



2026:CGHC:18497

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 3869 of 2025

1 - Anupama Jaltare W/o Mahendra Jangde Aged About 26 Years R/o House No. 39, Aman Nagar, Darri- Police Station Darri- District- Korba (C.G.)

... Petitioner(s)

versus

1 - State Of Chhattisgarh Through The Chief Secretary, Mantralaya, Mahanadi Bhawan, Naya Raipur, Atal Nagar, District - Raipur (C.G.)

2 - Secretary Department Of Health And Family Welfare, Mantralaya, Mahanadi Bhawan, Naya Raipur, Atal Nagar, District - Raipur (C.G.)

3 - Mission Director National Health Mission, Chhattisgarh, Third Floor , Health Bhawan, Sector- 19, Nawa Raipur Atal Nagar, District - Raipur (C.G.)

4 - Collector. Sakti District - Sakti (C.G.)

5 - Chief Medical Health Officer District - Sakti (C.G.)

... Respondent(s)

For Petitioner(s)	:	Ms. Rajni Soren, Advocate
For Respondent/State	:	Ms. Apurva Nigam, Panel Lawyer
For Respondent No. 3	:	Mr. C. Jayant K. Rao, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

22/04/2026

1. The petitioner has prayed for the following reliefs:
 - 10.1 That, this Hon'ble Court may be pleased to stay the effect and operation of order dated 09.10.2024 issued by Mission Director, National Health Mission, C.G. and reinstate the petitioner;
 - 10.2 Pass any other order the Hon'ble Court may deem fit in the interest of justice.

2. Counsel for the petitioner submits that the petitioner was initially engaged as Community Health Officer on contract basis and posted at Health Wellness Center, Saraipali, District- Janjgir-Champa (C.G.) vide order dated 28.12.2021. Petitioner while continuing as contract employee was falsely implicated in a criminal case and was arrested by the concerned police in Crime No. 265/2024 registered at Police Station-Sakti. As the petitioner was arrested she could not perform her duties at the posted place and during the period of her detention, the respondent no. 3 has passed an order dated 09.10.2024 invoking Clause 34.7 of the C.G. Human Resource Policy, 2018. She contended that the clause invoked for terminating the service of the petitioner can be invoked only when the contract employee is absent from duties without notice or without permission. In the case at hand, petitioner was arrested and she was not having any opportunity to

take permission in this regard and therefore the absence of the petitioner from her duties cannot be treated as unauthorized absence. In support of her contention, she placed reliance upon the decision in the case of Md. Arif Khan Vs. Union of India in W.A. No. 39214 of 2014 decided on 17.11.2022. She also contended that the petitioner was arrested in the aforementioned crime on 29.06.2024 and was in jail till 03.12.2024. The petitioner was granted bail vide order dated 28.11.2024.

3. Learned counsel for respondent no. 3 would oppose the submission of the counsel for the petitioner and would submit that the petitioner was a contract employee and the appointment order placed on record as Annexure P/3 shows that the appointment of the petitioner was extended further time to time. The order of termination was passed on 09.10.2024 after completion of extended period of 1 year of contract employment. As the tenure of the petitioner as contract employee has already completed she cannot be reinstated unless and until there is an order of the extension of period of contract.
4. At this stage counsel for the petitioner would submit that other similarly placed contract employees are continuing based on the extension of the period granted in their favour.
5. I have heard learned counsel for the respective parties and also perused the documents placed on record.
6. It is not disputed by the counsel for the respondent that the petitioner while working as Community Health officer posted at

Health and Wellness Center, Saraipali was arrested in a criminal case. The order Annexure P/1 which is an order of termination of services of the petitioner would show that the authority has also taken into consideration that the petitioner was implicated in a criminal case bearing crime no. 265/2024. She is in jail since 29.06.2024 and further recommendation was made by the Collector for initiating the disciplinary proceedings against the petitioner. Even after recording the aforementioned facts considering that the petitioner was in jail since 29.06.2024, had invoked the provisions under Clause 34.7 of the C.G. Human Resource Policy, 2018. The relevant clause which is invoked by the respondent no. 3 to terminate the services of the petitioner is stated below:

34.7 किसी भी संविदा कर्मचारी द्वारा बिना किसी सूचना के अथवा अनुमति बिना स्वीकृत प्राप्त किये अनुपस्थित रहने पर 30 दिवस या अधिक पूरे वित्तीय वर्ष में अनाधिकृत अनुपस्थिति होने की दशा में सेवा से पृथक किया जावेगा।

7. Bare perusal of the aforementioned clause of the policy would show that this can be used for terminating the services of the employee when he/she is unauthorizedly absent from his/her services. In the case at hand, the petitioner could not able to perform her duties at the place of posting because of the reasons beyond her control as she was arrested by the police and put behind the bars. Hon'ble Supreme Court in the case of

Krushnakant B. Parmar v. Union of India (2012) 3 SCC 178

while considering the issue with regard to unauthorised absence of the employee from duties as observed thus:-

16. In the case of the appellant referring to unauthorised absence the disciplinary authority alleged that he failed to maintain devotion to duty and his behaviour was unbecoming of a government servant. The question whether "unauthorised absence from duty" amounts to failure of devotion to duty or behaviour unbecoming of a government servant cannot be decided without deciding the question whether absence is wilful or because of compelling circumstances.

17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be wilful. Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean wilful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalisation, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a government servant.

18. In a departmental proceeding, if allegation of unauthorised absence from duty is made, the disciplinary authority is required to prove that the absence is wilful, in the absence of such finding, the absence will not amount to misconduct.

8. In the case at hand, undisputedly petitioner was arrested on 29.06.2024 and released on bail on 03.12.2024. Before she could report to her duties she was terminated vide order dated 09.10.2024. As dealt by the Hon'ble Supreme Court before taking a decision against the employee of termination/removal from service, it is for the employer to come to the conclusion based on the material that the absence of an employee is willful and in absence of such finding no action can be taken against an employee alleging to be a misconduct. Though there is recommendation of the Collector to initiate departmental enquiry against the petitioner, but, without initiating the enquiry proceedings, impugned order Annexure P/1 removing the petitioner from service has been passed which in the opinion of this court is arbitrary and contrary to the settled positions of law and therefore, it is not sustainable. Accordingly, the order dated 09.10.2024 Annexure P/1 is hereby quashed.
9. As the petitioner is a contract employee and the period of contract according to the submission by counsel for the respondent no. 3 came to an end on 31.03.2024 and further considering the submission that the other employees have been permitted to continue in service by extending their contract period, the respondent authority shall consider the candidature of the petitioner afresh with regard to the continuation/re-engagement of the petitioner in service as contract employee. Let the decision in this regard be taken by respondent no. 3 within further period of 4

weeks from the date of receipt of copy of this order.

10. This Court has quashed the order observing that the absence of the petitioner cannot be treated as unauthorized absence therefore, the order Annexure P/1 shall not come in the way at the time of consideration of the candidature of the petitioner.

SD/-

(Parth Prateem Sahu)

JUDGE

Madhurima