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W.P.No.14398 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2023

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THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.14398 of 2020 and
W.M.P.Nos.17881 to 17883 of 2020

E.Suresh

... Petitioner

Vs.

- 1.The Director-cum-Appointing Authority,
National Institute of Empowerment of Persons,
(NIEPMD),
E.C.R., Muttuakadu, Kovalam Post,
Chennai 600 112.
- 2.The Joint Secretary to Government of India,
Department of Empowerment of Persons with
Disabilities (Divyangjan),
Ministry of Social Justice and Empowerment,
Paryavaram Bhawan, 5th Floor, CGO Complex,
Lodhi Road, New Delhi 110 003.
3. The Under Secretary to Government of India,
Department of Empowerment of
Persons with Disabilities,
Ministry of Social Justice & Empowerment,
5th Floor, B-Wing, Pt.Deendayal Antyodaya Bhavan,
CGO Complex,
New Delhi - 110 003.

... Respondents



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Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the 3rd respondent vide his proceedings F.No.8-2/2017-N1 dated 26.07.2017 and quash the same in consequence to that direct the respondents to reinstate the petitioner in its services with all benefits attached thereto with continuity of service.

For Petitioner : Ms.P.V.Rajeswari

For Respondents : Ms.R.Durgarani for R1 to R3

ORDER

This Writ Petition has been filed to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the 3rd respondent vide his proceedings F.No.8-2/2017-N1 dated 26.07.2017 and quash the same and consequently, direct the respondents to reinstate the petitioner in service with all benefits attached thereto with continuity of service.

2. Heard Ms.P.V.Rajeswari, learned counsel for the petitioner and Ms.R.Durgarani, learned counsel for R1 to R3.

3. The petitioner has filed this Writ Petition challenging the



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termination order on the ground that he was terminated from service without giving any notice. The petitioner got appointed as Rehabilitation Officer (Social Work) on 03.02.2015 and he has to undergo probation for a period of two years.

4. The contention of the learned counsel for the petitioner is that on the verge of completion of two years of service, before declaring the probation of the petitioner, the first respondent has terminated the services of the petitioner on the ground that his appointment is irregular, without giving any notice to the petitioner. Aggrieved over that, the petitioner has filed this Writ Petition.

5. The petitioner had applied for the said post consequent to the notification issued by the National Institute for Empowerment of Persons with Multiple Disabilities *vide* Employment Notice No.2/2014. The notification prescribed the essential qualification for the above post is 1.) Bachelor's Degree in Social Work from a recognised University 2.) Five years' experience of working in a reputed organisation working in the field of disability 3.) Previous experience in Computer Application in day



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to day work.

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6. The Master's Degree in Social Work, published book in the field of peer reviewed format and any diploma / certificate course in disability related area are also the desirable qualification for the said post. Having found that the petitioner qualified to the above post, he has been selected through the selection committee and he was given with an appointment order on 03.02.2015. The first respondent appointing authority has passed the termination order by citing the following reasons:

"7. Whereas, in view of complaints and representations, the JS, DEPwD & the Chairperson, EC, had ordered to submit the details recruitment procedures followed on the appointment of Shri E.Suresh to the post of Rehabilitation Officer (Social Work). A statement was submitted after a detailed study of the case and was reported that the appointment is irregular."

7. The petitioner gave a representation to the third respondent and the third respondent has also re-asserted the order of the first respondent



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and issued a confirmation order on 26.07.2017.

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8. Ms.P.V.Rajeswari, learned counsel for the petitioner submitted that even in the order of termination, no details have been stated about how the appointment of the petitioner was irregular and which rules have been violated. Even if there is any irregularity in the appointment made by the first respondent, the petitioner who is at no fault, should not be suffered. In the termination order, nothing is stated about the performance dis-satisfaction against the petitioner or his conduct and character during his probationary period.

9. It is further submitted by the learned counsel for the petitioner that one Amarnath who was working as a Lecturer (Social Work) had sent a representation by stating that the recruitment done to the post of Rehabilitation Officer is inappropriate. But the said representation has been rejected by the third respondent by asserting that the recruitment has been made properly. Despite the same, the termination order has been passed illegally and hence, it is liable to be set aside and the respondents



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should be directed to reinstate the petitioner in service with all consequential and attendant benefits.

10. Ms.R.Durgarani, learned counsel for the respondents submitted that the petitioner's service is only temporary and the petitioner is well aware of the nature of the appointment and he has accepted the appointment order only on that basis. The attention of this Court was attracted to paragraph No.5 of the appointment order, which speaks as under:

"His appointment is temporary and can be terminated at any time without assigning any reason by giving one month's notice on either side. The Institute, however, reserves the right to terminate the services of the employee forthwith by making payment to the employee of a sum equivalent to the pay and allowances for the period of notice or the unexpired portion thereof."

11. There are some irregularities in the appointment and that has been stated in paragraph No.8 of the termination order. For the sake of



clarity, paragraph No.8 of the termination order is extracted as under:

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"8. Whereas, the CAG during the annual audit at NIEPMD accounts and records has also observed that "a total number of 34 applications were received (in response to 02/2014) out of which 17 candidates possessed with Masters degree in Social Work (MSW) and 8 were possessing with M.A. in Social Work. However, out of 25 applicants having Masters Degree, only two applicants were considered for issuance of call letter i.e., one having Master Degree and other one who possess Bachelors Degree (the appointed candidate). Further, amongst the applied candidates, one who possessed the Bachelor Degree was not considered. Further, out of two candidates considered for selection, only one candidate appeared for interview who is subsequently recruited to that post. The above lapses clearly indicate a major level of violation in recruitment of the eligible candidate of recruitment in such post. The reason for non-consideration of applicants possessing Master degree was not recorded in the recruitment rule. This is brought to the notice of the Ministry for their remarks regarding the violation in recruitment after detailed



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enquiry." The CAG has made this as an outstanding audit paragraph and still the audit observation sustains, pending settlement. The observation of the CAG will be settled only after action is taken on it by the Institute / DEPwD."

12. The CAG observed that there is a major violation of recruitment rules and the recruitment records do not contain the reasons why the persons possessing Master Degree were not considered and it also recommended a detailed enquiry in this regard. Subsequently, the said report had culminated into a disciplinary action against the officers who were in the screening committee and the selection committee respectively. The first respondent accepted that there are irregularities in the appointment process and subsequently, the order of termination has been issued to the petitioner.

13. But the learned counsel for the petitioner submitted that in the records of the interview file, a note has been made that those persons who



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have been not called for interview did not have the basic Bachelor Degree in Social Work. Since the Master Degree in Social Work is not a fundamental qualification, those candidates were not called for interview and hence, there is no irregularity in the appointment of the petitioner.

14. The grievance of the petitioner is that he was not furnished with CAG report or any other relevant materials before terminating from service. The first respondent ought to have made due justification for the selection process in which the selection committee had screened the petitioner and one another on the basis of essential qualification of possessing fundamental degree in Social Work. Since the fundamental qualification was not possessed by several candidates and they had only Master degree by having their Bachelor degree in some other discipline, the selection committee is seen to have rejected the other applications as ineligible and called upon the petitioner and one another for interview.

15. Instead of writing explanation to the CAG report, the first respondent passed the termination order. So far as the petitioner is



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concerned, he has nothing to do with the selection process. It is apparent that the authorities had acted on the apprehension that the authorities responsible for selection would be put into trouble due to the allegations of irregular appointment.

16. If the audit report states something without understanding the process through which the other applications were rejected, it is the obligation of the appointing authority or whomsoever responsible for the selection to explain and justify the correctness of the selection process. Such an exercise has not been done. Instead, the first respondent has chosen a shortcut method of terminating the petitioner in an arbitrary manner. Since the selection has been made only subject to the rules and the applications of the other applicants were rejected due to the reasons well recorded, the petitioner's appointment ought not to have been withdrawn or cancelled unnecessarily. Since the impugned order has been passed erratically, it is liable to be set aside.

17. In the result, this Writ Petition is allowed and the impugned order passed by the 3rd respondent *vide* his proceedings F.No.8-2/2017-



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N1 dated 26.07.2017 is set aside and the respondents are directed to reinstate the petitioner, however without any backwages, but with all other service and attendant benefits. Consequently, connected miscellaneous petitions are closed. No costs.

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Index : Yes

Internet : Yes/No

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