

07.08.2023
ML-99
(PP)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 6023 of 2022

Shri Krishna Karki
Vs.
The Secretary, Kolkata Metropolitan
Development Authority & Ors.

Mr. Sabyasachi Chatterjee,
Mr. Dinesh Ch. Mondal,
Mr. Debabrata Mondal,
Mr. Sandipan Das

....for the petitioner.

Mr. Satyajit Talukdar,
Ms. Piu Karmakar

....for KMDA.

Mr. Bibekananda Tripathy
Ms. Oindrila Chatterjee

....for the State.

The written instruction filed in Court today by the State-respondents is retained with records.

The petitioner's grievance is that he was terminated illegally and arbitrarily by a letter of termination dated February 24, 2022. The petitioner was provisionally appointed on compassionate grounds in group – 'D' post by Kolkata Metropolitan Development Authority (KMDA), by a letter of appointment dated July 29, 2011. The relevant conditions of the said letter of appointment are reproduced hereinbelow:-

"2. The appointment is made provisionally pending receipt of favourable Police Verification

Report from the Competent Police Authority and Medical Examination Report by an authorized Medical Board.

11. The appointment is also liable to be terminated without any reference to him/her, if any adverse report is received from the Competent Police Authority regarding his/her antecedents and on Medical Examination. An undertaking to this effect has to be submitted by him/her at the time of joining the post.”

From the letter of termination, it appears that the appointment of the petitioner was *provisional* and was liable to be terminated without any reference to the petitioner if an adverse report is received from the Competent Police Authority regarding the antecedents of the petitioner or on medical examination.

It was submitted by Mr. Chatterjee, learned counsel for the petitioner, on June 6, 2023 that the petitioner’s *provisional* appointment was pending favourable police verification report from the competent police authority and a report of medical examination by the Medical Board. Only if any adverse report was received from the competent police authority regarding the antecedents of the petitioner or on medical examination the petitioner was found to be **unsuitable**, he could be terminated from service. Admittedly, there was no allegation of any unsuitability on medical grounds.

The Deputy Secretary, KMDA wrote to the Joint Secretary on October 30, 2013 to take a decision regarding the suitability of the petitioner to continue in the present employment based on the “suitability report” of DC, Bidhannagar. Several verification reports were called from the DC, Bidhannagar. However, the DC, Bidhannagar did not respond to such requests by KMDA. The Deputy Secretary, Government of West Bengal, Home & Hill Affairs Department declared the petitioner to be “**unsuitable**” by a office memo dated April 25, 2018. The same was intimated to the Special Superintendent of Police. The Deputy Inspector General of Police decided that the petitioner was “**unsuitable**” by a communication dated May 3, 2018. Such an entry of unsuitability was made relying on the report of the Deputy Secretary and not on any independent report by the competent police authority.

From a report dated August 4, 2013 issued by the DC, Bidhannagar, it appears that there was nothing adverse available on record of the police station concerned and the Special Branch against the petitioner. Even though the petitioner’s home address, educational qualification etc. could not be verified, but during the petitioner’s stay at Rajarhat

Road, P. S.- Baguiati from 2002 till August, 2012, nothing adverse was found on record.

This Court called for records regarding the issue why the competent police authority acted on the instructions of the Deputy Secretary, Home & Hill Affairs Department.

From the written instructions handed over in Court today, it appears that during police verification no adverse report was sent by the Special Branch, Bidhannagar Police Commissionerate against the petitioner.

From the report of the Additional Deputy Commissioner of Police, Special Branch, Bidhannagar dated August 6, 2023, it appears that Special Branch, Barrackpore Police Commissionerate conducted an enquiry along with the office of the Joint Commissioner of Police (Intelligence) Special Branch regarding schooling of the petitioner. However, nothing adverse was found against the petitioner.

Considering the submissions of the parties and the materials placed on record, this Court finds that the impugned letter of termination dated February 24, 2022 issued by the Secretary, KMDA suffers from arbitrariness and perversity in the decision making process.

The petitioner could not have been held to be **unsuitable** relying on the report of the Deputy Secretary where the competent authority was the necessary police authority/Deputy Commissioner of Police, Special Branch, Bidhannagar. The deputy Secretary acted wholly without jurisdiction.

Accordingly, the termination order dated March 23, 2022 is quashed and/or set aside.

The petitioner will be permitted to continue with his duty from February 24, 2022. The petitioner will also be entitled to 50% of wages for the period of unemployment since February 24, 2022 till the date of his reinstatement by the authorities by way of compensation. Such compensation will be paid to the petitioner within 2 months from the date of this order.

With the directions aforesaid, **WPA 6023 of 2022** is **disposed of**.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Hon'ble Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Lapita Banerji, J.)