



W.P.No.15266 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
28.07.2023	01.08.2023

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.15266 of 2022

Dr. Tomy Mampilly Kochuvareed

...

Petitioner

versus

1. Union of India

Rep.by Secretary to Govt. of India,
Department of Disability Affairs
(now) Department of Empowerment of Persons with Disabilities
Ministry of Social Justice & Empowerment,
Room No.524,(B-III), 5th Floor,
Pandit Deenadayal Antyodaya Bhawan,
CGO Complex, Lodhi Road, New Delhi 110 003.

2. Joint Secretary to Govt. of India,

Ministry of Social Justice & Empowerment,
Room No.530(B-III), 5th Floor,
Pandit Deenadayal Antyodaya Bhawan,
CGO Complex, Lodhi Road, New Delhi 110 003.

3. Deputy Secretary to Govt. of India,

Ministry of Social Justice and Empowerment,



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Pt.Deenadayal Upadhaya Institute for Physically Handicapped,
Room No.511, now at 520(B-II), 5th Floor,
Pandit Deenadayal Antyodaya Bhawan,
CGO Complex, Lodhi Road, New Delhi 110 003.

4. Joint Secretary (Personnel)

Government of India
Department of Expenditure
Ministry of Finance, Room No.16-C,
North Block, New Delhi.

5. The Director,

National Institute of Empowerment of Persons with
Multiple Disabilities (NIEPMD)
E.C.R. Muttukadu, Kovalam PO
Tamil Nadu 603 112.

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Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned orders in No.7-1/2010-NI dated 28.07.2014 passed by the 3rd Respondent, quash the same and direct the respondents to pay death cum retirement gratuity, pension and other retirement benefits as given to employees of the Institute for Physically Handicapped under the Ministry of Social Justice and Employment, Government of India with all arrears and penal interests of 18% with exemplary cost.

For Petitioner : Mr. D. Prabhu Mukunth Arunkumar
Mr. R. Krishnakumar



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For Respondents : Mr.K. Ramamoorthy
Central Government Counsel

ORDER

This Writ Petition is filed to quash the order of 3rd Respondent and to direct the Respondents to pay the petitioner Death Cum Retirement Gratuity, Pension and other retirement benefits as given to employees of Institute for Physically Handicapped with all arrears and penal interest.

2.(a) It is the case of the Writ Petitioner that the Ministry of Social Welfare Government of India (now called the Ministry of Social Justice and Empowerment) issued an Advertisement dated 28.11.1984 for various post including direct recruitment of 4 vacancies in the post of Assistant Professor in Physical Medicine and Rehabilitation with pay scale of Rs.1100-00-1800-00. It is also stated that the post will carry Central Government pay scales and allowances. Selection Committee for recruitment was approved by the Secretary chaired by the Joint Secretary.

2.(b) The Petitioner was selected by the Selection Committee for



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recruitment approved by the Secretary chaired by the Joint Secretary and appointed on 01.03.1985 as Assistant Professor in Physial Medicine and Rehabilitation, a medical doctor and posted in the Regional and Rehabilitation Training Centre (RRTC) at Mumbai of the District Rehanbilitation Centre (DRC), Scheme of the Ministry of Social Justice and Empowerment (Ministry of Social and Women's Welfare then), Government of India and along with the Petitioner, one Mrs. Nirmala Venkateswaran, Mr.P.S.Srinivasan and Mr.Ghahshyam Das Bishnoi (G.D.Bishnoi) were appointed. In the Appointment Order it is clearly stated that the Central Government Rules and Regulations, besides Pay and Allowances, would be applicable to the Petitioner and services will be governed by the order of the Government of India since all the posting order are issued with the approval of Ministry.

2.(c) Petitioner was asked to subscribe CPF (Government of India – 1962), as were then employees of IPH. The Department of Pension and Pensioner's Welfare, Government of India vide O.M.No.4/1/87-P.I.C.I dated 01.05.1987 gave an option to Central Government Civilian Employees



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subscription to the CPF (Government of India – 1962) to continue in CPF.

If they did not exercise this option, they would be deemed to have come over to GPF-cum-Pension Scheme (CCS Pension 1972). In 2004 the Petitioner was deputed to North East to initiate the NE – Regional Centre of NIOH in Aizwal, Mizoram. Thereafter, he was redeployed with the approval of the Secretary to NIEPMD.

2.(d) Hence it is the contention that one Ms. Nirmala Venkateswaran from RRTC Chennai was directly recruited along with the Petitioner, who superannuated on 30.09.1999 to whom the CPF amount was returned like the Petitioner and denied Gratuity and Pension filed W.P.No.21935 of 2002 which was allowed by this Court on 15.11.2006 and the same has been upheld by this Court in W.A.No.1108 of 2007 dated 21.01.2008 and confirmed by the Apex Court in S.L.P(C) No.19803 of 2008 dated 22.08.2008. The Petitioner made a detailed representation dated 07.06.2011 detailing the earlier representation to grant the benefit extended to Mrs. Nirmala Venkateswaran as per the CCS Pension Rules 1972. The Petitioner was retired on 31.03.2014 and was paid only encashment of Earned Leave



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on superannuation and the accumulated amount in NPS account, both employees and employer's contribution. After the retirement of the Petitioner the 3rd Respondent passed the impugned order rejecting the petitioner's claim and the same has been challenged in this Writ Petition.

3.(a) Counter has been filed by the Respondent. It is the contention that prior to the Advertisement in the year 1984-85 the then Ministry of Welfare (now Social Justice & Empowerment) has started a Pilot Scheme called the District Rehabilitation Centre (DRC) Scheme with funding from the National Institute for Disability Rehabilitation & Research (NIDRR), a USA based Organisation for the establishment of a model for providing comprehensive rehabilitation services for the persons with disabilities in rural areas. From 1995, the funding for the project from non-plan grants from the Ministry of Social Justice & Empowerment, Government of India. The Project was closed w.e.f. 01.04.2006. Under the DRC Project, 4 Regional Rehabilitation Centres (RRTC) at Mumbai, Cuttack, Lucknow and Chennai were established.



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3.(b) The Petitioner was appointed under the rules in force in District Rehabilitation Centre Scheme from time to time w.e.f. 01.03.1985. As on the appointment, an order was issued dated 18.03.1985 that the post is temporary but likely to continue.

3(c) It is the further contention that all the redeployed employees have joined their new organisation after 01.01.2004 since then New Pension Scheme has been made applicable. Hence the redeployed employees would be governed by New Scheme, if there is a provision for the same in the new Institute. As on the Minutes, a Circular has been issued to the petitioner and other deployed staff dated 18.07.2007 by the then Director stated that “as per the minutes of the meeting held at Shastri Bhavan, New Delhi on 20.03.2007 under the chairmanship of DDG & JD(DD) with the Directors/AOs regarding clarifications on service conditions of redeployed staff and as approved by the Competent Authority, the redeployed staff of the RRTC will be governed under the New Pension Scheme”. Accordingly, the Petitioner was requested to fill up the requisite form dated 22.12.2003 for admission to the New Pension Scheme enclosed with the circular and



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submit the same to the office at the early date. Thus the Petitioner admitted to the scheme from the 1st of the month when the petitioner had actually joined NIEPMD. The Petitioner continued to opt for Contributory Provident Fund Scheme at his previous services. He subscribed for NPS at NIEPMD till his retirement. Therefore, the Petitioner is standing on a different footing than that of the the aforesaid Mrs.Nirmala Venkateswaran. Hence opposed the Writ Petition.

4. Learned counsel appearing for the Petitioner submitted that the Petitioner was appointed by the Ministry of Social Justice by proper mode. Appointment order itself clearly shows that service will be governed by the relevant rules and orders in force and amended/clarified from time to time by the Government of India and it is also stated that in the absence of any provision regarding any service matter of the borrowing organisation, the concerned Central Government Rules would be applicable. One Mrs. Niramala Venkateswaran appointed along with the Petitioner has already filed a Writ Petition in W.P.No.21935 of 2002 with similar relief. Her Writ Petition was allowed. The same was upheld in the Writ Appeal in



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W.A.No.1108 of 2007 dated 21.01.2008 and SLP filed against the Writ Appeal was dismissed by the Honourable Supreme Court. Similar defence taken in this matter was also taken in the above case, but the Division Bench has already negatived such a defence in that case. Therefore his contention is that the Respondents cannot take a similar defence when the same has been negatived by this Court and approved by the Apex Court. The other similarly appointed in the same Advertisement were also given the relief. One Mr.Arunagiri also filed a similar Writ Petition in W.P.No.19319 of 2020, that writ petition was also allowed. Therefore, his contention that now different stand cannot be taken by the Respondents.

5. Learned Central Government Counsel would mainly submit that in Civil Appeal No.7999 of 2002 the Apex Court has held that they are not entitled for any pensionary benefits. Since the project had subsequently closed on 15.12.2006 petitioner was redeployed in different department from 05.05.2006 and Mrs. Nirmala Venkateswaran was appointed in permanent vacancy whereas the Petitioner was employed in the Institute of Physical Disability Centre and the contention of the learned counsel is that



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Mrs. Nirmala Venkateswaran case cannot be applied in this case since she has opted for switching over to the GPF scheme from CPF scheme and had also proceeded on superannuation before implementation of the New Pension Scheme w.e.f. 01.01.2004, whereas the Petitioner has subscribed only for CPF and continued to opt for Contributory Provident Fund Scheme at his previous service. Hence, the Petitioner cannot claim any benefit on the basis of the earlier orders of this Court. His further contention is that the Central Administrative Tribunal has also dismissed the Petition filed by the Petitioner. Therefore, the Writ Petition is not maintainable.

6. I have perused the entire materials. It is not disputed that the petitioner was appointed as per the Advertisement of the Ministry of Social Welfare, now called the Ministry of Social Justice and Empowerment dated 28.11.1984 for filling up of 4 vacancies. The petitioner was appointed on 01.03.1985 as per the Memorandum of Government of India Ministry of Social & Women's Welfare. The Office Memorandum clearly shows that the Petitioner was appointed as Assistant Professor in Physical Medicine and Rehabilitation. The Appointment Order further indicates that his service



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will be governed by the relevant rules and orders in force and as amended/clarified from time to time by the Government of India. Further, in the absence of any provision regarding any service matter of the borrowing organisation, the concerned Central Government rules would be applicable. The Order of the Project Director of District Rehabilitation Centre Scheme makes it clear that the Central Government rules and regulations will apply to the employees of the RRTCs/CACU as are also applicable to the IPH employees. Section 6(vii) of the Bye-laws for Administration and Management of the Institute for the Physically Handicapped reads as follows:

“6(vii) Pension and G.P.F.

The employees of the Institute shall be eligible to pensionary benefits and GPF and gratuity as per the Central Government Rules. On completion of one year of service, the employee will be eligible for admission to the Institute's GPF scheme.

The Present CPF scheme will continue for the employees, existing on the date these Bye-laws are made effective i.e., 2nd May 1988 in the IPH, who do



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not opt for GPF scheme and opt to continue under CPF scheme”.

7. Appendix 13 Change over from Contributory Provident Fund

Scheme to Pension Scheme reads as follows:

“Change-over of employees from Contributory Provident Fund Scheme to Pension Scheme

**[G.I., Dept. of Pen. & Pensioners' Welfare,
O.M.No.4/1/87-P.I.C-I., dated the 1st May, 1987]**

The Central Government employees who are governed by the Contributory Provident Fund Scheme (CPF Scheme) have been given repeated options in the past to come over to the Pension Scheme. The last such option was given in the Department of Personnel and Training, O.M.No.F.3(1)-Pension Unit/85, dated 6th June, 1985. However some Central Government employees still continue under the CPF Scheme. The Fourth Central Pay Commission has recommended that all CPF beneficiaries in service on January 1, 1986, should be deemed to have come over to the Pension Scheme on that date unless they specifically opt out to continue under the C.P.F. Scheme.”

8. When the bye-laws of the rules itself clear that on completion of one year service, the employees shall be eligible for Pensionary benefits,



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GPF, Gratuity as per Central Government Rules, they are eligible for admission to the Institute's GPF scheme. The impugned order states that the Petitioner has not opted for GPF scheme is not correct. Further change over of employees from Contributory Provident Fund Scheme to Pension Scheme as referred above also makes it clear that all CPF beneficiaries in service on January 1, 1986, should be deemed to have come over to the Pension Scheme on that date unless they specifically opt out of continue under the CPF Scheme.

9. Further Clause 3.2. of the above Office Memorandum also reads as follows:

“3.2. The employees of the category mentioned above will, however, have an option to continue under the CPF Scheme, if they so desire. The option will have to be exercised and conveyed to the concerned Head of Office by 30.09.1987, in the form enclosed if the employees wish to continue under the CPF Scheme. If no option is received by the Head of Office by the above date the employees will be deemed to have come over to the Pension Scheme.”

10. When the above memorandum makes it clear that if the



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employees have not opted within the particular date they have deemed to have come over to the Pension Scheme. The impugned order rejecting the petitioner contention in view of this Court is not correct.

11. Much emphasis made in C.A.No.7999 of 2002 to contend that On perusal of the above order the Apex Court has held that the person appointed in the Rehabilitation Centres by the Co-ordinators of the State Governments of West Bengal and Karnataka will not become the employees of Central Government. Above judgment cannot be pressed into service in this case. Admittedly the very appointment itself made to the petitioner by the Central Government i.e., the Ministry of Social Welfare and the Appointment Order was issued by the Secretary to the Ministry. It is also relevant to note that one Mrs. Nirmala Venkateswaran appointed along with the Petitioner has filed a W.P.No.21935/2002 has been allowed and the Writ Appeal filed by the Government was dismissed by a Division Bench of this Court wherein also similar ground raised by the Respondents. The relevant portions of the above Judgment are as follows:

5. The respondent was subscribing to CPF since 1985.



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Since the employees of the RRC were not informed of the pension scheme introduced in the IPH, nor asked any option in that regard, on the respondent coming to know about the amendment to the bye-laws of IPH, she opted for pension by her letter dated 01.05.1988. There were series of requests made by her to almost all authorities for grant of pension. Though certain replies were received by her to the effect that her request was being considered in accordance with the Rules, nothing fructified. Hence, she filed the writ petition with the prayer as stated above.

6.

7. Along with this appeal, the appellants have filed an application praying to stay all further proceedings of the order of the learned single Judge. In the affidavit filed in support of the application, the appellant has taken a stand that the respondent was the employee of RRTC, Chennai recruited by the Project Director of DRCS in the pay scale of the Central Government. The Central Government stopped funding to the DRC projects with effect from 01.04.2006. The applicability of the Government Rules to the project employees was for the administrative convenience so as to regulate the services and conduct of the employees during the project tenure. The respondent had not been recruited under the same terms as applicable to the Central Government



employees. The applicability of the bye-laws mutatis mutandis to the directly recruited employees of CACU/RRTC would only mean the applicability of the same with suitable modification.

8.
9.

10. We are not able to accept the argument of the learned Counsel for the appellants. It is an undisputed case that IPH caused a publication in the newspaper (Indian Express dated 28.11.1984) in which it invited application for 8 posts. One among them was the post of Assistant Professor in Occupational and Physiotherapy. The number of posts for which the applications were called for was 4. The scale of pay was Rs. 1100-50-1600/-. The qualifying age was 'not more than 45 years'. Qualifications and experience have been prescribed as 3 years degree/diploma in occupational/physiotherapy with atleast 10 years of teaching/clinical experience. The publication further stated that the selected applicant would be required to serve in any of the training institute for the disabled under the Government at New Delhi, Bombay, Madras, Lucknow, Cuttack and Calcutta. All posts carry central Government pay scale and allowances. It further stated that the posts are senior level trainee posts. Each trainee team would be required to train physicians, therapists,



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audiologists, vocational counsellors, orthotic and prosthetic technicians and multi purpose rehabilitation workers, etc., in DRC. In the publication there is no reference to the fact that the posts are either temporary in nature or for a specified period or under any scheme.

11. By the Official memorandum dated 30.01.1985/01.02.1985 after referring to the earlier letter of the Joint Secretary dated 29.01.1985, the terms and conditions of the respondent's appointment had been given. In Clauses (ii), (iii) and (iv) it has been clearly stated that dearness allowance/additional dearness allowance/interim relief, house rent allowance, city compensatory allowance would be admissible at the rate at which it was allowed to the employees of the Central Government. The office order dated 18.03.1985 also referred to the order No. 15-6/84-HW-III dated 1st February, 1985.

12. From the above it is clear that the respondent has been appointed in the IPH with the terms and conditions of appointment as stated therein and that she was entitled to all the benefits which are available to the Central Government employees. Further, the proceedings dated 04.07.1986 in Reference No. 1-1 (8) 85 - MSW - ORC - 542 (1) makes it clear that the rules and regulations contained in the bye-laws applicable to the employees of IPH, New Delhi would apply



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mutatis mutandis to the employees directly recruited in CACU/RRTCs and the applicability of CCS (Contributory Provident Fund) Rules was also stated therein. It is an admitted case that since 1985 the respondent has contributed to CPF scheme.

13. The bye-laws for administration and management of IPH framed by virtue of the power conferred by Rule 10.5 of the Rules and Regulations of IPH provides for pension benefits as follows:

“6. General Service Conditions of the employees:

(vii) Pension and G.P.F.

The employees of the Institute shall be eligible to pensionary benefits and GPF and gratuity as per the Central Government Rules. On completion of one year of service, the employee will be eligible for admission to the Institute's GPF scheme.

The present CPF scheme will continue for the employees, existing on the date these bye-laws are made effective, i.e., 2nd May, 1988 in the IPH, who do not opt for GPF



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scheme and opt to continue under CPF scheme.

14. Thus, it is clear that the respondent is entitled to the pensionary benefit as she opted for the same by her letter dated 01.05.1988. As already stated from 01.05.1988 onwards, the respondent was repeatedly making representations - 08.06.1988, 08.09.1998, 14.10.1998, 14.01.1999, 08.02.1999, 22.03.1999, 23.04.1999, 26.04.1999 and 06.05.1999. However, by letter dated 20.12.1999 the Project Director informed the respondent that the action towards approval of her pension and gratuity was being taken up with the Ministry. The said letter was followed by another letter dated 10/15.02.2000 stating that the respondent was entitled to receive final payment of balance lying in her CPF account and if she desires she could draw the final payment. As regards the pensionary benefit, it was reiterated that the Ministry was in the final stage of taking action. From the above it is clear that the respondent is entitled to pension and all through, it is not the case of the appellants that the respondent is not entitled to pension.

15. Learned Counsel for the appellant though placed the decision of the Supreme Court in [District Rehabilitation Officer v. Jay Kishore Maity Civil Appeal No. 7999 of 1999](#) dated 10.11.2006 in the typed set of papers, has not made any



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submission relying on the judgment. The core question before the Supreme Court in that case was whether the employees selected for the Rehabilitation Centre at the West Bengal and Karnataka by the Project Co-ordinator of the Rehabilitation Centre, who were the officials of the State Government of West Bengal and Karnataka could be regarded as employees of the Central Government so as to invoke the jurisdiction of the Central Administrative Tribunal. The apex Court re-stated the test determinative for ascertaining the relationship of 'employer-employee' viz., functional test or control test or organisational test, etc., and after referring to the earlier decisions of the Supreme Court in the cases of [Workmen of Nilgiri Co-op. Market Society v. State of Tamilnadu](#) 2004-3-SCC 51 if, [Haldia Refineries Canteen Employees Union v. IOC](#) , and [State of Karnataka v. KGSD](#) employees Welfare Association, , ultimately observed that it was not in agreement with the finding of the CAT.

16. Here in this case, as stated supra, the advertisement was caused by IPH, Department of Ministry of Social Welfare, wherein it was categorically stated that the posts carry central Government pay scale and allowances and the terms and conditions of appointment dated 30.01.1985/1.2.1985 also indicated that all allowances as that of the employees of the Central Government would be applicable to the respondent.



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Hence, the judgment of the Supreme Court is not applicable to the facts of the present case.

12. The SLP filed against the Judgment is also dismissed in SLP No.19803 of 2008 by order dated 22.08.2008. Thereafter, one Mr.Arunagiri also filed a Writ Petition No.19319 of 2010 and the same was also allowed by this Court. Those orders have been implemented by the Respondents. On Bishnoi.G. Has also filed an application before the Tribunal to grant benefit as per CCS Pension Rules 1972. Subsequently, he was also granted pensionary benefit.

13. The Petitioner also filed O.A.No.322 of 2015 before the Central Administrative Tribunal. However, the same has been rejected on the technical ground that the Respondents were not in the Central Government List, however liberty has been granted for appropriate remedy according to law. Therefore, the present petition is filed. When the similarly placed persons who have appointed in the same notification have already given benefit and as per the rules extracted above, the petitioner is also governed by the Central Government Rules and as per the Office Memorandum



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referred above, the Petitioner deemed to have come under the Pension Scheme, the Petitioner is certainly entitled to the relief as prayed for.

14. Accordingly, the impugned order is set aside and the Writ Petition is allowed. No costs. The Respondents are directed to pay Death cum Retirement Gratuity, Pension and other retirement benefits with all arrears and penal interest at the rate of 9% per annum from the next date of his retirement, within a period of three months from the date of receipt of copy of this Order.

01.08.2023

Index : yes
Internet : yes
Neutral Citation : yes/no
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Copy to:

1. the Secretary to Govt. of India, Department of Disability Affairs
(now) Department of Empowerment of Persons with Disabilities
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Lodhi Road, New Delhi 110 003.
2. Joint Secretary to Govt. of India, Ministry of Social Justice &



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Empowerment, Room No.530(B-III), 5th Floor, Pandit Deenadayal
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3. Deputy Secretary to Govt. of India, Ministry of Social Justice and Empowerment, Pt.Deenadayal Upadhaya Institute for Physically Handicapped, Room No.511, now at 520(B-II), 5th Floor, Pandit Deenadayal Antyodaya Bhawan,CGO Complex, Lodhi Road, New Delhi.
4. Joint Secretary (Personnel),Government of India, Department of Expenditure Ministry of Finance, Room No.16-C,North Block, New Delhi.
5. The Director, National Institute of Empowerment of Persons with Multiple Disabilities (NIEPMD), E.C.R. Muttukadu, Kovalam PO Tamil Nadu 603 112.



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N.SATHISH KUMAR, J.,

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Order in:

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