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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 23rd September, 2024*

+ W.P.(C) 9548/2017 and CM APPL. 38845/2017 and 41088/2023

DR. ASHOUTOSH DEV KAUSHIKPetitioner

Through: Mr. Tanmay Yadav, Advocate.

versus

UNION OF INDIA AND ANR.Respondents

Through: Ms. Archana Gaur, Ms. Ridhima Gaur and Ms. Ring Baliyan, Advocates for Respondents/UOI.

CORAM:**HON'BLE MS. JUSTICE JYOTI SINGH****JUDGMENT****JYOTI SINGH, J. (ORAL)**

1. Present writ petition has been preferred on behalf of the Petitioner under Article 226 of the Constitution of India seeking the following reliefs:

"A. issue a writ of certiorari or any other writ quashing /setting aside the impugned office orders dt.11-9-2017, 10.10.2017 and 13-10-2017 passed by respondent no.2 as illegal unjust and void ab-initio, and

B. Issue a writ of Mandamus directing the respondents no. 1 & 2 to comply with CCS service Rules and benefits of Pension rule 1972 be given to the petitioner as applicable to central govt. employees.

C. Pass an appropriate Writ/order directing the respondents to treat the petitioner as permanent employee of the respondent No.1 and provide all the consequential service benefits as being given to the permanent/regular employees of the Central Government as the petitioner is going to retire on 31-12-2019, and

D. Impose exemplary cost upon respondents for passing such impugned orders for harassing the petitioner."

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2. Facts to the extent necessary and as averred in the writ petition are that National Centre for Disaster Management ('NCDM') was established on 28.03.1995 as a permanent centre in Indian Institute of Public Administration ('IIPA'), an autonomous body established under the Societies Registration Act, 1860. On 08.06.1995, Department of Agriculture and Co-operation ('DOAC'), Ministry of Agriculture, sanctioned grant for 19 posts in NCDM under the Central Sector Scheme. On 02.11.1998, IIPA advertised two posts of Research Associates in NCDM as per bye-laws and 35 applications were received. In furtherance of interviews held on 04.12.1998, 02 candidates were selected, one of them being the Petitioner and appointment letter was issued to him on 16.12.1998. Appointment was initially for a period of six months w.e.f. 01.01.1999 and Petitioner joined on the same day. In October, 1999, Petitioner's pay was revised in implementation of 5th CPC recommendations and on 24.03.2000 he also filled the nomination form under the General Provident Fund (Central Services) Rules, 1960. Between 2001-2002, Petitioner contributed his share towards provident fund by deduction from his salary. In 2002, IIPA converted the GPF into CPF and Petitioner was allotted a CPF account number and the funds accumulated in GPF were transferred to CPF.

3. It is averred in the writ petition that Petitioner's services were extended from time to time and lastly upto 31.03.2004 in between which the Ministry of Home Affairs/Respondent No. 1 issued an O.M. dated 16.10.2003 whereby NCDM was re-designated as National Institute of Disaster Management ('NIDM') with immediate effect and the same was delinked from IIPA w.e.f. 16.10.2003. On the happening of this event,



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services of the Petitioner were transferred to NIDM on 10.04.2004 and further extended upto 31.03.2006 on existing terms and conditions.

4. It is further averred that the Disaster Management Act, 2005 ('2005 Act') was enacted and brought into force from 31.10.2006 constituting a separate Institution i.e. National Disaster Management Authority ('NDMA') which was directly under the control of PMO. Section 43 of the 2005 Act provided that Central Government shall provide NIDM with officers, consultants etc. as it deems fit and Management Committee of NIDM decided that 04 posts of Research Associates would be re-designated as Research Officers and upgraded to the pay scale of Rs.6500-10500. Petitioner was one such Research Associate who was re-designated as Research Officer vide letter dated 20.09.2007 by Respondent No. 1. His CPF account was transferred from IIPA to NIDM and the contributions were regularly deducted from his salary.

5. It is averred that Respondent No. 1 issued a letter dated 28.02.2008 to NIDM conveying the approval of Competent Authority *inter alia* to retain/continue 46 posts of NIDM upto 31.03.2008. On 08.02.2011, Respondent No. 1 sanctioned posts in NIDM on permanent basis which included 04 posts of Research Associates and Petitioner claims to have become an employee of NIDM. On 03.03.2011, NIDM issued an Office Order conveying the recommendation of the Committee to continue the Petitioner on permanent basis and directing that service of the Petitioner in NIDM will stand regularised from his initial appointment on 01.01.1999. Basis this document, Petitioner represented on 12.03.2013 to permit him to join the GPF Scheme as he had joined NIDM i.e. erstwhile NCDM before 01.01.2004 and could not be governed by the New Pension Scheme ('NPS').



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Respondent No. 1 thereafter in its meeting dated 28.11.2016 decided to delink NCDM from IIPA w.e.f. 16.10.2003 and accordingly employees appointed by IIPA in NCDM were treated as NIDM employees from the said date. On 11.04.2017, Governing Body meeting of NIDM was convened and it considered that the recruitments in NCDM/NIDM were made in three phases where phase-1 included recruitment to NCDM between 1998 to 15.10.2003, in which the case of the Petitioner fell. On 25.07.2017, NIDM issued a Circular reminding the Petitioner to subscribe to NPS which he had failed to do pursuant to an earlier Circular. Petitioner resisted in subscribing to NPS on the ground that he had been an employee from 1999 and was due to superannuate on 31.12.2019 and sought the benefit of Old Pension Scheme ('OPS'). NIDM issued a notice on 11.09.2017 asking the employees of NIDM to opt for absorption under the 2005 Act and while 20 employees opted, Petitioner did not. The employees who opted were declared as having joined NIDM against substantive posts w.e.f 31.10.2006. Since Petitioner refused to opt, an order was issued by NIDM on 10.10.2017 declaring that Petitioner will not be taken on the strength of NIDM and shall continue to remain as an ad-hoc employee. This led to the Petitioner filing the present petition.

6. Learned counsel for the Petitioner contends that on 29.06.2006, Management Committee of NIDM in its 3rd Meeting approved Agenda No.8.7 whereby services of the employees who had joined the Institute prior to 2003 and had completed three years of service and against whom no disciplinary inquiry was pending, were to be regularised with effect from the initial date of appointment in the Institute. On 03.03.2011, the then Executive Director ('ED') of NIDM, constituted a Committee that reviewed



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the performance of the Petitioner and recommended his continuation on a permanent basis and accordingly in its capacity as the highest officer of the Institute, ED issued a letter on the same day regularising the services of the Petitioner w.e.f. his initial appointment i.e. 01.01.1999. It is, therefore, not open to the Respondents to now claim contrary to the said decision and deprive the Petitioner of counting his past service from 01.01.1999 and/or claim that his services will not be regularised from the date of his initial appointment.

7. It is further argued that it is not open to NIDM to take a stand that Petitioner cannot be regularised as he has not opted for absorption and regularisation pursuant to notice dated 11.09.2017, calling upon the employees to opt for regularisation from 31.10.2006. Since Petitioner's services stood regularised by an earlier order dated 03.03.2011, he had no reason to opt pursuant to this notice as doing that would have led to his regularisation from a later date i.e. 31.10.2006. Even the order dated 10.10.2017 issued by NIDM stating that Petitioner would continue as ad-hoc employee was erroneous as Petitioner was initially appointed as a temporary employee and not ad-hoc.

8. It is argued that Petitioner's services were rightly regularised from his initial date of appointment and the revocation of the order is illegal. On getting statutory recognition in 2006 and in order to ensure that working of NIDM proceeds smoothly, services of the Petitioner were taken over by NIDM on 'as is basis' and Petitioner, who was working as Research Associate in NIDM, continued without any break. Petitioner has worked for 21 years with NIDM without any break and was given all benefits including pay revisions under 5th, 6th and 7th CPC, MACP Financial Upgradation,



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Leave Encashment etc. from the very beginning. NIDM, erstwhile NCDM, has been in existence since 1995 and was only given a statutory recognition in 2006 and therefore, the service of the Petitioner from 1999 cannot be wiped out and he is entitled to count this service for all benefits of promotion, pension etc. In support, Petitioner relies on the decision of the Division Bench of this Court in ***Neena Gandhi v. UOI & Ors., 2016 SCC OnLine Del 4461*** and Division Bench of Patna High Court in ***Mukteshwar Prasad Singh and Others v. The State of Bihar and Others, LPA No.716/2017***, decided on 12.12.2017 which was upheld by the Supreme Court.

9. Ms. Archana Gaur, learned counsel for the Respondents, on the other hand, opposes the writ petition primarily on two-fold grounds i.e. Petitioner did not submit his willingness for absorption in NIDM against permanent position w.e.f. 31.10.2006 and secondly, NIDM is a statutory body which was created on 30.10.2006 and National Institute of Disaster Management Employees (Recruitment and other Conditions of Service) Rules, 2014 ('2014 Rules') were notified only on 21.08.2014 and thus, Petitioner cannot claim any benefit of regularisation in NIDM prior to 30.10.2006. It is submitted that DOAC conveyed the administrative approval of Government of India on 28.03.1995 to set up NCDM in IIPA. Applications were invited by IIPA for appointment on temporary basis and Petitioner was recruited pursuant thereto on 01.01.1999, initially for six months and later his tenure was extended from time to time. Respondent No. 1 vide O.M. dated 16.10.2003 conveyed the approval for re-designation of NCDM as NIDM and the last extension of the Petitioner and other temporary staff of NCDM was upto March, 2004 by IIPA. Subsequent to conversion into NIDM,



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service of the Petitioner was extended upto 31.03.2006.

10. It is further submitted that Management Committee of NIDM in its 1st meeting held on 01.01.2005 desired that Recruitment Rules for the post be finalised and in the next meeting held on 11.11.2005, the draft NIDM Recruitment Rules, 2005 were approved. The 2005 Act was notified on 23.12.2005 constituting NIDM and Section 43 thereof provided that the Central Government shall provide such officers, consultants etc. as it considered necessary. By order dated 20.05.2006, NIDM reappointed the temporary staff including the Petitioner of NCDM w.e.f. 01.04.2006. The Central Government notified constitution of NIDM and its rules and regulations on 30.10.2006. On 25.02.2008, MHA conveyed its approval for continuation/retention of 46 posts in NIDM. Consequent to receipt of this sanction, the ED, NIDM, contrary to Section 43 of 2005 Act, without any power and jurisdiction, regularised the services of the Petitioner and other Group 'B', 'C' and 'D' officials from the date of their initial appointments.

11. It is further submitted that 2014 Rules were thereafter notified on 21.08.2014 wherein it was stated that the Institute was created on 30.10.2006 and provisions of NPS shall be applicable to all employees of the Institute. The matter with respect to the pension of the employees was referred for consideration by DoPT, which rendered an opinion that the employees had no option but to opt for NPS. Pursuant thereto and a subsequent consent dated 13.04.2017, NIDM issued a Circular calling upon all employees to fill-up NPS Subscriber Registration Forms by 29.05.2017. On 11.09.2017, Competent Authority of NIDM decided to seek willingness from employees who were not recruited or were not deemed to have been recruited under 2014 Rules for absorption in NIDM against permanent



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position as per Roster Norms w.e.f. 31.10.2016 and last date for exercise of option was 15.09.2017, failing which it was to be presumed that such employees were not willing to be absorbed in NIDM.

12. It is urged that Petitioner did not submit his willingness for absorption and has only himself to be blamed for treating him as an ad-hoc employee. It is further strenuously urged that since the Institute itself came into being in 2006 and the Rules were notified in 2014, Petitioner cannot claim permanent appointment in NIDM and/or its consequential benefits of counting past service from 01.01.1999 for promotion and pension etc. prior to 2006.

13. Heard learned counsels for the parties and examined their rival submissions.

14. Insofar as the contention of NIDM that Petitioner did not opt for absorption when called upon to do so in 2017 is concerned, in my view, the same merits rejection. It is an admitted position between the parties that pursuant to a decision taken on 29.06.2006 by the Management Committee of NIDM, the then ED of NIDM constituted a Committee vide order dated 18.02.2011, which reviewed the performance of the Petitioner and recommended his continuation on permanent basis. In line with this, the ED as the highest officer of the Institute issued a letter dated 03.03.2011 regularising the services of the Petitioner w.e.f. the date of initial appointment i.e. 01.01.1999. When options were called for absorption by a notice dated 11.09.2017, Petitioner already had a decision and order in his favour regularising his services from 01.01.1999, which till the said date had neither been cancelled nor revoked and there was thus no reason or occasion for him to have opted for regularisation from 2006, pursuant to notice dated 11.09.2017. It is not the case of NIDM even today that Petitioner had



obtained regularisation by any unfair or fraudulent means. In hindsight, NIDM may claim today that the decision was wrong but the fact of the matter is that when the decision was taken it was by the Management Committee in which all stakeholders were members. Therefore, it cannot be taken against the Petitioner that having not opted for regularisation in 2017, his case cannot be considered for regularisation.

15. Coming to the second contention of NIDM, there is no dispute that NIDM was created on 30.10.2006 and the Recruitment Rules for NIDM employees were notified on 21.08.2014. The expression 'Institute' has been defined in Rule 2(g) to mean the National Institute of Disaster Management constituted vide Notification dated the 30.10.2006 of the Government of India in the Ministry of Home Affairs No. S.O. 18620. The Recruitment Rules also have an 'Initial Constitution' clause in Rule 5 which reads as follows:-

"5. Initial Constitution.-

(1) All employees appointed to various posts in regular pay band and grade pay shall be deemed to have been appointed under these rules to the respective posts with effect from the date of their service in the Institute.

(2) The services rendered in the Institute by the employees referred to in sub-rule (1) shall be counted for the purpose of qualifying service for promotion, confirmation, period of probation and pension from the date of their service in the Institute."

16. From a plain and conjoint reading of Rule 5 and Rule 2(g), it is clear that services rendered in the Institute by the employees referred to in sub-Rule (1) of Rule 5 shall be counted for the purpose of qualifying service for promotion, confirmation, period of probation and pension from the date of their service in the Institute and therefore, Ms. Archana Gaur, learned counsel for Respondents may be right in arguing that in the ordinary course



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benefit of service prior to the creation of the Institute in 2006 cannot be given to the employees. However, the present case rests on certain peculiar facts with regard to the manner in which services of the Petitioner came to be transferred to NIDM. There is no dispute that NIDM is the erstwhile NCDM. Minutes of 10th Meeting of the Governing Body of NIDM held on 11.04.2017, placed on record by the Petitioner, reflect that recruitments to NCDM/NIDM were made in three different phases, i.e. Phase I, II and III. It is noted in the Minutes that during Phase-I, 21 employees were recruited by the then NCDM out of which 12 were in position in NIDM and were recruited between the period 1998 to 2003, as per IIPA Bye-laws and 9 out of them belonging to Group 'B' and 'C' categories were confirmed by the then ED, NIDM in March, 2011. It was recognised in the Minutes that all the existing employees of NCDM joined the new set-up when NCDM was de-linked from IIPA w.e.f. 16.10.2003 and was re-designated as NIDM and that the new set-up manned by the old staff was administered by a Management Committee headed by the Union Home Secretary, until the enactment of 2005 Act. It was also noted that for Phase-I and II employees, overall *inter se* seniority amongst employees shall be counted from the date of their joining in the pre-notified NIDM i.e. pre-Institute period *albeit* for promotion etc. the eligibility will be counted from 31.10.2006 as per 2014 Rules.

17. It is clear from a reading of the Minutes dated 11.04.2017 as well as Office Order dated 03.03.2011 that Petitioner was recruited in Phase-I and joined the erstwhile NCDM on 01.01.1999 and therefore, he is right in contending that on re-designation of NCDM, his past service from 01.01.1999 cannot be wiped away. It is not the case of NIDM that it was a



new Institute in the sense that it had no relation with the erstwhile NCDM. It, therefore, requires consideration by NIDM whether the services of the Petitioner prior to creation of NIDM can be counted for the purpose of regularisation and other benefits such as pension etc. and whether by virtue of his appointment on 01.01.1999 with NCDM, he can be compelled to opt for the NPS and not be a member of the OPS. In fact, in this context, Petitioner has placed reliance on the judgments of the Supreme Court in *State of Jharkhand v. Bir Kuar Paswan and Others, 2017 SCC OnLine SC 2135*; and *The State of Bihar & Ors. v. Mahendra Kumar Mishra and Ors. Etc. Etc., SLP No.15567/2018 decided on 04.03.2020* [arising out of decision of Patna High Court in *Mukteshwar Prasad Singh (supra)*], wherein it has been held that denial of counting of past services even in another Department in calculating pensionary benefits etc. and implementing the New Pension Scheme without the consent of the employees is wholly unjust and arbitrary.

18. In view of the above, this writ petition is disposed of at this stage without entering into the merits, directing NIDM to consider the case of the Petitioner and decide whether he is entitled to count his past service from the date of his initial appointment on 01.01.1999 for the purpose of regularisation and other benefits such as promotion, pension etc. and also whether he can be compelled to join the NPS instead of being a member of OPS. The fact that Petitioner has not opted for absorption in NIDM pursuant to notice dated 11.09.2017 whereby NIDM sought willingness from the employees who were not recruited or were not deemed to have been recruited under 2014 Rules for absorption in NIDM, will not be an impediment in this consideration, for the reason given in the earlier part of



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this order. While taking the decision, the Competent Authority shall consider the issues flagged by the Petitioner in the present writ petition as well as the judgments relied upon, as aforementioned. The decision shall be taken within three months from the date of receipt of this order and needless to state that if the decision is in favour of the Petitioner, consequential benefits shall be released to him since he stands superannuated on 31.12.2019. If for any reason, the decision is otherwise, a reasoned and speaking order shall be passed by the Competent Authority, which shall be communicated to the Petitioner, who will be at liberty to take recourse to legal remedies, if so advised.

19. At this stage, learned counsel for the Petitioner submits that the retiral benefits due to the Petitioner on superannuation *de hors* his claims in the present writ petition have also not been released despite the retirement of the Petitioner on 31.12.2019 on the ground that the matter is *sub judice* before this Court. This stand of the Respondents cannot be countenanced. It is, therefore, directed that whatever benefits are immediately due and payable to the Petitioner *de hors* the issues on which the decision has to be taken by the Respondents will be released without any delay.

20. Pending applications also stand disposed of.

JYOTI SINGH, J

SEPTEMBER 23, 2024

B.S. Rohella/shivam