IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VISHAL DHAGAT

ON THE 14th OF OCTOBER, 2026

WRIT PETITION No. 28473 of 2025

CNR No.: MPHC010505262025

AMIT KUMAR MISHRA AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Gopesh Tiwari - Advocate for petitioners.

Shri Ved Prakash Tiwari - Government Advocate for State.

ORDER

Petitioners have filed this petition under Article 226 of Constitution of India challenging circular dated 24/06/2025 bearing No.MGNREGS-MP/GRS/2025 (Gram Rojgar Sahayak Marg Drshika-2025) issued by Commissioner, Madhya Pradesh Rajya Rojgar Guarantee Parishad, Bhopal (M.P.).

2. Learned counsel appearing for petitioners submitted that petitioners are Gram Rojgar Sahayak posted in different parts of State of Madhya Pradesh. They were selected in recruitment process for respective places and respective Janpad Panchayats. Gram Rojgar Sahayak were appointed on contract basis on conditions mentioned in their appointment letter for particular Gram Panchayat. Orders issued by State of Madhya Pradesh in respect of contractual appointment are also applicable to them. Post of Gram

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Rojgar Sahayak was non transferrable as per their contract. Period of contract is for one year and thereafter same is being renewed. Appointment is attached to implementation of programs and their requirement is dependent upon projects of State Government. Gram Rojgar Sahayak were also entitled for 13 days Casual Leave, 15 days Medical Leave and women employees are entitled to Maternity Leave. Contract is entered between Chief Executive Officer and Project Officer of Janpad Panchayat (MGNREGA). Contract can be terminated by giving one month's notice or one month's wages. If Gram Rojgar Sahayak remains unauthorizedly absent for more than one month, then contract appointment is cancelled automatically. Gram Rojgar Sahayak is not entitled to pension or any bonus. In case of any dispute, decision of Madhya Pradesh Rajya Rojgar Guarantee Parishad is final.

3. Counsel appearing for petitioners further submitted that circular for Gram Rojgar Sahayak in respect of their service conditions was issued on 02/06/2012. By another circular dated 06/07/2013 Gram Rojgar Sahayak were treated to be Sahayak Sachiv. In absence of Secretary, Gram Rojgar Sahayak in emergency can be given charge to the post of Secretary. After circular of 2013, Gram Rojgar Sahayak were working in a full fledged manner and not as part time employee. It is submitted that from 2017 onwards Gram Rojgar Sahayak are receiving fixed pay of Rs.9,000/-. It is submitted that presently Gram Rojgar Sahayak are getting pay of Rs.18,000/- per month. Counsel appearing for petitioners submitted that Gram Rojgar Sahayak working in other States like Rajasthan are regularized on civil post. Similar scheme for regularization has been adopted by State Government of

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Himchal Pradesh. Petitioners are aggrieved by new circular which was issued by Madhya Pradesh Rajya Rojgar Guarantee Parishad, Bhopal on 24/06/2025. Petitioners are challenging following clauses of circular dated 24/06/2025 :-

(i) Clauses - 2.1.7, 3.10 & 6.11 :- Aforesaid clauses provide for Second Appeal before Commissioner, Madhya Pradesh Rajya Rojgar Guarantee Parishad, Bhopal within period of 90 days. Many candidates reside in distant places, which makes it difficult for them to file Second Appeal within the prescribed period of 90 days.

(ii) Clauses - 2.2.6 & 2.2.8 :- Aforesaid provisions provide for selection of candidate on its merit. However, said selection is subject to permission of General Body of respective Gram Panchayat. Aforesaid provisions creates confusion in selection process. If selection is to be made on merits, then why permission from Gram Panchayat is required.

(iii) Clauses - 3.4 & 3.9 :- As per aforesaid provisions employee has to secure 60 marks every year for continuation of his service, otherwise his job may be terminated. Gram Rojgar Sahayak has to face uncertain difficulties every day of their working like server not functioning properly and not sanctioning of funds from higher authorities etc. Due to said practical difficulties, Gram Rojgar Sahayak may not secure 60 marks and may be removed arbitrary.

(iv) Clause 6.9 :- If criminal case is pending against Gram Rojgar Sahayak, he or she may be denied an extension or renewal of their tenure. Since criminal trials often take considerable time to conclude, this may result

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in undue hardship and injustice to the Gram Rojgar Sahayak.

(v) Clause 6.12 :- Aforesaid provision restrains Gram Rojgar Sahayak to participate in strike. Aforesaid provision restrains legal right of an employee to raise his or her voice against injustice.

(vi) Clauses 6.14 & 6.15 :- It provides that if merger of Gram Panchayat and Municipal Corporation would take place, then services of Gram Rojgar Sahayak would be terminated. Said provision is arbitrary and malafide.

(viii) Clauses 8.1, 8.2, 8.3 and 8.7 :- After completion of three years of service, on recommendation of Chief Executive Officer of Zila Panchayat, Collector would transfer Gram Rojgar Sahayak anywhere in the District and employee has to join at new place of posting within period of seven days. Aforesaid provision is contrary to the recruitment Rules, which provides that Gram Rojgar Sahayak should be local resident and post is non transferable. Clause 8.7 does not provides any transfer allowance or dearness allowance to a Gram Rojgar Sahayak. Said allowance ought to have been paid to a Gram Rojgar Sahayak as at time he is transferred to a distant Janpad Panchayat about more than 100 -200 kms away.

4. Counsel appearing for petitioners submitted that circular dated 24/06/2025 is issued in violation to the principle of natural justice. Circular is contrary to the contract and statutory provisions. Policy is also contrary to the orders passed by High Courts and Supreme Court. Aforesaid provisions are arbitrary and malafide and oppressive in nature. On basis of aforesaid submissions counsel appearing for petitioners made a prayer to issue writ of

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certiorari to quash circular dated 24/06/2025.

5. Government advocate appearing for State submitted that petitioners were given contract appointment when they agreed to the conditions imposed upon them. Condition Nos.4 & 6 of the appointment letter stipulates that all directions issued by State of Madhya Pradesh in respect of contract employment will be applicable on Gram Rojgar Sahayak and they will be bound by it. Further contract employee will be bound by directions issued by Madhya Pradesh Rajya Rojgar Guarantee Parishad from time to time. It is submitted that circular dated 24/06/2025 was issued in accordance with Section 12 of Mahatma Gandhi National Rural Employment Guarantee Act, 2005. It is submitted that petitioners are misinterpreting circular dated 10/11/2009, wherein it is mentioned that Gram Rojgar Sahayak in all Panchayats are not to be treated as part time workers. Merely using expression that Gram Rojgar Sahayak are not to be treated as part time workers, cannot be construed to mean regularization or absorption in Government service. It is submitted that State Government from time to time engaged certain personnel under specific Schemes such as Guest Faculty Teacher, Asha Worker, Aanganwadi Worker, Nagar Sainik, Kotwar and Gram Rojgar Sahayak. Appointment of aforesaid workers are scheme based. Such workers are only entitled to honorarium. They cannot seek parity with regular employees for getting benefits of other allowances like transfer allowance. Status of petitioners is of contractual part time employee and they execute yearly bonds. They cannot claim party with regular employees of Government for grant of allowances or other benefits. Gram Rojgar Sahayak

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are engaged for implementation of MGNREGA work, whereas post of Panchayat Sachiv is a regular cadre post under Department of Panchayati Raj. Petitioners cannot claim parity with Gram Rojgar Sahayak of other States for granting them regularization.

6. Government Advocate further submitted that direction for Second Appeal was framed after all relevant considerations. There is provision of First Appeal before Collector. Office of Collector is approachable within District. Scope of Appeal before Commissioner MGNREGA is limited and same is highest administrative authority under the Scheme, therefore, machinimas of Appeal is balanced and is not arbitrary. Gram Rojgar Sahayak is appointed to do work under Gram Panchayat for implementation of Government Schemes, therefore, approval of Gram Sabha General Body is necessary administrative requirement and same cannot be said to be arbitrary. Contention of counsel for petitioner that Gram Rojgar Sahayak had to work at grassroot and they faced various difficulty of server problems and other duties due to which sometime it is difficult to secure 60 marks for their continuation, there is Clause-3.1.1 of MGNREGA. This provides annual performance review of Gram Rojgar Sahayak by Program Officer and District Program Coordinator. Employee is competent to prescribe and regulate service conditions including performance evaluation. Therefore, there is no arbitrariness if they are required to secure minimum 60 marks on annual performance. Government Advocate further submitted that it is within disciplinary and administrative domain of employer to formulate scheme for termination of a Gram Rojgar Sahayak if he is involved in any criminal

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offence or other irregularities. There is no arbitrariness or illegality if Gram Rojgar Sahayak is terminated if any criminal case is registered against him. Strike is always considered to be an undisciplined act on part of an employee. Rule 6 of M.P. Civil Services (Conduct) Rules, 1965 also declares participation in strike to be an act of indiscipline. Imposing such guideline is neither arbitrary and nor inconsistent with service discipline. It is submitted that MGNREGA is only applicable to rural areas. Consequently, upon merger very basis of engagement of Gram Rojgar Sahayak will cease to exist, therefore, there is no arbitrariness in Clause 5.15 or 6.14 of Circular dated 24/06/2025. Challenge is also made to the guidelines regarding transfer of Gram Rojgar Sahayak. It is submitted that Gram Rojgar Sahayak is only to be transferred within District after period of three years. Provision for transfer has been introduced as a welfare and administrative measure. Present Scheme enable adjustments within District for administrative exigency and personal convenience, therefore, scheme of transfer is framed in accordance with convenience of Gram Rojgar Sahayak and their demands. Welfare and safety of Women Employees was also taken into consideration. Such guidelines cannot be said to be arbitrary and malafide and contrary to contract. Transfer is an incidence of service. Employer can always impose conditions regarding transfer of an employee.

7. Government Advocate further submitted that only because additional charge is given to Gram Rojgar Sahayak to act as Secretary of Gram Panchayat will not make their demands for payment of T.A. and D.A. There is no statutory provisions for making payment of said sums. Post of

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Gram Rojgar Sahayak is coterminous with project or specific schemes, therefore, despite rendering continuous service, their cannot be any regularization of petitioners and they cannot be treated on parity with Panchayat Employees. Actual service do not confer any vested right to claim regularization on parity with employees appointed against sanctioned post. It is submitted that provision of termination of service is necessary for disciplined working of Gram Rojgar Sahayak. Termination is only in case of negligence in discharge of duties, financial irregularities, embezzlement of Government funds, moral turpitude or serious act of indiscipline. Said provision cannot be said to be malafide or arbitrary in nature. In view of aforesaid submissions, Government Advocate appearing for State made a prayer for dismissal of Writ Petition.

8. Heard counsel for the parties.

9. Admittedly, petitioners as well as respondents admits that employment of Gram Rojgar Sahayak is contractual in nature and contract is entered between employee and employer, which governs conditions of service. Writ Petition under Article 226 of Constitution of India is a public law remedy. Provisions of Article 226 of Constitution of India can be resorted to in cases where public law element is involved in a case. Public law remedy or public element means a body / organization described in Article 12 of Constitution of India. Body or organization is a state within the meaning of Article 12 of Constitution of India and said authority is violating Constitutional rights of a party or there is statutory violations by a party or where party is failed to discharge any public duty, which is legally

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enforceable in accordance with law. Body or State within meaning of Article 12 of Constitution of India exercising its power arbitrarily. In aforesaid cases Writ Petition under Article 226 of Constitution of India can be filed before High Court.

10. Gram Rojgar Sahayaks are appointed for implementation of projects under MGNREGA. Nature of employment is contractual in nature and, therefore, if there is violation of conditions of contract, then obligation of either party is contractual in nature and they cannot file Writ Petition under Article 226 of Constitution of India for enforcement of conditions of contract. But, if State is violating Constitutional statutory obligations or pubic duty or exercises power arbitrary, then despite there being contract between them, contractual employee can file Writ Petition under Article 226 of Constitution of India before this Court.

11. Now it is to be seen whether petitioners are asking for implementation of contractual obligation or making prayer for violation of Constitutional duty / statutory violation or failure on part of State Government to do public duty or acting malafidely. Prayer made by petitioners in this Writ Petition is to be examined on anvil of aforesaid established criteria.

12. Statutory Appeal is provided under the framework and if right of Appeal is provided, it is the duty of Court to see that same is not arbitrary or *malafide*, therefore, challenge to Clause 2.1.7, 3.10 & 6.11 is taken into consideration.

13. **Answer to challenge to Clauses 2.1.7, 3.10 & 6.11** :- Clauses 2.1.7,

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3.10 and 6.11 are quoted as under :-

2.1.7 - नियुक्ति कार्यवाही से व्यथित होने पर अभ्यर्थी द्वारा निम्नांकित अपीलीय प्रावधान के तहत सक्षम स्तर पर अपील की जा सकेगी:

(क) मुख्य कार्यपालन अधिकारी/अति. जिला कार्यक्रम समन्वयक द्वारा पारित आदेश से व्यथित अभ्यर्थी कलेक्टर/जिला कार्यक्रम समन्ययक को 60 दिवस की समय-सीमा में प्रथम अपील प्रस्तुत करेगा। प्रस्तुत अपील का निराकरण कलेक्टर द्वारा 45 दिवस की समय-सीमा में किया जाएगा। कलेक्टर/जिला कार्यक्रम समन्वयक को प्रदत्त यह अधिकार अपर कलेक्टर को नहीं दिया गया है।

(ख) प्रथम अपीलीय अधिकारी के आदेश से व्यथित अभ्यर्थी द्वारा आदेश पारित होने की तिथि से 90 दिवस के अन्दर द्वितीय अपील आयुक्त, म.प्र. राज्य रोजगार गारंटी परिषद, भोपाल के समक्ष प्रस्तुत की जा सकेगी। प्रस्तुत अपील का निराकरण 90 दिवस की समय-सीमा में किया जायेगा। आयुक्त, म.प्र. राज्य रोजगार गारंटी परिषद भोपाल के द्वारा पारित निर्णय अंतिम होगा। उक्त निर्णय/आदेश के विरुद्ध कोई अपील ग्राह्य नहीं होगी।

3.10 - नियुक्ति की कार्यवाही व वार्षिक मूल्यांकन के आधार पर सेवा समाप्ति से व्यथित होने अभ्यर्थी/संबधित ग्राम रोजगार सहायक द्वारा निम्नांकित अपीलीय प्रावधान के तहत सक्षम स्तर अपील की जा सकेगी -

(क) मुख्य कार्यपालन अधिकारी/अति. जिला कार्यक्रम समन्वयक द्वारा पारित आदेश से व्यथित अभ्यर्थी/संबधित ग्राम रोजगार सहायक कलेक्टर/जिला कार्यक्रम समन्वयक को 60 दिवस की समय सीमा में प्रथम अपील प्रस्तुत करेगा। प्रस्तुत अपील का निराकरण कलेक्टर द्वारा 45 दिवस की समय सीमा में किया जाएगा। कलेक्टर/जिला कार्यक्रम समन्वयक को प्रदत यह अधिकार अपर कलेक्टर को नहीं दिया गया है।

(ख) प्रथम अपीलीय अधिकारी के आदेश से व्यथित अभ्यर्थी/संबधित ग्राम रोजगार सहायक द्वारा आदेश पारित होने की तिथि से 90 दिवस के अन्दर द्वितीय अपील आयुक्त, म.प्र. राज्य रोजगार गारंटी परिषद भोपाल के समक्ष प्रस्तुत की जा सकेगी। प्रस्तुत अपील का निराकरण 90 दिवस की समय-सीमा में किया जायेगा। आयुक्त, म.प्र. राज्य रोजगार गारंटी परिषद भोपाल के द्वारा पारित निर्णय अंतिम होगा । उक्त निर्णय/आदेश के विरुद्ध कोई अपील ग्राह्य नहीं होगी।

(ग) प्रथम अपीलीय अधिकारी या आयुक्त, परिषद द्वारा अपील मान्य होने का निर्णय होने की दशा में संविदा अनुबंध किए जाने की स्थिति उत्पन्न होती है तो किसी भी दशा में ग्राम रोजगार सहायक को सेवा विरत अवधि हेतु किसी प्रकार का मानदेय/पारिश्रमिक/अन्य लाभ की पात्रता नहीं होगी।

6.11 **अपीलीय प्रावधान** :- (क) मुख्य कार्यपालन अधिकारी/अति. जिला कार्यक्रम समन्वयक द्वारा पारित आदेश से व्यथित अभ्यर्थी कलेक्टर/जिला कार्यक्रम समन्ययक को 60 दिवस की समय-सीमा में प्रथम अपील प्रस्तुत करेगा। प्रस्तुत अपील का निराकरण कलेक्टर द्वारा 45 दिवस की समय-सीमा में किया जाएगा। कलेक्टर/जिला कार्यक्रम समन्ययक को प्रदत्त यह अधिकार अपर कलेक्टर को नहीं दिया जा सकेगा।

(ख) प्रथम अपीलीय अधिकारी के आदेश से व्ययित अभ्यर्थी द्वारा आदेश पारित होने की तिथि से 90 दिवस के अन्दर द्वितीय अपील आयुक्त, म.प्र. राज्य रोजगार गारंटी परिषद, भोपाल के समक्ष प्रस्तुत की जा सकेगी। प्रस्तुत अपील का निराकरण 90 दिवस की समय-सीमा में किया जायेगा। आयुक्त, म.प्र. राज्य रोजगार गारंटी परिषद भोपाल के द्वारा पारित निर्णय अंतिम होगा। उक्त निर्णय/आदेश के विरुद्ध कोई अपील ग्राह्य नहीं होगी।

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(ग) प्रथम अपीलीय अधिकारी या आयुक्त, परिषद द्वारा अपील मान्य होने का निर्णय होने की दशा में संविदा अनुबंध किए जाने की स्थिति उत्पन्न होती है तो किसी भी दशा में ग्राम रोजगार सहायक को सेवा विरत अवधि हेतु किसी प्रकार का मानदेय/पारिश्रमिक/अन्य लाभ की पात्रता नहीं होगी।

14. Regarding aforesaid clauses i.e. 2.1.7, 3.10 & 6.11 main grievance of petitioners is that Gram Rojgar Sahayak has to file Appeal within period of 90 days before Commissioner at Bhopal. Gram Rojgar Sahayak are posted in different Gram Panchayats and sometime it is very difficult to them to approach Bhopal within period of 90 days. Provisions of Appeal is formulated for ventilation of grievance of Gram Rojgr Sahayak. Such provisions cannot be said to be arbitrary. Neither it violates any Constitutional or legal right of petitioners. Provision of appeal do not require that Gram Rojgar Sahayak is required to appear in person before Commissioner for filing of Appeal. Properly formulated alongwith facts and grounds, duly signed by Gram Rojgar Sahayak, which will fulfil requirement of appeal, can be sent to Commissioner, Madhya Pradesh Rajya Rojgar Guarantee Parishad, Bhopal either by post or through email or by any other mode of communication. Personal appearance of Gram Rojgar Sahayak is not necessary. In view of same I do not find any arbitrariness in Clauses 2.1.7, 3.10 and 6.11. Said provisions are held to be legal, valid and in accordance with law.

15. Challenge is made to procedure adopted for selection of Gram Rojgar Sahayak. Appointment of Gram Rojgar Sahayak is made to implement the Schemes of State Government. Petitioners are challenging that procedure is arbitrary and unconstitutional. Since arbitrariness of selection

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procedure in public employment which is to be offered as contract employment, is under challenge, therefore, Court may examine arbitrariness or illegality in procedure of selection process, therefore, challenge to Clauses 2.2.6 and 2.2.8 is taken up for adjudication.

16. **Answer to challenge to Clauses 2.2.6 & 2.2.8**. Clauses 2.2.6 and 2.2.8 are quoted as under :-

> 2.2.6 - मेरिट सूची में प्रथम स्थान पर अंकित अभ्यर्थी को ग्राम पंचायत में ग्राम रोजगार सहायक के पद पर नियुक्ति हेतु आदेश ग्राम पंचायत की सामान्य सभा से अनुमोदन उपरांत ग्राम पंचायत द्वारा प्रसारित किया जाएगा।
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> 2.2.8 - आदेश प्रसारित दिनांक से 15 दिवस की समयावधि में कार्यभार ग्रहण करना अनिवार्य होगा। इस अवधि में कर्मचारी द्वारा कार्यभार ग्रहण न करने की स्थिति में नियुक्ति स्वतः समाप्त मानी जायेगी एवं मेरिट सूची में दूसरे स्थान पर उल्लेखित अभ्यर्थी की नियुक्ति हेतु ग्राम पंचायत की सामान्य सभा से अनुमोदन उपरांत ग्राम पंचायत द्वारा आदेश प्रसारित किया जाएगा। इस अभ्यर्थी को भी 15 दिवस की समयावधि में कार्यभार ग्रहण करना अनिवार्य होगा।

17. As per Clause 2.2.1 examination is to be conduced for selection of Gram Rojgar Sahayak. Clause 2.2.2 provides that examination is only qualifying in nature and no claim can be made by a candidate on basis of high merit position. Further Gram Sabha is required to make approval in favour of meritorious candidate, who secured first position. Examining aforesaid provision does not show any anomaly. Although Clause 2.2.2 provides that the examination is merely qualifying in nature, a conjoint reading of the provisions of the said clause indicates that examination is required to be conducted and the name of the meritorious candidate is to be approved by the Gram Sabha for appointment to the post of Gram Rojgar Sahayak. Gram Rojgar Sahayak is to work for implementation of project in Gram Panchayat, therefore, approval of Gram Sabha is necessary. It is also stipulated in said provision that name of meritorious candidate is to be

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recommended for appointment, therefore, principle of merit and democratic selection for implementation of schemes is adopted and same cannot be said to be bad in law.

18. Clauses 3.4 and 3.9 are regarding retaining of Gram Rojgar Sahayak in his work and appreciation of his work. Since Gram Rojgar Sahayak is implementing Government Policies and working under Government Institutions, therefore, whether prcedure adopted for retaining Gram Rojgar Sahayak in servide is legal or not, can be examined by Court, therefore, challenge to Clauses 3.4 and 3.9 is taken up for consideration.

19. **Answer to challenge to Clauses 3.4 & 3.9** :- Clauses 3.4 and 3.9 are quoted as under :-

> 3.4 - अनुबंध एक बार निष्पादित किये जाने के पश्चात लागू संविदा शर्तों पर पुनः नये सिरे से अनुबंध निष्पादित करने की आवश्यकता नहीं होगी। यदि वार्षिक सेवा मूल्यांकन के आधार पर संबंधित ग्राम रोजगार सहायक का कार्य संतोषप्रद पाया जाता है और उनके विरुद्ध किसी प्रकार की अनुशासनात्मक अथवा अभियोजन कार्यवाही प्रचलित न हो तो अनुबंध स्वतः ही समान शर्तों पर मुख्य कार्यपालन अधिकारी, जिला पंचायत द्वारा नवीनीकरण किया जाएगा। प्रचलित अनुबंध पत्र पर मुख्य कार्यपालन अधिकारी जिला पंचायत द्वारा आगामी 01 वर्ष के नवीनीकरण की टीप दर्ज की जाएगी। वार्षिक मूल्यांकन पत्रक का प्रारूप परिशिष्ट 02 अनुसार है। आयुक्त, मनरेगा समय-समय पर वार्षिक मूल्यांकन पत्रक के प्रारूप में संशोधन व संविदा अवधि बढ़ाए जाने हेतु न्यूनतम अंक निर्धारित करने हेतु सशक्त होंगे। आगामी आदेश होने तक संविदा अवधि बढ़ाए जाने हेतु वार्षिक मूल्यांकन पत्रक में न्यूनतम 60 अंक प्राप्त किया जाना अनिवार्य रहेगा।
>
> 3.9 - वार्षिक मूल्याकंन में ग्राम रोजगार सहायक को न्यूनतम अंक (60) से कम प्राप्त होने की स्थिति में सेवा समाप्ति की कार्यवाही की जा सकेगी।

20. Aforesaid clauses are not oppressive, nor create any confusion. Aforesaid clauses provide a system for valuation of work done by Gram Rojgar Sahayak for renewal of his contract. Employer is always free to renew contract with efficient employees only. Process enacted for renewal of contract is scientific. There is annual valuation in format provided and if Gram Rojgar Sahayak has to secure minimum 60 marks for renewal of

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contract, then same cannot be said to be arbitrary. Said method is adopted for renewal of contract with efficient and good workers only. In most of the Government departments and private sectors ACRs are written of an employees or there is appreciation of their work to give them benefits and promotions. If some scale is fixed which makes Gram Rojgar Sahayak work hard for renewal of contract, then no arbitrariness is found in same. Resultantly challenge to Clauses 3.4 and 3.9 fails.

21. Clause 6.9 is also regarding the procedure for removal of Gram Rojgar Sahayak. Gram Rojgar Sahayak is holding important position for implementation of Government projects, therefore, arbitrariness or illegality in such procedure can be examined by this Court, therefore, challenge to Clause 6.9 is taken up for consideration.

22. **Answer to challenge to Clause 6.9** :- Clause 6.9 is quoted as under :

> **6.9** यदि किसी ग्राम रोजगार सहायक के विरुद्ध लोकायुक्त / ईओडब्ल्यू का ट्रैप प्रकरण अथवा आपराधिक प्रकरण पंजीबद्ध हुआ हो तो उसके विरुद्ध उपरोक्त प्रावधानों के अनुसार शासकीय कार्यों से विरत रखे जाने का आदेश प्रसारित किया जाएगा। यदि अनुबंध अवधि समाप्त होने तक संबंधित ग्राम रोजगार सहायक सक्षम न्यायालय से दोषमुक्त नहीं होता है तो आगामी वर्ष हेतु संविदा नवीनीकरण नहीं किया जाएगा। इस प्रकार के प्रकरणों में निम्न आधार पर संविदा सेवा भी समाप्त की जाएगी :-
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> (क) जब भ्रष्टाचार या अन्य नैतिक पतन में अंतर्वलित दाण्डिक अपराध में सक्षम प्राधिकारी द्वारा अभियोजन स्वीकृति के पश्चात् उसके विरुद्ध चालान प्रस्तुत किया गया हो।
>
> (ख) उसके निरुद्ध किए जाने के दिनांक से यदि उसे या तो किसी दाण्डिक आरोप पर या अन्यथा, 48 घंटे से अधिक की कालावधि के लिए अभिरक्षा में निरुद्ध किया गया हो।

23. On perusing aforesaid Clause it is found that Gram Rojgar Sahayak is suspended from doing work if any criminal case is registered by Economic Offences Wing or Lokayukta or in cases of corruption, moral turpitude when

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challan is filed or in cases where he is under arrested for more than 48 hours. Under these conditions Gram Rojgar Sahayak will continue to remain suspended and will not be permitted to work till pendency of such case and contract will not be renewed. However, option is provided to such Gram Rojgar Sahayak that if he is finally acquitted in criminal case, then he can file an application for re-entering into contract with Commissioner, M.P. Gramin Rojgar Guarantee Parishad. Aforesaid provision is not found to be arbitrary or against Constitutional guarantee provided to citizens. By enacting aforesaid provisions Gram Rojgar Sahayak who is under cloud is stopped from implementing Government scheme, but his rights are also secured by giving him facility to file an application for being re-engaged or re-entering into contract with M.P. Rajya Rojgar Guarantee Parishad if he has finally been acquitted, therefore, it cannot be said that any right of Gram Rojgar Sahayak is violated during pendency of trial. Gram Rojgar Sahayak will not do any work, therefore, he will not be paid during said period. Gram Rojgar Sahayak are required to implement important schemes giving employment to rural people. Gram Rojgar Sahayak has to deal with money of Government and until he is cleared from cloud of suspension, he cannot do Government work. Keeping him away and not working as Gram Rojgar Sahayak for implementation of Government Scheme is not a penalty imposed upon him, but said measure has been taken in interest of public good and to safeguard public money. Provision does not take away the right of livelihood of Gram Rojgar Sahayak. Gram Rojgar Sahayak will be heard in trial and if he is found to be not guilty, there is provision for re-engaging him. Aforesaid

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provision is not arbitrary or unconstitutional. It cannot be said that by said provision Gram Rojgar Sahayak is penalized without opportunity of hearing as he has been given option for re-engagement and keeping him away from work and suspension is only temporary in nature and not final.

24. Clause 6.12 is regarding conduct of Gram Panchayat while in service. Said Clause also touches upon public law, therefore, challenge to Clause 6.12 is taken up for consideration.

25. **Answer to challenge to Clause 6.12** :- Clause 6.12 is quoted as under :

> 6.12 - ग्राम रोजगार सहायक अपनी सेवा या किसी अन्य संविदा सेवक की सेवा से संबंधित किसी मामले के संबंध में न तो किसी भी तरह का प्रदर्शन / हड़ताल का सहारा लेगा और न किसी अन्य को इस हेतु प्रेरित करेगा। ग्राम रोजगार सहायक यदि प्रदर्शन / हडताल में शामिल होता है तो उस पर अनुशासनात्मक कार्यवाही की जाएगी। प्रदर्शन / हड़ताल की अवधि का निराकरण अपर मुख्य सचिव / प्रमुख सचिव, पंचायत एवं ग्रामीण विकास विभाग द्वारा किया जायेगा तथा उनका निर्णय अंतिम होगा।

26. Supreme Court in many cases has declared strike to be illegal and Advocates are not permitted to participate in strike. Similarly in Government Rules also it is provided that Government employees will not participate in strike. There are democratic methods of doing protest and raising their voice. Strike is not the only answer. Strike is counter productive to implementation of Government schemes, therefore, there is no illegality or unconstitutionality in Clause 6.12.

27. Clauses 6.14 and 6.15 are regarding dissolution of service of Gram Rojgar Sahayak upon merger of Gram Panchayat with Municipal Council. Said Clauses touche upon service conditions of Gram Rojgar Sahayak, therefore, challenge to Clauses 6.14 and 6.15 is taken up for consideration.

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28. <u>Answer to challenge to Clauses 6.14 & 6.15</u> :- Clauses 6.14 and 6.15 are quoted as under :-

> **6.14** - ग्राम पंचायत का नगरीय निकाय में विलय होने की स्थिति में ग्राम रोजगार सहायक की सेवाओं के विषय में नगरीय निकाय के अधिनियम/नियम के प्रावधानों अनुसार कार्यवाही की जाए। यदि किसी विधिक कारणवश नगरीय निकाय में समायोजन/संविलियन इत्यादि संभव नहीं है और उस जिले की अन्य ग्राम पंचायतों में ग्राम रोजगार सहायक के पद रिक्त हैं तो मुख्य कार्यपालन अधिकारी, जिला पंचायत परिषद की अनुमति प्राप्त कर संबंधित रिक्त ग्राम पंचायतों को नगरीय निकाय के विलय से प्रभावित ग्राम रोजगार सहायकों की नियुक्ति की कार्यवाही करने हेतु निर्देशित कर सकेंगे। जिले में रिक्त ग्राम पंचायत न होने की दशा में एक माह का पारिश्रमिक / मानदेय देकर संविदा समाप्त की जा सकेगी।
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> **6.15** - यदि ग्राम पंचायत का अस्तित्व अन्य किसी कारण से समाप्त होता है यथा ग्राम पंचायत के डूब क्षेत्र में आना, विस्थापन हो जाना, इत्यादि और उस जिले की अन्य ग्राम पंचायतों में ग्राम रोजगार सहायक के पद रिक्त हैं तो मुख्य कार्यपालन अधिकारी, जिला पंचायत परिषद की अनुमति प्राप्त कर संबंधित रिक्त ग्राम पंचायतों को ग्राम पंचायत का अस्तित्व समाप्त होने से प्रभावित ग्राम रोजगार सहायकों की नियुक्ति की कार्यवाही करने हेतु निर्देशित कर सकेंगे। जिले में रिक्त ग्राम पंचायत न होने की दशा में एक माह का पारिश्रमिक / मानदेय देकर संविदा समाप्त की जा सकेगी।

29. Gram Rojgar Sahayak are appointed by Gram Panchayat for implementation of Government schemes to provide employment to rural people. Post of Gram Rojgar Sahayak is associated and is in coexistence with the schemes of the State Government and with existence of Gram Panchayat. When Gram Panchayat itself does not exists, then post of Gram Rojgar Sahayak is also to be dissolved. In cases where a Gram Panchayat is merged with a Municipal Council, the relevant provision empowers the Chief Executive Officer to issue appropriate directions for absorption of affected Gram Rojgar Sahayak against other vacant posts. Where such absorption is not possible, their contractual services may be terminated upon payment of one month's honorarium. Thus, aforesaid Clauses cannot be held to be arbitrary, malafide or unconstitutional.

30. Similarly, where the area of a Gram Panchayat is submerged due to a dam project or is otherwise affected by a similar circumstance, provision

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has been made for appointment of the affected Gram Rojgar Sahayaks in other Gram Panchayats. However, if no vacant posts are available, their services may be discontinued upon payment of one month's honorarium. Accordingly, no unconstitutionality or illegality can be found in Clauses 6.14 and 6.15.

31. Challenge is made to the policy of transferring of Gram Rojgar Sahayak. Transferring a Gram Rojgar Sahayak to another place touches upon the service conditions of Gram Rojgar Sahayak and not the part of contract, therefore, there is no privity of contract between the parties. Respondents had issued a policy of transfer which is not included in the contract, therefore, challenge to Clauses 8.1, 8.2, 8.3 and 8.7 is taken up for adjudication.

32. <u>Answer to challenge to Clauses 8.1, 8.2, 8.3 and 8.7</u> :- Clauses 8.1, 8.2, 8.3 and 8.7 are quoted as under :

> 8.1 - तीन वर्ष से अधिक की सफलतापूर्वक सेवा पूर्ण करने पर ग्राम रोजगार सहायक का उसी जिले में किसी अन्य ग्राम पंचायत में स्थान परिवर्तन किया जा सकेगा। ऐसी स्थिति में, उसका प्रथम ग्राम पंचायत के साथ अनुबंध समाप्त होगा तथा उसे संबंधित नवीन ग्राम पंचायत के साथ नवीन अनुबंध निष्पादित करना होगा।
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> 8.२ - यह स्थान परिवर्तन जिले के भीतर कलेक्टर की अनुमति से किया जा सकेगा। प्रकरणों में प्रशासनिक गुण-दोष का मूल्यांकन मुख्य कार्यपालन अधिकारी, जिला पंचायत द्वारा किया जायेगा तथा कलेक्टर के अनुमोदन उपरांत स्थान परिवर्तन संबंधी आदेश संबंधित मुख्य कार्यपालन अधिकारी, जिला पंचायत जारी करेंगे। संबंधित पंचायतों को ऐसे आदेश की सूचना दी जावेगी।
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> 8.3 - उक्त कंडिका (8.2) के आदेश होने पर ग्राम रोजगार सहायक का विद्यमान पंचायत के साथ हुआ अनुबंध समाप्त माना जावेगा। उक्त आदेश के 07 दिवस के भीतर ग्राम रोजगार सहायक नवीन पंचायत में उपस्थिति देगा तथा उसका शेष अवधि के लिए अनुबंध हस्तांतरित किया जावेगा। स्थान परिवर्तन आदेश जारी होने के 03 दिवस के भीतर अति. जिला कार्यक्रम समन्वयक/मुख्य कार्यपालन अधिकारी, जिला पंचायत संबंधित ग्राम रोजगार सहायक को कार्यमुक्त कराया जाना सुनिश्चित करेंगे।
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> 8.7 - ग्राम रोजगार सहायक को विकासखण्ड के अंदर रिक्त ग्राम पंचायत में ग्राम रोजगार सहायक का अतिरिक्त प्रभार दिया जा सकेगा। उक्त अतिरिक्त प्रभार हेतु कोई भत्ता इत्यादि देय नहीं होगा।

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33. Aforesaid Clauses stipulate that a Gram Rojgar Sahayak who has completed three years of satisfactory service may be transferred to another Gram Panchayat within the same District, subject to the condition that he shall enter into a fresh contract with the Gram Panchayat to which he is transferred. Counsel appearing for the petitioners contended that Gram Rojgar Sahayak is required to be a local resident of the concerned area and that the post is non-transferable under the terms of the contract. It was, therefore, argued that Clauses 8.1, 8.2 and 8.3 are contrary to the terms and conditions of the contract.

34. The contention is devoid of merit. Appointment of a Gram Rojgar Sahayak is contractual in nature. Upon completion of contractual period of three years, the existing contract comes to an end. If a Gram Rojgar Sahayak is thereafter engaged in another Gram Panchayat within the same District, he is required to enter into a fresh contract with the concerned Gram Panchayat. Upon expiry of the previous contract, the terms and conditions governing the earlier engagement cease to operate. Consequently, a Gram Rojgar Sahayak cannot rely upon the terms of the previous contract. The subsequent engagement constitutes a fresh contractual arrangement between the employer and the employee, and both parties are bound by the terms and conditions of the new contract. Accordingly, the conditions stipulated in the previous contract, having ceased to operate upon its expiry.

35. Transfer is exigency of service. Gram Rojgar Sahayak had voluntarily entered into contract to work in other Gram Panchayat and as per aforesaid terms of contract, he can be transferred. Transfer of an employee is

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included for administrative exigency and to see that Gram Rojgar Sahayak are disciplined and are working efficiently. They are to be transferred within District.

36. However, it is made clear that the place where a Gram Rojgar Sahayak is transferred in the interest of administrative exigency and is required to shift his place of residence to the transferred Gram Panchayat, he ought to have been given one-time transfer allowance to meet the expenses of shifting his residence and belongings. The State Government cannot deny such transfer allowance merely on the ground that the Gram Rojgar Sahayak will enter into a new contract, particularly when he is required to work in a distant Gram Panchayat and establish his residence there.

37. Accordingly, the provisions of Clauses 8.1, 8.2, and 8.3 are not found to be arbitrary, malafide or unconstitutional and are, therefore, upheld. However, Commissioner, Madhya Pradesh Rajya Rojgar Guarantee Parishad under writ of mandamus is directed to make appropriate provision for the payment of Transfer Allowance and House Rent Allowance to a Gram Rojgar Sahayak who is transferred to a distant Gram Panchayat and is required to shift his place of residence because of administrative exigency of respondent authorities, therefore, they are required to be compensated for the same. Policy in this regard be formulated within period of six months from the date of receipt of certified copy of order passed today. Thus, Clauses 8.1, 8.2, and 8.3 are upheld, as no arbitrariness, malafides, or unconstitutionality has been established in respect of these provisions. However, Clause 8.7 is found to be violative of the legal rights of Gram Rojgar Sahayaks to the

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extent indicated above.

38. In view of the aforesaid directions, the Writ Petition is partly allowed.

(VISHAL DHAGAT)
JUDGE

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