

**AFR****Court No. - 34**

**Case :-** WRIT - A No. - 42425 of 1998

**Petitioner :-** Smt. Santosh Maurya

**Respondent :-** State of U.P. and others

**Counsel for Petitioner :-** H.P. Mishra

**Counsel for Respondent :-** C.S.C.

**Hon'ble Sudhir Agarwal, J.**

1. Heard Sri J.N. Tripathi, Advocate, holding brief of Sri H.P. Mishra, Advocate, for petitioner and learned Standing Counsel for respondents.

2. Appointment of petitioner as Anganbari Karyakatri made vide order dated 21.04.1998 on contractual basis has been cancelled by order dated 06.07.1998 by District Programme Officer, Azamgarh on the ground that income certificate of the petitioner dated 31.03.1998 was cancelled vide order dated 02.07.1998 by Tehsildar Sadar Azamgarh, hence petitioner was not below poverty line. It is pointed out that subsequently Tehsildar, Sadar, Azamgarh by order dated 09.11.1998 has cancelled his order dated 02.07.1998 and restored income certificate dated 31.03.1998. Therefore, the very basis of cancellation of appointment of petitioner disappears, therefore impugned order cancelling petitioner's appointment is liable to be set aside. The documents on record clearly show these facts. The cancellation order, therefore, cannot be sustained, but the fact remains that petitioner's appointment was made on contract basis with honorarium of Rs. 500/- per month and it was liable to be terminated at any point of time. If that be so, it is not governed by any statutory rule. That being so, no direction for reinstatement in the matter of service can be issued.

3. Learned counsel for petitioner argued that a writ petition against termination of an Anganbari Karyakatri is maintainable and relied on a Full Bench decision in **Smt. Sheela Devi and another Vs. State of U.P. and others (Special Appeal No. 1121 of 2005)** wherein referred

question was answered by Full Bench vide order dated 28.05.2010. We find that issue raised before the Full Bench was, “whether a writ petition under Article 226 filed by an Anganbari Karyakatri against her termination is maintainable or not. Full Bench held that though an Anganbari Karyakatri is appointed under a scheme of Government and does not hold any civil post, but a writ petition under Article 226 against the order of termination passed by Child Development Project Officer, a government functionary, would be maintainable on the grounds available for judicial review. The aforesaid Full Bench judgment, therefore, nowhere says that if the order of termination is found to be incorrect, relief of reinstatement can be granted to a contractual appointee like Anganbari Karyakatri, whose appointment is not governed by Statute and is founded only on a contract.

4. The appointment of petitioner as Anganbari Karyakatri is evidently on contract basis as is evident from appointment letter dated 21.04.1998 (Annexure-4 to the writ petition). Relevant extract thereof is reproduced as under:

“एतद्द्वारा कार्यभार ग्रहण करने की तिथि से श्रीमती सन्तोष मौर्य पत्नी श्री कैलाश मौर्य निवासी—ग्राम—ओदरा पैकौली पो0—रऊतमऊ न्याय पंचायत शाहगढ़ जनपद आजमगढ़ को आंगनबाड़ी कार्यकर्त्री के पद पर आंगनबाड़ी केन्द्र पैकौली पर संविदा (कान्ट्रैक्ट) के आधार पर नियुक्त किया जाता है। आंगनबाड़ी कार्यकर्त्री को रूपया पांच सौ प्रतिमाह की दर से मानदेय के रूप में दिया जायेगा।

यह तैनाती पूर्णतया मानदेय पर आधारित होगी तथा राजकीय कर्मचारियों से सम्बन्धित सेवा नियमावली लागू नहीं होगी। उक्त संविदा (कान्ट्रैक्ट) किसी भी समय बिना किसी पूर्व सूचना के समाप्त की जा सकती है। साथ ही अभ्यर्थिनी यदि संविदा (कान्ट्रैक्ट) के अनुरूप कार्य नहीं करना चाहती है तो कम से कम एक माह पूर्व उसे सूचित करना होगा।

आंगनबाड़ी कार्यकर्त्री/ सहायिका को शासनादेशानुसार किसी भी समय शासन द्वारा निर्धारित अवधि के लिए प्रदेश में संचालित प्रशिक्षण केन्द्रों पर प्रशिक्षण हेतु भेजा जा सकता है।

संविदा की शर्तें तथा दायित्वों का विवरण क्रमशः ‘अ’ एवं ‘ब’ पर संलग्न है।”

*“Smt Santosh Maurya w/o Sh. Kailash Maurya r/o village*

*Odara Paikauli, Post Rautmau, Nyay Panchayat Shahgarh, District Azamgarh is hereby appointed to the post of Aganwadi Karyakarti at Aganwadi Centre, Paikauli on contractual basis from the date of her assumption of charge. The Aganwadi Karyakarti shall be paid the honorarium @ Rs. 500/- per month.*

*This posting shall be fully based on honorarium and not be under the Service Rules applicable to the government employees. The aforesaid contract can be terminated any time without any prior notice. However, if the applicant does not want to serve as per terms of the contract, she must give intimation atleast one month in advance.*

*The Aganwadi Karyakarti/ Sahayika shall as per the government order be sent at any time for training at training centres being run in the state for the period prescribed by the government.*

*The terms and conditions of the contract and details of responsibilities are annexed at 'A' and 'B' respectively."*

*(English Translation by Court)*

5. The conditions of employment appended in appointment letter reads as under:

- “1. नियुक्त की गयी आंगनबाड़ी कार्यकर्त्री को अपना या गांव के किसी अन्य का कमरा निःशुल्क उपलब्ध कराना होगा जिसमें 40 से 50 बच्चों के बैठने की क्षमता हो। कमरा हवादार हो एवं छत टपकती न हो।
2. आंगनबाड़ी कार्यकर्त्री पूर्णतः संविदा के आधार पर कार्यरत रहेगी। यह संविदा किसी भी समय समाप्त की जा सकती है। परन्तु यदि कार्यकर्त्री स्वयं केन्द्र बंद करने की इच्छा रखती हो तो उसे एक माह पूर्व जिला कार्यक्रम अधिकारी / बाल विकास परियोजना अधिकारी को सूचना देनी होगी।
3. इस संविदा के अनुसार कार्यकर्त्री का 500/- रुपया प्रति माह मानदेय होगा।
4. इस संविदा के अनुसार राजकीय कर्मचारी सेवा नियमावली लागू नहीं होगी।

5. आ0 का0 का यह दायित्व होगा कि वह नियुक्ति के समय दी गयी दायित्वों की सूची को पूर्ण रूप से निर्वाहन सुनिश्चित करेगी। यदि कार्यकर्त्री अपने कार्य में दोषी पायी गयी तो उसकी सेवा समाप्त कर दी जायेगी।
6. आ0 का0 को केन्द्र पर जो की समान की आपूर्ति की जायेगी उसकी सुरक्षा तथा केन्द्र बन्द होने पर वापस करने का दायित्व उसी का होगा। इस दायित्व का निर्वाहन न करने पर क्षतिपूर्ति कार्यकर्त्री से की जायेगी।
7. कार्यकर्त्री का यह दायित्व होगा कि वह समय-समय पर शासन/ विभाग द्वारा दिये गये निर्देशानुसार कार्य करेगी।
8. चयनित कार्यकर्त्री को नियुक्ति के बाद किसी भी समय शासन / निदेशालय द्वारा निर्धारित अवधि के लिए प्रशिक्षण प्राप्त करना अनिवार्य होगा।

उपरोक्त के आधार पर कार्य न करने पर अथवा दोषी पाये जाने पर कार्यकर्त्री की किसी भी समय सेवा समाप्त की जा सकती है।”

- “1. The Aganwadi Karyakarti so appointed shall have to make available a free-of-charge room of hers or any other person of the village which has a seating capacity of 40 to 50 children. The room must be airy and without any roof leakage.*
- 2. The Aganwadi Karyakarti shall be posted fully on contractual basis. This contract can be terminated any time. However, if a Karyakarti herself wants to close her centre, she must give its information to the District Programme Officer/ Child Development Project Officer one month in advance.*
- 3. Under this contract, the Karyakarti shall be paid an honorarium of Rs.500/- per month.*
- 4. Under this contract, the Government Servants Service Rules shall not be applicable.*
- 5. It shall be duty of the Aganwadi Karyakarti to ensure to fully discharge responsibilities as mentioned in the list provided to her at the time of appointment. In case of Karyakarti being found to be guilty, her services shall be terminated.*
- 6. The Aganwadi Karyakarti shall be responsible for safety of the items supplied to the Aganwadi Centre and in case of centre being closed, for return of the items. On failure to*

*discharge this responsibility, compensation shall be realised from her.*

7. *The Aganwadi Karyakarti shall be responsible to act in accordance with the directions issued by the government/department from time to time.*

8. *It shall be a must for the selected Karyakarti to undergo training at any time after her appointment for the period as prescribed by the government/ directorate.*

*In case of not working in terms of the aforesaid or on being found to be guilty, the services of the Karyakarti can be terminated any time.” (English Translation by Court)*

6. Even if it is held that the said contractual appointment has been wrongly terminated, whether such contractual appointee can claim relief by invoking writ jurisdiction is a matter, need be considered, at this stage. It is well settled that enforcement of contract of personal service in a writ jurisdiction is not permissible except in certain limited circumstances. As already held by Full Bench in **Smt. Sheela Devi Vs. State of U.P. and others (supra)** that appointment of Anganbari Karyakatri is an appointment on contract basis, if is not governed by any statutory rules, it is governed by executive orders or a Scheme launched by Government. Such an appointment does not confer any status upon appointee and appointee is not governed by the Statute or Statutory provisions since the Scheme or executive orders do not enjoy status of statutory provision. The nature of engagement is like an ordinary contract between Master and servant.

7. In **Roshan Lal Tandon Vs. Union of India and others AIR 1967 SC 1889** drawing distinction between the employment under a contract and status, it was held that there is no vested contractual right in regard to the terms of service where the employment is one of the status. The origin of Government service is contractual. There is an offer and acceptance in every case. But once appointed to the post or

office, the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a Government servant is more one of status than of contract. The hallmark of status is the attachment to a legal relationship of rights and duties imposed by public law and not by mere agreement of the parties. The relationship between the Government and the Servant is not like an ordinary contract of service between a master and servant. The legal relationship is something entirely different, something in the nature of status. In the language of jurisprudence, status is a condition of membership of a group of which powers and duties are exclusively determined by law and not by agreement between the parties concerned. Thus, in the cases where the appointment and conditions of service are governed by statute, the relationship is that of status and not mere a contract. However, in other cases, it is purely a contract of service resulting in a relationship of ordinary master and servant. In the present case, it cannot be said that the petitioners employment is that of a status since it is not governed by the statutory provisions in any manner. It is purely and simply an ordinary contract of service between master and servant. In such cases, where the contract of service is not governed by the statutory provisions, it is well-settled that contract of service cannot be sought to be enforced by seeking reinstatement or continuance in employment since such a relief is barred under the Specific Relief Act.

8. In **Executive Committee of U.P. State Warehousing Corporation, Lucknow Vs. C.K. Tyagi** AIR 1970 SC 1244 considering the question as to when such a relief can be granted, Court observed:

*"Under the common law the Court will not ordinarily force an employer to retain the services of an employee whom he no*

*longer wishes to employ. But this rule is subject to certain well-recognised exceptions. It is open to the Courts in an appropriate case to declare that a public servant who is dismissed from service in contravention of Article 311 continues to remain in service, even though by doing so the State is in effect forced to continue to employ the servant whom it does not desire to employ. Similarly under the Industrial Law, jurisdiction of the Labour and Industrial Tribunals to compel the employer to employ a worker whom he does not desire to employ, is recognised. The Courts are also investigated with the power to declare invalid the act of a statutory body, if by doing the act the body has acted in breach of a mandatory obligation imposed by statute, ..."*

9. Again in para 25 of the judgment, Court held:

*"The position in law is that no declaration to enforce a contract of personal service will be normally granted. But there are certain well-recognized exceptions to this rule and they are: To grant such a declaration in appropriate cases regarding (1) a public servant, who has been dismissed from service in contravention of Article 311. (2) Reinstatement of a dismissed worker under Industrial law by Labour or Industrial Tribunals. (3). A statutory body when it has acted in breach of a mandatory obligation, imposed by statute"*

10. The above view has been reiterated in **Executive Committee of Vaish Degree College, Shamli and others Vs. Lakshmi Narain and others AIR 1976 SC 888 (paras 9, 10, 13 and 17); Smt. J. Tiwari Vs. Smt. Jawala Devi Vidya Mandir and others, AIR 1981 SC 122 (paras 4 and 5); and Life Insurance Corporation of India Vs. Escorts Ltd., and others AIR 1986 SC 1370 (paras 101, 102).** Similar view has been taken by this Court also in **A.K. Home Chaudhary Vs. National Textile Corporation U.P. Ltd., Kanpur**

**1984 UPLBEC 81; B.M. Varma Vs. State of U.P. and others 2004 (4) AWC 2866; and Vivek Kumar Mishra and others Vs. State of U.P. and others, 2008(4) ESC 2811.**

11. The above principle has been reiterated recently in **K.K. Saxena vs. International Commission on Irrigation and Drainage (2015) 4 SCC 670**, where Court has said as under:

*“It is trite that contract of personal service cannot be enforced. There are three exceptions to this rule, namely: (i) when the employee is a public servant working under the Union of India or State; (ii) when such an employee is employed by an authority/body which is a State within the meaning of Article 12 of the Constitution of India; and (iii) when such an employee is 'workmen' within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 and raises a dispute regarding his termination by invoking the machinery under the said Act. In the first two cases, the employment ceases to have private law character and 'status' to such an employment is attached. In the third category of cases, it is the Industrial Disputes Act which confers jurisdiction on the labour court/industrial tribunal to grant reinstatement in case termination is found to be illegal.”*

12. In **State Bank of India and others Vs. S.N. Goyal (2008) 8 SCC 92**, it was reiterated that relationship of Master and servant is purely contractual. Thus, contract of personal service is not specifically enforceable having regard to bar contained in Section 14 of Specific Relief Act, 1963. Even if the termination of the contract of employment (by dismissal or otherwise) is found to be illegal or in breach, the remedy of the employee is only to seek damages and not specific performance. Courts will neither declare such termination to be a nullity nor declare that the contract of employment subsists nor grant the consequential relief of reinstatement. The three exceptions to the above rule referred to in the above decision are as under:



- (i) where a civil servant is removed from service in contravention of the provisions of Article 311 of the Constitution of India (or any law made under Article 309);
- (ii) where a workman having the protection of Industrial Disputes Act, 1947 is wrongly terminated from service; and
- (iii) where an employee of a statutory body is terminated from service in breach or violation of any mandatory provision of a statute or statutory rules.

13. Court further said that there is a clear distinction between public employment governed by statutory rules and private employment governed purely by contract. The test for deciding the nature of relief - damages or reinstatement with consequential reliefs - is whether the employment is governed purely by contract or by a statute or statutory rules. Even where the employer is a statutory body, where the relationship is purely governed by contract with no element of statutory governance, the contract of personal service will not be specifically enforceable. Conversely, where the employer is a non-statutory body, but the employment is governed by a statute or statutory rules, a declaration that the termination is null and void and that the employee should be reinstated can be granted by Courts.

14. In view of above exposition of law, no relief of reinstatement, when the appointment/engagement is contractual, can be granted and at the best, remedy lies in common law claiming damages for breach of contract. Hence, no effective relief can be granted to petitioner and the petitioner has remedy to seek damages in common law.

15. The writ petition is dismissed, accordingly.

Dt. 30.11.2017

PS