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W.P.No.30029 of 2019



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2025

CORAM:

THE HONOURABLE MR. JUSTICE T.VINOD KUMAR

W.P.No.30029 of 2019
and W.M.P.Nos.29946 and 29948 of 2019

R.Vasudevan

.. Petitioner

vs

The Tamil Nadu Homeopathy Medical Council
Represented by its Registrar
Aringnar Anna Government Hospital,
Arumbakkam, Chennai -106.

.. Respondent

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for records relating to respondent's order made in Ref:No./26/TNHMC/19 dated 14.06.2019 to quash the same and to consequently direct the respondent to forthwith reinstate the petitioner into service with all service and monetary benefits arising thereto.

For Petitioner : Mr.L.Chandrakumar

For Respondent : Mr.J.Saravanel
Standing Counsel



ORDER

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Heard the learned counsel for the petitioner and the learned counsel for the respondent.

2. The case of the petitioner, in brief, is that he was issued with an order of appointment to work as Junior Assistant in the respondent Council in the pay scale of Rs.5200-20200 with Grade Pay of Rs.2400 with all other allowances vide order of appointment dated 01.08.2016; that his services were regularised vide proceedings bearing No.O.O.No.15/TNHMC/17 dated 01.08.2017 with effect from 01.08.2017; that thereafter his probation was continued vide proceedings bearing No.O.O.No.11/TNHMC/18 dated 10.08.2018; and thus, the services of the petitioner was in regular employment of the respondent.

3. It is the further case of the petitioner that all of a sudden, he was served with the impugned proceedings No.O.O.No.26/TNHMC/2019 dated 14.06.2019, whereby, it is stated that he was appointed without consulting Employment Exchange and thus, his appointment was irregular and accordingly, was dismissed from service with immediate effect. The petitioner contends that while dismissing him from the service with immediate effect vide impugned proceedings dated 14.06.2019, no notice



was issued or any enquiry conducted nor was he made aware of the reason for dismissing him from service except stating that his appointment is irregular, as the same was made without consulting the Employment Exchange.

4. It is also contended that the authority who had appointed him initially vide proceedings dated 01.08.2016, himself had issued the impugned proceedings dated 14.06.2019 and it is the duty of the said authority to verify whether the petitioner can be appointed to the post of Junior Assistant only by consulting the Employment Exchange or not; and that for the commissions and omissions of the respondent, the petitioner cannot be made to suffer, more particularly, on account of the impugned proceedings being termed as “dismissed from service”, thereby, putting up blot on his career of seeking employment elsewhere in future.

5. It is also contended that since, the respondent sought to do away with the services of the petitioner by terming the same as 'dismissed from service'; and being a major punishment, the required procedure of issuing Article of charge, holding an enquiry, furnishing of enquiry report and opportunity to submit explanation before passing the impugned order, ought to have been followed and inasmuch, no such enquiry is conducted, the



entire action of the respondent in issuing the impugned proceedings is vitiated, apart from being in violation of principles of natural justice.

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6. *Per contra*, the learned counsel for the respondent submits that the order of appointment dated 01.02.2016 as issued under the signature of the Registrar is without authority, since, Section 14(3) of the Tamil Nadu Homeo System of Medicine and Practitioners of Homeopathy Act, 1971 (for short 'Act of 1971'), confers power to appoint officers and servants only on the Council and the Registrar, under who's signature the impugned order of appointment is issued had no authority to do on his own.

7. On behalf of the respondent, it is further contended that as per proviso to Regulation 25-D of the Tamil Nadu Homeopathy Council Regulations, 1973 (hereinafter referred to as 'Regulations of 1973'), appointment to the post of Junior Assistant can be made only by calling for candidates from the Employment Exchange and since, the appointment of the petitioner was not done through the Employment Exchange, there is a blatant violation of the provisions of Section 14(3) as well as non-compliance of the Regulation 25-D of the Tamil Nadu Homeopathy Council Regulations, 1973. It is also contended that since, the initial appointment of the petitioner, vide order of appointment dated 01.08.2016, itself is in violation of the Regulation, the same is void-ab-initio.



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8. On behalf the respondent, it is contended that since, the appointment of the petitioner is by an authority, who had no power under the Act and the appointment not being in terms of the provisions of the Act and the regulation, the petitioner cannot claim of non-following of the procedure for terminating his services rendering the impugned proceeding being vitiated.

9. I have taken note of the respective contentions urged.

10. A reading of the provisions of Section 14(3) of the Act of 1971 makes it clear that the power to appoint officers and servants is vested only with the Council as defined in Section 2(3) and established under Section 3 of the Act of 1971. Further, Regulation 25-D of the Regulations of 1973, provides for appointment to the post of Junior Assistant, Typist, OA etc., is required to be made by calling for candidates from Employment Exchange.

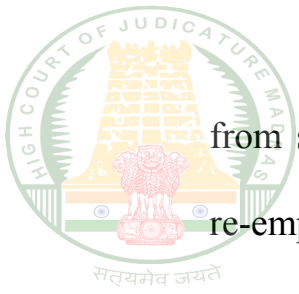
11. Admittedly, in the facts of the present case, such procedure has not been followed while appointing the petitioner in the post of Junior Assistant vide order of appointment dated 01.08.2016. Further it is also to be noted that the order of appointment had been issued under the signature of the Registrar of the respondent without mentioning that the appointment of the petitioner is having approval of the Council for it to be considered as



being in compliance with Section 14(3) of the Act of 1971. Since, the petitioner was appointed to the post of Junior Assistant vide proceedings dated 01.08.2016 (and continued for nearly 2 ½ years) till he was dismissed, vide impugned proceedings dated 14.06.2019 (by placing him in the pay scale of Rs.5200-20200 with Grade Pay of Rs.2400), it cannot be said that the appointment of petitioner has gone unnoticed, for the respondent to claim of such appointment being an illegal.

12. However, having regard to the fact that the appointment of the petitioner is contrary to the provisions of the Act and the Regulations, mere continuance for the period of 2-1/2 years cannot confer any right on the petitioner to claim permanency or his illegal appointment having been regularised by the respondent.

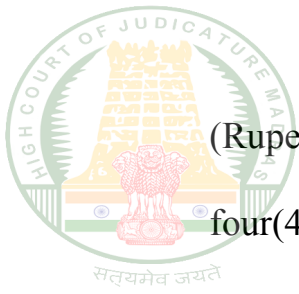
13. Further, it is to be noted that in the order of appointment as issued to the petitioner it had been categorically stated that the appointment is purely temporary nature and the services being liable to be terminated at any time without any prior notice and without assigning any reason thereof. Though the said order of appointment does not provide for any notice period for terminating the services and also for assigning reasons, however, in the impugned order, it had been stated that the petitioner is “dismissed from service” rather than his service being terminated. The term 'dismissed



from service” connotes a different meaning and imposes a bar of seeking re-employment, in which case, the respondent is required to conduct an enquiry before fastening the petitioner with such a punishment.

14. Admittedly, no such enquiry has been held and on the other hand, the respondent having regard to the fact that the petitioner's appointment itself is void-ab-initio had the authority to terminate the service of the petitioner. The respondent however, instead of terminating the service of petitioner, had used the word “dismissed from service” while issuing the impugned proceedings. Thus, this Court is of the view that the said proceedings is to be treated as “termination of service”, instead of “dismissal from service” which would be in consonance with the order of appointment.

15. Further, as the petitioner was appointed to the post of Junior Assistant with the respondent, though by an authority who had no power under the Act and the Regulation, since, the respondent from the date of appointment of petitioner viz., from 01.08.2016 till the issuance of impugned order dated 14.06.2019 had availed the services of the petitioner, this Court is of the view that the respondent is to be directed to compensate the petitioner in lieu of termination of his services. Accordingly, the respondent is directed to make lump sum payment of Rs.25,000/-



(Rupees twenty five thousand only) to the petitioner within a period of four(4) weeks from the date of receipt of a copy of this order, as compensation for non-issuance of notice for termination of his service.

16. Subject to the above direction, this writ petition is disposed of.

No costs. Consequently connected miscellaneous petitions are closed.

03.09.2025

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

msv

To

The Registrar

Tamil Nadu Homeopathy Medical Council

Aringnar Anna Government Hospital,

Arumbakkam, Chennai -106.



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T. VINOD KUMAR, J.

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