

**HIGH COURT OF JAMMU & KASHMIR AND LADAKHAT
JAMMU**

Reserved on: 29.01.2026

Pronounced on: 06.02.2026

Uploaded on: 06.02.2026

*Whether the operative
part or full judgment is
pronounced: **Full***

WP(C) No. 2950/2024

Himani Sharma

...PETITIONER(S)

Through: - Mr. Antriksh Sharma, Advocate.

Vs.

U T OF J&K & ORS.

...RESPONDENT(S)

Through: - Mr. Raman Sharma, AAG.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The petitioner has challenged order No. 291 of 2024 dated 12.01.2024 issued by respondent No. 2 whereby the contractual services of the petitioner as Mid-Level Health Provider (hereinafter to be referred to as "**MLHP**") under National Health Mission has been terminated with immediate effect.

2) Briefly stated case of the petitioner is that in terms of order No. 10 of 2021 dated 16.04.2021 issued by respondent No. 2, she was engaged as MLHP with her proposed place of posting at HWC-SC Kagrore block

Basholi district Kathua. It appears that the petitioner pursuant to the aforesaid order joined her place of posting whereafter she lodged a complaint with Deputy Commissioner, Kathua with regard to lack of infrastructural facilities and non-cooperation of the staff at her place of posting.

3) On 05.07.2021, respondent No. 4 sought an explanation from the petitioner for her absence from duties. On 24.08.2021, respondent No. 4 again sought an explanation from the petitioner for not having attended the monthly meeting that was held in the office of said respondent on 24.08.2021. Thereafter a communication was addressed by respondent No. 4 to the petitioner whereby a final explanation was sought from her regarding her conduct and summary of allegations was incorporated in the said communication. As per these allegations, on 05.07.2021 the petitioner was found to be absent from duty when respondent No. 4 visited her place of posting. It is further alleged in the said communication that when respondent No. 4 visited the place of posting of the petitioner on 12.08.2021 she was again found to be absent from duty w.e.f., 07.08.2021. Another allegation recorded in the said communication is that the petitioner had tampered with attendance register. It has also been

alleged that the petitioner has always been irresponsible towards her duties and that she had not responded to the phone calls of respondent No. 4 during covid-19 pandemic.

4) The record shows that another explanation was sought by respondent No. 4 from the petitioner on 31.03.2022 for not attending the meeting on 31.03.2022.

5) It seems that respondent No. 4, in terms of order dated 05.07.2022, constituted a committee of five members to conduct preliminary enquiry in respect of the allegations leveled against the petitioner. The committee recorded the statements of the witnesses and concluded that the petitioner has consistently been absent from work and she has tampered with the attendance register. It was also concluded that behavior of the petitioner has not been appropriate towards her staff members and that she has been careless, irresponsible and negligent towards her duties. The committee also opined that there is no hope of petitioner mending her ways.

6) On 02.08.2022, another show cause notice was issued by respondent No. 4 to the petitioner for not having furnished monthly reports. It seems that the petitioner responded to the show cause notice informing respondent

No. 4 that she is not attending her duties regularly because of medical reasons. She also forwarded copies of prescriptions issued by Hindurao Hospital, Delhi.

7) On 30.09.2022, again explanation was sought from the petitioner for not attending the monthly meeting and for not reporting on NCD portal. On 29.11.2022, respondent No. 4 again sought an explanation from the petitioner informing her that on the said date, while she visited her place of posting, the petitioner was found absent from duty w.e.f., 26th to 29th of November, 2022. Respondent No. 4 also addressed a communication to respondent No. 3 on the same date informing him that salary of the petitioner has been withheld because of her unauthorized absence from duty and also because of her unsatisfactory performance.

8) It seems that another enquiry was conducted by a three member committee in respect of the conduct of the petitioner and on 15.12.2022, the Committee framed its report. As per the report, when the Committee visited the place of posting of the petitioner on 15.12.2022, she was found absent from duty and her whereabouts were not known to the staff. It was also found that the petitioner is habitual of remaining absent from duty. The Committee

also found that the petitioner has not made even a single entry in her NCD ID, as such, her performance on NCD portal is NIL. The Committee, upon enquiry, found that the petitioner has not been punctual towards her duty and it was also reported by the staff that the furniture of the office had been damaged by the petitioner. The staff also complained that the petitioner misbehaves with them. Similar complaints were also received from the general public.

9) After the holding of enquiry, respondent No. 3, vide his communication dated 10.01.2023, forwarded the enquiry report along with documents to respondent No. 2 with a recommendation to take necessary action in the matter. Pursuant to the aforesaid communication of respondent No. 3, respondent No. 2 issued show cause notice dated 17.01.2023 to the petitioner seeking explanation as to why action as warranted under rules be not taken against her.

10) Reply to the aforesaid show cause notice was submitted by the petitioner vide her communication dated 24.01.2023. In her reply, the petitioner denied the allegations with regard to her rude behavior and unprofessional conduct. It was contended by the

petitioner in her reply that two enquiries conducted against her are biased and the conclusions made by the enquiry committees are without any evidence. It was submitted by the petitioner that she had informed her immediate superiors on numerous occasions in writing about the lack of infrastructure in the office and lack of facilities in the hospital but no action was taken by her superior officers. She denied the allegation that she was responsible for causing damage to the furniture. According to the petitioner, she had informed her senior officers telephonically as well as through whatsapp messages about the reasons for her absence from duty which was due to issues relating to transport and her health.

11) It seems that respondent No. 2 had asked respondent No. 3 to monitor the behavior of the petitioner, however, vide communication dated 02.03.2023 respondent No. 3 informed respondent No. 2 that there has been no improvement in the performance and attitude of the petitioner. Updated work and conduct report with respect to the petitioner was forwarded by respondent No. 3 to respondent No. 2 from time to time vide his communications dated 13.10.2023 and 28.11.2023.

12) It seems that another committee of five members was constituted for submitting a report with regard to the status of petitioner. A fresh report was submitted by the Committee after its visit to HWC SC Kagrore on 25.11.2023 in which it was reported that working of the petitioner has not improved and her professional behaviour with staff members and patients has not improved. It was also reported that the petitioner is not conducting daily programmes and is not reporting the same on the portal. The Committee also found that PRI members and local population are not satisfied with the behavior of the petitioner as she is not well behaved and punctual. Accordingly, the committee members recommended suitable necessary action against the petitioner.

13) Pursuant to the aforesaid report of the Committee, respondent No. 2 proceeded to issue impugned order dated 12.02.2024 thereby terminating the contractual services of the petitioner. It seems that the petitioner, through her counsel, had served a legal notice upon the respondents for reconsideration of the matter but no action was taken by the respondents on the said legal notice.

14) The petitioner has challenged the impugned termination order on the grounds that the same has been passed without affording any opportunity of hearing to her. It has been contended that the petitioner was not associated with the enquiry proceedings and she was not allowed to cross-examine the witnesses and to put up a proper defence. It has also been contended that respondent No. 4 had issued a certificate of good character in favour of the petitioner on 26.09.2023, as such, the allegations that behavior and conduct of the petitioner has not been up to the mark stands contradicted. It has been further contended that the petitioner was harassed by the respondents by serving show cause notices upon her which resulted in physical and mental harassment to her. It has been contended that because the impugned order of termination is stigmatic in nature, as such, without holding a regular departmental enquiry, it was not open to the respondents to terminate her engagement.

15) The respondents have contested the petition by filing the reply in which they have contended that the petitioner has been given fair opportunity of being heard and as many as three enquiries have been conducted by the respondents before passing the impugned order. It has been submitted that repeated show cause notices have

been issued to the petitioner to explain her conduct but most of the times, she failed to respond to these show cause notices. According to the respondents, the petitioner, being a contractual employee, cannot be equated with a government employee holding a civil post and claim that she cannot be terminated without a regular departmental enquiry.

16) I have heard learned counsel for the parties and perused the record of the case including the record produced by the respondents.

17) As is clear from the pleadings of the parties, the petitioner has been served with repeated show cause notices by the respondents and preliminary enquiries into her conduct have been held, on as many as three occasions before taking impugned action against her. It is, however, clear from the record produced by the respondents that the petitioner has not been afforded an opportunity of cross-examining the witnesses who have deposed before the enquiry committees. The petitioner has been permitted to respond to the final show cause notice and to project her side of the story. The respondents have considered her reply and after feeling dissatisfied with the explanation tendered by the

petitioner, they have proceeded to pass the impugned order of termination.

18) The question that falls for determination is as to whether the petitioner, who is a contractual employee, is entitled to be subjected to a regular departmental enquiry before terminating her services particularly when the order of her termination is stigmatic in nature.

19) Learned counsel for the petitioner has placed reliance upon the judgment of Supreme Court of India in the case of **U.P State Road Transport Corporation & Ors Vs. Brijesh Kumar and anr**, 2024 SCC Online SC 2282, and judgments of this Court in the cases of **Feroz Ahmad Sheikh & Ors Vs. UT of J&K & ors** [WP(C) No. 2260/2022 decided on 16.12.2023] and **Dr. Shazia Salam Vs. UT of J&K & Ors** [WP(C) No. 494/2023 decided on 01.08.2025] to press home his contention that because the impugned order passed against the petitioner is stigmatic and punitive in nature, therefore, she was entitled to an opportunity of defending the accusations/allegations made against her in a full-fledged enquiry.

20) In the above context, it is to be noted that the petitioner was not working as a regular employee against a

civil post but she was engaged on contractual basis. As per the format of agreement relating to contract of appointment of the petitioner, a copy whereof has been produced by learned counsel for the petitioner during the course of hearing, the contract was valid for one year extendable upto not more than three years subject to satisfactory performance. The safeguards available to an employee appointed on a civil post as contained in Article 311 of the Constitution of India and the Jammu and Kashmir Civil Service (Classification, Control and Appeal) Rules, 1956 are not available to the petitioner. The terms and conditions of engagement of the petitioner are governed by the contract of appointment executed by the parties.

21) As per Clause (4) of the service agreement, the employer has a right to rescind the contract before completion if the performance of the employee has been found to be unsatisfactory. As per Clause (16) of the said agreement, the engagement of the employee would stand terminated if he/she absents from duty for seven working days without taking permission from the competent authority. As per Clause (22) of the agreement, employer has a right to terminate the services of an employee if he/she has committed irregularities and impropriety of

administrative and financial nature, negligence of care, unsafe practices, inefficiency and insincerity, professional misconduct or false reporting of information or fabrication of date in the maintained records or any other inappropriate action. Thus, it is clear that services of the petitioner were terminable at any time on the basis of her poor performance, negligence, inefficiency, insincerity or professional misconduct.

22) The respondents have, before terminating the services of the petitioner, constituted Committees of officers as many as three times and on all three occasions, the Committee of officers after visiting the place of posting of the petitioner and after scrutinizing the records and recording the statements of the witnesses came to the conclusion that the petitioner is in the habit of being absent from her duty unauthorizedly, her behavior towards staff, local people and the patients has not been up to the mark and she has even tampered with the attendance register. The Committees also found that the petitioner has not uploaded the requisite reports on the portal and her performance has not been satisfactory.

23) Although the petitioner in her reply to the show cause notice has denied most of these allegations but

nonetheless she has admitted that she has not attended the office on several occasions. As per her version, her absence was due to ill health and due to transport issues. She had also issues with the infrastructural facilities at her place of posting. While illness can be a justified ground for not attending the duties provided the same is of such a nature as would prevent an employee to attend his/her duties, but intimation in this regard has to be given to the superior officers. However, in the instant case, it appears that the petitioner has not cared even to intimate her superior officers before proceeding on leave. Issues relating to transport and infrastructure can never form a justified ground for not attending the duties. Thus, from the reply to the show cause notice furnished by the petitioner, it can safely be inferred that she has admitted the allegation regarding her unauthorized absence from the duty.

24) It is for the aforesaid reasons that her reply to the show cause notice has not been found to be satisfactory by respondent No. 2, who has proceeded to issue the impugned order of termination, which is perfectly in accordance with the terms of contract of service executed by the petitioner. Once respondent No. 2 had material before him to show that performance of the petitioner was

not satisfactory, he was well within his powers to pass the impugned order of termination. In fact while joining her service, the petitioner has executed an undertaking wherein it was agreed by her that in case of unsatisfactory performance, the respondents would have a right to terminate her services prior to the expiry of the contractual period without assigning any reason and without giving one month's prior notice to her.

25) So far as the contention of the petitioner that she was entitled to be subjected to a regular departmental enquiry is concerned, in this context it is to be noted that a person appointed on contractual basis does not enjoy the protection of Article 311 (2) of the Constitution of India for the simple reason that he/she is not a member of civil service of the Union or an All India Service or a civil service of a State or holds a civil post under the Union or a State. Reliance in this regard is placed upon the judgment of the Supreme Court in the case of **Union Public Service Commission Vs. Girish Jayanti Lal Vaghela**, (2006) 2 SCC 482. Therefore, a contractual employee is not entitled to the protection, which is available to an employee who is in service of Union or State on a civil post.

26) Reliance placed by the learned counsel for the petitioner on the judgments delivered by this Court in the cases of **Feroz Ahmad Sheikh and Dr. Shazia Salam** (supra) is misconceived for the reason that in those cases, there was clear-cut violation of principles of natural justice while passing the termination order against the writ petitioners therein. It is in those circumstances that the writ petitioners, in those petitions, succeeded before the Court. In the instant case, the respondents have followed the principles of natural justice by issuing repeated show cause notices to the petitioner and giving her not only the opportunity of hearing but also of improving her conduct. As many as three enquiries were conducted by the respondents before passing the impugned order, which goes on to show that the respondents have been more than fair in dealing with the case of the petitioner.

27) For what has been discussed hereinbefore, it is clear that termination of the petitioner from her services has been effected in accordance with the conditions of her engagement after following the principles of natural justice and after considering her reply to the show cause notice in the light of the enquiry reports. The contention of the petitioner that she was entitled to a full-fledged regular

enquiry with a right to participate in the preliminary enquiry is misconceived having regard to the nature of engagement of the petitioner.

28) The petition, therefore, lacks merit and is, accordingly, **dismissed**. The respondents shall, however, release the unpaid/withheld salary, if any, to the petitioner for the period during which she has performed her duties.

29) The record be returned to the learned counsel of the respondents.

JAMMU
06.02.2026
NARESH/SECY



Whether the order is reportable: **Yes**
Whether the order is speaking: **Yes**