appointment, the appointment comes to an end with the term of contract and contractual employee cannot claim to be made permanent on the expiry of his contract/term of appointment. Merely because a contractual employee has continued beyond the term of his appointment, he would not be entitled to be absorbed in regular services or made permanent merely on the strength of such continuation. As the post of Data Entry Operator was created only for a period of two years and appointments were made only on the basis of contract, the intention of the State was very clear that State was not interested to create any permanent post of Data Entry Operator.

17. A bare perusal of the order dated 09.08.2018 reveals that the same is not stigmatic in nature. Undoubtedly, the termination order casts stigma/blemish on the future career prospects of the incumbent by finding him guilty of serious misconduct is required to be passed after following principles of natural justice and a reasonable opportunity should be afforded before criticizing the character of an individual. But since the petitioner was contractual / temporary employee no such opportunity on the question of continuation of contract required to be given.

18. In view of the above settled position of law, we have no hesitation in saying that there is no material to show that there is any unreasonableness, unfairness, perversity or irrationality in the action taken by the Commissioner, Planning, Economics and Statistics Department, Bhopal in issuing order for not extending the contract period of Data Entry Operators and to discontinue them from 01.09.2017. Contractual appointments work only if the same are mutually beneficial to both the contracting parties and not otherwise. The Court cannot sit in

appeal to decide whether a more reasonable decision or course of action could have been taken in the circumstances. In the facts and circumstances of the present case, we do not think that there is any justification to interfere with the impugned order dated 09.08.2018 passed by the Commissioner. In these circumstances, no directions could be issued to the State to continue the contractual employee including the petitioners even after completion of the period of contract. Similarly decision of State not to continue the contractual date entry operators after expiry of renewed period of contract could not be quashed or set aside.

19. The learned writ court heavily relied upon the judgment of Supreme Court in the matter of **Ku. Shrilekha (supra)** for reaching to the conclusion that before removal of any employee including contractual employee, the opportunity of hearing ought to have been granted and as no opportunity of hearing was granted to the petitioners before their termination, the whole proceeding stands vitiated being violative of principle of nature justice. As held above, the Supreme Court considered the judgment of **Ku. Shrilekha (supra)** in the matter of **GRIDCO (supra)** by holding that the development of law over the past few decades has settled legal position by shifting from the earlier decision that termination of contractual employee in accordance with terms and conditions was possible and an employee cannot claim protection against termination, if the order is not stigmatic or punitive. Learned writ court erroneously held that the petitioners were removed from the services without affording any opportunity of hearing whereas from record, it is evident that contract of the petitioners was continued till 31.08.2017 and thereafter the contract was not renewed and no order of removal or termination was passed. The decision taken by the State Government for not continuing the contract of Data Entry Operators was wrongly

considered by the learned writ court as order of termination and therefore, the order passed by the learned writ court cannot be sustained in law. Consequently, in the considered opinion of this Court, the impugned order passed by learned writ court in W.P. No. 21766/2018 on 02.02.2023 deserves to be set aside and is hereby set aside and the appeal preferred by the appellant/State is allowed. Writ Petition preferred by respondents/petitioners is dismissed. No order as to costs.

(SANJEEV SACHDEVA)
ACTING CHIEF JUSTICE

(VINAY SARAF)
JUDGE

P/-