

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Writ Petition No. 13916/2021

Mahendra Kumar Maliwal S/o Shri Krishan Kumar Maliwal, aged about 49 years, R/o Near Government Senior Secondary School, Kunadi, Kota.

-----Petitioner

Versus

1. State of Rajasthan through Principal Secretary, Medical And Health Department, Government Secretariat, Jaipur.
2. Mission Director, National Health Mission, Medical Health and Family Welfare Department, Government of Rajasthan, Swasthya Bhawan, Tilak Marg, Jaipur.
3. Chief Medical and Health Officer, District Kota.

-----Respondents

For Petitioner(s)	:	Mr. Ashish Sharma Upadhyay Mr. Jaikishan Singh Mr. Anirudh Gupta Mr. Saurabh Yadav Mr. Santosh Sharma
For Respondent(s)	:	Mr. Archit Bohra.

HON'BLE DR. JUSTICE NUPUR BHATI

Order

18/03/2026

1. The instant writ petition has been filed with the following prayer:-

"It is, therefore, humbly prayed that this Hon'ble Court may graciously be pleased to accept and allow this writ petition and by an appropriate writ, order or direction, may further be pleased to:-

(a) To quash and set aside the impugned order dated 27.02.2021 (Annexure-7) passed by the respondent No. 2;

(b) To direct the respondents to reinstate the petitioner with all consequential benefits;

(c) Any other order or direction which this Hon'ble Court deems fit and proper in the facts and circumstances of the case, may also be awarded in favour of the petitioner. "

2. Brief facts of the case are that the petitioner was appointed as District Accounts Manager under the NRHM and RCH Programme vide order dated 30.01.2006, followed by corrigendum dated 14.02.2006, on a contractual basis. Pursuant thereto, he joined his duties on 15.02.2006 and has since been discharging responsibilities relating to financial management, including maintenance of accounts and disbursement of funds, to the satisfaction of the authorities. His tenure was periodically extended, including most recently vide office order dated 31.03.2021. The performance of the petitioner has been duly appraised from time to time, including by the District Collector, Kota, vide appraisal dated 03.07.2020. However, an allegation under the Prevention of Corruption (Amendment) Act, 2018 was levelled against the petitioner, pursuant to which an FIR was registered and he was taken into custody. Subsequently, the petitioner was enlarged on bail by order dated 03.08.2021 passed by this Hon'ble Court. During the period of judicial custody, the services of the petitioner were terminated vide impugned order dated 27.07.2021 issued by respondent no. 2, purportedly invoking contractual provisions on the ground that affording an opportunity of hearing or conducting an enquiry was not feasible. It is pertinent that the termination was effected without adhering to principles of natural justice. Further, the competent authority (CMHO, Kota), who was to conduct the enquiry, is himself allegedly involved in the same matter and subject to investigation.

The petitioner thereafter sought information under the RTI Act, 2005, and was informed that a departmental enquiry was pending against him. The petitioner is thus seriously prejudiced by the arbitrary and illegal termination of his services without due process and has filed the present writ petition.

3. Learned counsel for the petitioner submits that the respondents entered into an agreement with the petitioner while affording the petitioner an appointment on the post of District Accounts Manager on contractual basis (Annexure-1). He further submits that the petitioner's services were satisfactory, however, by way of the order dated 27.07.2021 (Annexure-7), the services of the petitioner was terminated with immediate effect, while considering the petitioner's act to be a misconduct mentioned in point 05 (i) of the agreement. He further submits that once the respondents have invoked Clause 5(i) of the agreement, they were required to hold an enquiry before terminating the service of the petitioner.

4. Learned counsel for the respondents submits that the petitioner remained in judicial custody since 30.04.2021 and in view of Clause 5(ii) of the agreement, the petitioner has been terminated from the service as he remained willfully absent from the duty for a period of 7 days. He further submits that the respondents have the authority in view of clause to terminate the service of the petitioner without any notice. He also submits that no enquiry has been initiated against the petitioner as the order impugned has been passed by invoking Sub-Clause ii of clause 5 of the contract.

5. I have heard the rival submission made by counsel for the parties and perused the material available on record.

6. Upon examination of the impugned order dated 27.07.2021 (Annexure-7) it is evident that the respondents characterized the petitioner's conduct as misconduct under Clause 5 (i) of the Contract. Notwithstanding the respondents Counsel's contention that termination was effected pursuant to Sub-Clause (ii) of the Clause 5 – Empowering termination *sans* notice for willful absence exceeding 7 days - It is conceded that the petitioner has been in judicial custody under the Prevention of Corruption Act since 30.04.2021, a fact undisputed by petitioner's counsel. The respondents could permissively have invoked Sub-Clause 5 (ii); however, the impugned order simultaneously adjudged the petitioner's actions as misconduct. The impugned order dated 27.07.2021 (Annexure-7) as under:-

"No. F-20 (91) NHM/HR/ACB/1772 Date: 27/07/2021

Order

Whereas, the contract for the post of District Account Manger, Chief Medical & Health Officer Kota Office was executed between Mr. Mahendra Kumar Maliwal, the First Party and Chief Medical & Health Officer, Kota, the Second Party.

Whereas, the First Party Mr. Mahendra Kumar Maliwal is now under Judicial Custody under the Prevention of Corruption (Amendment) Act 2018 since 30.04.2021.

Whereas, Second Party CM&HO Kota, Dr. BS Tanwar, is also allegedly involved in the case, against whom the investigation is going on under Section 173(8) of CrPC as mentioned in the letter no 6632-34 dated 16.6.21 of ACB. It is also informed that a committee has already been constituted via letter no. 829-1 dated 6.4.21 to enquire about the complaints received against Second Party for financial irregularities in various NHM programs.

Whereas, the act of Mr. Maliwal is definitely a misconduct as mentioned in the point 05 (i) of the contract the opportunity of hearing or enquiry, as mentioned in the contract with the first party is legally not possible because the First Party is in Judicial Custody and has not been granted bail so far. In view of facts and circumstances, his services are liable to be terminated after an enquiry by Second Party.

Whereas, as the Second Party is also allegedly involved and investigation is going on, it is not appropriate to direct Second Party to terminate Mr. Maliwal's contract. The authority to CM&HO, to enter into an agreement with the contractual person, was given by Headquarter. It is therefore, appropriate to exercise this authority by the undersigned instead of the Second Party.

Hence, contract of Mr. Mahendra Kumar Maliwal, District Account Manger, Kota is hereby terminated with immediate effect."

The relevant part of the agreement (Annexure-6) is reproduced as under:-

AGREEMENT

"5. ACTION AGAINST FIRST PARTY

(i) Any misconduct on the part of the first party, if proven, after an enquiry by second party, shall entitle second party to terminate services of first party.

(ii) Any unauthorized or willful absence from duty for a period of 7 days would entitle second party to terminate contract without any notice."

7. This Court observes that the respondents assert invocation of Sub-clause (ii) nonetheless, had such been intended, the impugned order ought expressly to have reflected invocation thereon. Instead, it unequivocally proceeds on misconduct allegations under Clause 5 (i), mandating an intended enquiry. The order itself contemplates an enquiry but purportedly dispenses there with on grounds of the petitioner's incarceration – a proposition untenable in law. Judicial custody *per se* does not exonerate the respondents from adherence to principles of natural justice and respondents were required to accord the petitioner a reasonable opportunity of hearing before passing the said impugned order.

8. In light of the forgoing paras, this Court deems apposite to allow the instant writ petition. The writ petition is accordingly allowed and the impugned order dated 27.07.2021 (Annexure-7) is quashed and set aside. It is, however, clarified that the

respondents remain at liberty to initiate rightful proceedings against the petitioner, consonant with applicable law in contractual stipulations. The respondents are directed to promulgate a fresh speaking order post scrupulous compliance with the principles of natural justice within four weeks' form the date thereafter.

9. Pending applications, if any, shall stand disposed of. No order as to cost(s).

(DR. NUPUR BHATI),J