

Court No. - 8

Case :- WRIT - A No. - 3963 of 2023

Petitioner :- Nitin Kapoor

Respondent :- State Of U.P. Thru. Secy. Medical Health And Family Welfare
Deptt. Lko. And 2 Others

Counsel for Petitioner :- Meenakshi Singh Parihar, Divyarth Singh Chauhan

Counsel for Respondent :- C.S.C.

Hon'ble Dinesh Kumar Singh, J.

1. Heard H.G.S. Parihar, Senior Advocate assisted by Ms. Meenakshi Singh Parihar, learned counsel appearing for the petitioner and Ms. Deepshikha, learned Chief Standing Counsel appearing for the State.

2. Present petition under Article 226 of the Constitution of India has been filed by the petitioner being aggrieved by the order dated 12.05.2023 passed by Director (Administration), Medical and Health Services, U.P. whereby the petitioner has been declared ineligible to work on Class III post as well as order dated 16.05.2023 whereby the petitioner has been demoted to Class IV post and directed to join the Class IV post within a period of one week, otherwise he will be terminated from service.

3. First typing test of the petitioner was conducted on 25.03.2022 in which he was declared unqualified. However, in second typing test scheduled on 03.04.2023, he remained absent, therefore, it has been held that the petitioner is not qualified to hold Class III post. His appointment on the post of Junior Assistant has been cancelled and he has been directed to join on Class IV post vide impugned orders.

4. The petitioner was appointed vide order dated 11.09.2017 under the provisions of The U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 (hereinafter referred to as 'Rules, 1974') on the post of Junior Assistant. Appointment letter itself would disclose that the petitioner must have typing efficiency of 25 words per minutes. It appears that petitioner's typing efficiency was not assessed at the time of his appointment under Rules, 1974, and he continued on the post and also got regularized. Typing tests were organized as mentioned above. In both the typing tests, the petitioner failed and, therefore, impugned orders have been passed demoting him to the Class IV post.

5. Ms. Deepshikha, learned Chief Standing Counsel appearing for the State submits that the petitioner has been given opportunity to clear typing test twice, which is an essential qualification for the post in question, but he could not qualify the same, therefore, he is not eligible for the Class III post. Impugned orders have rightly been passed which do not require any interference by this Court.

6. Learned counsel appearing for the petitioner submits that the petitioner was not assigned any work of typing, therefore, his proficiency of the typing got decreased and he failed in the typing test. He further submits that if the petitioner is given a chance after a period of two months to prove his typing efficiency, he would succeed. If he qualifies in the third chance, his posting as a Class III employee should be directed to continue. If he fails, he would work on Class IV post. He also submits that in similar set of facts, this Court vide order dated 05.05.2023 passed in Writ A No.3316 of 2023 exercising equity jurisdiction, has directed the respondents to take a fresh typing test of the candidate, therefore, same opportunity may also be given to the petitioner.

7. Ms. Deepshikha, learned Chief Standing Counsel appearing for the State has opposed this prayer. However, she has left it to the discretion of the Court to pass appropriate order(s).

8. Considering the aforesaid facts, this Court directs the respondents to take a fresh typing test after a period of two months from today, and if the petitioner qualifies the typing test and it is found that the petitioner has typing proficiency of 25 words per minutes in Hindi, he should be allowed to continue on the Class III post. If the petitioner fails despite the last opportunity, which is granted by this Court in exercise of equity jurisdiction, the petitioner shall continue on Class IV post.

9. With the aforesaid direction/observation, the writ petition stands disposed of.

(Dinesh Kumar Singh, J.)

Order Date :- 25.5.2023/prateek