

Abdul Majeed vs State Of U.P. Thru. Prin. Secy. Rural ... on 3 March, 2025

Author: Abdul Moin

Bench: Abdul Moin

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2025:AHC-LK0:12762

Court No. - 5

Case :- WRIT - A No. - 1653 of 2023

Petitioner :- Abdul Majeed

Respondent :- State Of U.P. Thru. Prin. Secy. Rural Development And 4 Others

Counsel for Petitioner :- Qazi Mohd.Ahmad,Punit Kumar Shukla,Rajendra Kumar Dubey

Counsel for Respondent :- C.S.C.

Hon'ble Abdul Moin,J.

Supplementary counter affidavit filed today by the learned Standing counsel be kept on record.

Heard learned counsel for the petitioner and learned Standing counsel appearing on behalf of the State-respondents.

Under challenge is the order dated 06.01.2023, a copy of which is annexure 1 to the writ petition whereby the services of the petitioner have been terminated in terms of paragraph 15.3.1 of the Standard Operating Procedure on Complaints (hereinafter referred to as "SOP").

Learned counsel appearing on behalf of the contesting parties state that the crux of the issue has already been indicated in detail in the order dated 27.01.2025 which for the sake of convenience is reproduced below:-

"Heard.

By means of the order dated 06.01.2023, a copy of which is annexure 1 to the petition, after giving a show cause notice to the petitioner, his contractual services had been terminated by the respondents.

The contention is that a perusal of the show cause notice dated 02.11.2022, a copy of which is annexure 5 to the petition, would indicate that the show cause notice pertains to the alleged work which has been said to have been done by the petitioner in Gram Panchayat Arthapur.

Placing reliance on the assignment of duty chart indicated in the office order dated 07.12.2021, a copy of which is annexure 3 to the petition, the contention is that the Gram Panchayat Arthapur was being manned by Shri Lavkush Kumar who was working as a Computer Operator, as finds place at Serial No.3 of the said order, while so far the petitioner is concerned, he has not been assigned duties pertaining to any particular gram panchayat as would be apparent from the said duty chart of the said office order.

Reliance has also been placed on the specific averment made in paragraph 3 of the supplementary rejoinder affidavit dated 19.11.2024.

The further argument of the learned counsel for the petitioner is that by means of the order dated 19.12.2022, a copy of which is annexure 8 to the petition, the petitioner has already been imposed with a recovery along with others and consequently, there cannot be any occasion for terminating his services on the said allegation, more particularly, when he has already been imposed with a penalty and the termination would amount to double jeopardy.

Learned Standing counsel prays for and is granted two weeks' time to file a supplementary counter affidavit indicating as to how the petitioner has been terminated from service for the work alleged to have been done in Gram Panchayat Arthapur, more particularly, when as per the office chart, the petitioner was not posted as Computer Operator in Gram Panchayat Arthapur.

While filing the supplementary counter affidavit, copy of the para 15.3.1 of the Standard Operating Procedure on Complaints of the master circular 2018-19 as referred to in the order impugned dated 06.01.2023 would also be brought on record.

As the matter has been heard at length, as such, list this case on 13.02.2025 at 02:15 P.M. for further hearing."

From a perusal of the aforesaid order dated 27.01.2025 it emerges that the contractual services of the petitioner have been terminated by the order impugned dated 06.01.2023.

The grounds taken by learned counsel for the petitioner for challenging the aforesaid order are that (a) the Gram Panchayat, Arthapur was being run by Sri Luv Kush who was working as a Computer Operator while the petitioner had not been assigned any specific duty pertaining to the Arthapur Gram Panchayat and the Show Cause Notice that had been issued to him indicated about the work not done by the petitioner in Gram Panchayat, Arthapur (b) that the petitioner has already been punished with the recovery along with others vide order dated 19.12.2022 and consequently, termination of his services would amount to double jeopardy.

This Court vide order dated 27.01.2025 had required the learned Standing counsel to file a supplementary counter affidavit duly bringing on record paragraph 15.3.1 of the SOP.

Supplementary counter affidavit has been filed today.

Learned Standing counsel argues that so far as ground (a) taken by the petitioner, a perusal of the order dated 07.12.2021, a copy of which is annexure 3 to the writ petition would indicate that although Sri Luv Kush Kumar had been assigned the work in Gram Panchayat, Arthapur yet assignment of duty of the petitioner as has been made in the said order itself indicates that the petitioner had been given the charge of the entire feeding work including the documents etc. which he failed to discharge. It is contended that the petitioner was in-charge for feeding for the entire block and not only pertaining to village Arthapur and when he failed to do the feeding work and the other work that had been assigned to him consequently, his services have been terminated.

So far as ground (b) is concerned, Sri Asthana, learned Standing counsel has placed reliance on Clause (III) of the SOP, a copy of which is annexure 2 to the supplementary counter affidavit to contend that where financial irregularities are established, following measures shall be invariably ensured namely (a) recovery of embezzled fund (b) FIR against those found guilty (c) departmental proceedings against those found guilty and (d) which does not pertain to the petitioner.

Contention is that apart from the recovery imposed on the petitioner, the contractual services of the petitioner have also been terminated considering Clause (III) (iii) of Clause 15.3.1 of the SOP and as such, there is no infirmity in the same.

Heard learned counsel appearing on behalf of the contesting parties and perused the records.

From a perusal of the records it emerges that the contractual services of the petitioner have been terminated vide order dated 06.01.2023. While terminating the services, reliance has been placed on Clause 15.3.1 of the SOP.

So far as Clause 15.3.1 of the SOP is concerned, it entails following punishments namely (a) recovery of embezzled fund (b) FIR against those found guilty (c) departmental proceedings against those found guilty.

The respondents have incidentally already adopted the measure of recovery of the alleged embezzled fund from the petitioner as emerges from a perusal of the order dated 19.12.2022, a copy of which is annexure 8 to the writ petition whereby a recovery of Rs. 14,862/- has been made from the petitioner. Incidentally, the said order indicates that the recovery from the petitioner along with others is being made in terms of Clause 15.3.1 of the SOP more particularly paragraph (III).

Admittedly, no departmental proceedings have initiated against the petitioner. Obviously no such departmental proceedings could be initiated as the petitioner is not a regular employee of the respondents. Thus, the termination of the contractual services of the petitioner, although purporting it to be one of the measures as provided under Clause 15.3.1 of the SOP, would go beyond what is provided under the aforesaid clause of the SOP inasmuch as the said clause does not pertain to the termination of the contractual services of a contractual employee.

So far as the argument of the learned Standing counsel that the petitioner had been assigned the entire feeding work and not only the work pertaining to Gram Panchayat, Arthapur the same has credence and thus is not considered to be a ground favourable to the petitioner.

Keeping in view the aforesaid discussion, the writ petition is allowed. The order impugned dated 06.01.2023, a copy of which is annexure 1 to the writ petition is quashed.

Consequences to follow.

However, it is provided that in case the respondents are of the view that the petitioner has violated any of the terms and conditions of his contract then it would be open for the respondents to take action against the petitioner in terms of the contract but the aforesaid incident would not be a ground for taking of a fresh action against the petitioner in terms of the liberty being granted now by this Court.

Order Date :- 3.3.2025 Pachhere/-