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W.P.No. 18849 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2024

CORAM

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P.No. 18849 of 2018

S. Ponnivalavan

... Petitioner

Vs.

**1.The Director of Medical and Rural Health Services,
Chennai – 600 006.**

**2.The Joint Director of Health Services,
Nagapattinam District.**

**3.The Superintendent,
Govt. District Head Quarters Hospital,
Nagapattinam.**

... Respondents

Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the order passed by the second respondent in R.C.No.4099/E3/99 dated 14.05.2001, quash the same and direct the respondents to regularise the services of the petitioner with all consequential service and monetary benefits from the date of appointment.

For Petitioner : Mr. V. Chandrasekaran

**For Respondents : Mr. K. Tippu Sultan,
Government Advocate**



W.P.No. 18849 of 2016

ORDER

This Writ Petition has been filed to quash the order passed by the second respondent in R.C.No.4099/E3/99 dated 14.05.2001 and for a consequential direction to regularise the services of the petitioner with all consequential service and monetary benefits from the date of his appointment.

2. The case of the petitioner is that he was fully qualified and eligible for the post of Pharmacist. He completed Diploma in Pharmacy and his name registered in the Tamilnadu Pharmacy Council and the District Employment Exchange, Nagapattinam. His employment exchange registration number is 6941/1991. The recruitment to the post of Pharmacist was made as per the seniority in the District Employment Exchange up to the year 2006. Thereafter state seniority in Employment Exchange was followed up to the year 2012. After 2012, the recruitment is made through Medical Recruitment Board.

3. The petitioner was appointed as Pharmacist in the year 2001 by following G.O.Ms.No.105, Health and Family Welfare Department, dated 03.05.2000. The petitioner was issued appointment order on 12.01.2001 by the second respondent on following the Employment Exchange seniority and rule of reservation. The petitioner was terminated from service by a stereo typed order dated 14.05.2001 of the second



respondent. The said order was passed without assigning any reasons and without providing any opportunity to the petitioner. As such, the petitioner filed O.A.No.3394 of 2001 before the erstwhile Tamilnadu Administrative Tribunal. The Tribunal after hearing, granted interim stay against the operation of the termination order and thereafter, the petitioner has been continuing in service till date. But the service of the petitioner has not been regularised till date, whereas all his juniors appointed at the later point of time have been regularised.

4. Infact, in O.A.No.3394 of 2001, the respondents filed their counter affidavits. The respondents without waiting for the outcome of the case, he was terminated for hypothetical reasons. Aggrieved by the action of the respondents in terminating the service of the petitioner, the present writ petition has been filed.

5. A counter affidavit has been filed on behalf of the second respondent. It is averred in the counter affidavit that the petitioner was appointed under the OC Non Priority. Though one Thiru. J. Selvaraj who was senior under Employment Exchange seniority to the petitioner and who had attended the interview, but by overlooking him and by evading the instructions laid down in the G.O.Ms.No.105, Health and Family Welfare Department, dated 03.05.2000, the second respondent appointed the petitioner irregularly. Accordingly, the petitioner was terminated from service vide



proceedings dated 14.05.2001 without giving a notice and reasons as already informed in his appointment order. It is stated in the counter affidavit that against the termination order, the petitioner filed O.A.No.3394 of 2001 in the erstwhile Tamilnadu Administrative Tribunal, Channai and got interim stay orders on 22.05.2001 and 21.06.2001. In the light of the interim stay orders of Tamilnadu Administrative Tribunal, the petitioner rejoined duty in the month of May 2001 and continuing the service till date.

6. Learned counsel for the petitioner submits that the order impugned is bad in law for the reason that it has been passed in violation of principles of natural justice. The learned counsel further submits that no prior opportunity was given to the petitioner before issuing the impugned order of termination. He further contends that the petitioner was appointed in the substantive vacancy by following the proper procedure and as such, he cannot be terminated without following the due process of law and there cannot be an order of termination due to administrative reasons and as such, he sought to quash the impugned order as it is arbitrary and colourable exercise of power.



7. The learned counsel for the petitioner further contends that on abolition of the Tribunal, several Original Applications have been transferred and re-numbered as Writ Petitions before this Court. However, he was not heard anything about the transfer of his case. Therefore, the petitioner has given a detailed representations dated 10.04.2015 and 28.06.2016 to the Registry of this Court, however, the case bundle could not be traced, hence, the petitioner was constrained to file the present writ petition challenging the order of termination dated 14.05.2001.

8. On the other hand, the learned Government Advocate appearing for the respondents submit that the second respondent contrary to the instructions issued by the Government in G.O.Ms.No.105, Health and Family Welfare Department, dated 03.05.2000 appointed the petitioner as Pharmacist by ignoring the seniors who registered their names in the District Employment Exchange. As the appointment order issued to the petitioner is legal, there is no necessity to give a notice to the petitioner before issuing termination order. The learned Government Advocate further contends that one Dr.Gangadharan, the former Joint Director of Health Services and S. Janakiraman, former Administrative Officer incharge, who are responsible for the irregular appointment of the petitioner was imposed punishment of compulsory retirement and as such, the appointment of the petitioner was irregular and illegal and sought to dismiss the writ petition.



9. Having heard the submissions of the respective counsel and upon careful perusal of the materials available on record, it is an admitted fact that the petitioner had possessed the qualifications for appointment as Pharmacist. He passed Diploma in Pharmacy and registered in the Tamilnadu Pharmacy Council and also in Employment Exchange, Nagapattinam. He was appointed as Pharmacist in the year 2001 by the second respondent. The appointment order was issued on 12.01.2001. By order dated 14.05.2001, the petitioner was terminated from service by the second respondent. On perusal of the order impugned in this writ petition, it appears that the appointment of the petitioner was terminated with immediate effect due to administrative reasons. Aggrieved by the said order, the petitioner approached the Tamilnadu Administrative Tribunal and obtained interim stay orders against the operation of the termination order and he is continuing in service till today.

10. On bare perusal of the termination order, it is proved that the petitioner was terminated from service without issuing any notice to the petitioner. No opportunity was provided to the petitioner to put forth his case before the competent authority. Atleast, the competent authority who passed termination order ought to have provided an opportunity for the petitioner to submit his version. It is an admitted fact that these procedures are not followed while issuing the termination order.



11. The Hon'ble Apex Court and this Court time and again held that passing any order which affects the persons without issuing any notice or without providing any opportunity for hearing, is in violation of principles of natural justice. Undisputedly, in the present case, due process of law is not followed before passing the termination order. This is a clear case of violation of principles of natural justice.

12. Beside this, in the light of the interim stay orders passed by the Tamilnadu Administrative Tribunal, the petitioner has been continuing till date. As of now, he has completed around 23 years of service. It appears that no adverse statement / remarks made against the petitioner in their counter affidavit filed by the respondents against the antecedent of the petitioner in his service for all these years. Initiating disciplinary proceedings against the then Joint Director of Service and against the Administrative Officer would not come in the way to consider the request of the petitioner. In the process of appointments, the petitioner may not have any role. As the petitioner possessed requisite qualifications and other eligibilities, he was appointed as Pharmacist. The petitioner is no way concerned with any deviation of the Government instructions in appointments by the concerned authorities. For the mistake committed by the concerned authorities of the respondents, the candidates who are appointed as per their qualifications and eligibilities should not be penalized. Even though, there are any procedural lapses in appointments, the competent



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authority has to follow the due process of law to proceed to terminate the service of the appointees.

13. In the present case, as the impugned order of termination is issued without following due process of law and no notice was issued to the petitioner and no opportunity of being heard was accorded to the petitioner which is against the principles of natural justice, in the considered opinion of this Court, the order impugned in this writ petition is liable to be quashed.

14. For the aforesaid reasons, this Writ Petition is allowed with the following directions: -

i. The order passed by the second respondent in R.C.No.4099/E3/99 dated 14.05.2001 is hereby quashed.

ii. The respondents are directed to regularise the service of the petitioner with all consequential and monetary benefits from the date of his appointment.

15. There shall be no order as to costs.

19.03.2024

Index :Yes/No

Neutral Citation :Yes/No

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To

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Chennai – 600 006.

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BATTU DEVANAND, J.

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