

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on : 14-11-2016

Orders pronounced on : 02-12-2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.19396 of 2016

and

W.M.P.No.16815 of 2016

P.S.K.Singaravelu .. Petitioner

Vs.

1. The Secretary,
Tamil Nadu Legislative Assembly Secretariat,
Fort St.George, Chennai-600 009.
2. The Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Chennai City-IV, Chennai. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the order in S.O.(Ms).No.72, Legislative Assembly Secretariat, dated 31.05.2016 and the consequential order in S.O.(Ms).No.73, Legislative Assembly Secretariat, dated 31.05.2016 and quash the same and direct the first respondent to permit the petitioner to retire from service on superannuation.

For Petitioner : Mr.N.Anand Venkatesh

For Respondents : Mr.R.Muthukuramasamy, Advocate General,
assisted by Mr.C.Jagadish, Spl.G.P.

ORDER

The petitioner has filed the above Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the order in S.O.(Ms).No.72, Legislative Assembly Secretariat, dated 31.05.2016, whereby the petitioner

was placed under deemed suspension with effect from 30.05.2016 until further orders and the consequential order in S.O.(Ms). No.73, Legislative Assembly Secretariat, dated 31.05.2016, not permitting the petitioner to retire from service and retaining him in service until enquiry into charges contemplated and criminal case under trial against the petitioner, are concluded and final orders are passed. The petitioner seeks to quash the said orders and direct the first respondent to permit the petitioner to retire from service on superannuation.

2. It is the case of the petitioner that he was appointed as Assistant in the Legislative Assembly Secretariat by direct recruitment under Group-V through Tamil Nadu Public Service Commission with effect from 13.08.1985. After satisfactory declaration of probation, the petitioner was promoted as Assistant Section Officer with effect from 29.03.1989, then as Section Officer with effect from 06.07.2000, thereafter as Under Secretary with effect from 16.11.2007 and subsequently as Committee Officer (Public Accounts Committee) with effect from 28.11.2011. It is further stated that the Tamil Nadu Legislative Assembly Secretariat (TNLAS) is a separate unit and the staff of the Legislative Assembly Secretariat are governed by separate service Rules framed under Article 187(3) of the Constitution of India, namely the Tamil Nadu Legislative Assembly Secretariat Service Rules, 1955 (TNLAS Service Rules). The TNLAS Service Rules is a separate code by itself, covering the entire service conditions of employment including disciplinary procedures from Class I to Class IV of the TNLAS. Rules 28 to 45 of the TNLAS Service Rules provide for initiation of disciplinary action against the staff members. It is further stated that as per the TNLAS Service Rules, the first respondent is the appointing authority upto the level of Section Officer and from the post of Under Secretary to the post of Secretary, His Excellency The Governor is the appointing authority. The petitioner was promoted and appointed as Under Secretary with effect from 16.11.2007 by the order of the Governor and then promoted as Committee Officer (PAC) with effect from 28.11.2011 by the order of the Governor.

3. While the petitioner was acting as the Committee Officer (PAC) in TNLAS, a First Information Report (FIR) came to be registered by the second respondent against M.Selvaraj, former Secretary of LAS, S.Balakrishnan, Section Officer, P.S.K.Singaravelu (the petitioner herein), K.Indira, Joint Secretary (Retd) and C.Amaladas, a third party, who was the member of Virugambakkam Carpentry and Blacksmith Co-operative Cottage Industrial Society Ltd., Chennai, for the alleged offences under Sections 420, 477-A, 409, 511 read with 409 IPC read with Section 13(2) read with 13(1)(d) and Section 15 of the Prevention of Corruption Act in Crime No.02/AC/2012/CC-IV, dated

02.07.2012. The only allegation against the petitioner in the FIR is that while he was working as Under Secretary (Buildings), he approved a note put up by the Section and thereby attempted to create a wrongful loss of Rs.3,90,400/- to the State Exchequer. The said note was further approved by the then Secretary on 30.03.2011. Even according to the complaint, the note was put up for payment to the Virugambakkam Carpentry and Blacksmith Workers' Co-operative Society, by re-appropriation of funds from one Head to the relevant Head of account. In view of coming into force of the Model Code of Conduct for General Election, 2011, the file was sent to the Election Commission for clearance, however, the same was returned by the Election Commission for a decision to be taken after the Assembly Elections. Hence, the note itself became infructuous, in view of closure of the financial year on 31.03.2011 and it is well known that after closure of the financial year, the re-allocation of funds cannot be made and hence, the purpose of the note was aborted and no amount was actually drawn from the State Exchequer or paid to any party or benefited by any party. However, the petitioner was targeted and the FIR had been registered against him on 02.07.2012 after a gap of 15 months, which itself is nothing but a pick and choose exercise with an intention to ruin the petitioner's official career. The FIR against the petitioner is nothing but a colourable exercise, mala-fide and has no substance or basis. Though the FIR was registered on 02.07.2012, there was no progress and till date, charge sheet has not been filed.

4. It is further stated by the petitioner that based on the criminal case, the first respondent had not initiated any disciplinary proceedings against the petitioner till date. Thereafter, the petitioner was promoted to the post of Committee Officer (PAC) equivalent to the post of Deputy Secretary with effect from 28.11.2011 and thereafter to the post of Joint Secretary with effect from 11.05.2015, and both these promotions were given after getting orders from His Excellency The Governor. While so, the petitioner was due to retire on superannuation on 31.05.2016. Suddenly, on 31.05.2016, i.e. on the last day of his superannuation, he was served with 'deemed suspension order' in S.O.Ms.No.72, LAS, dated 31.05.2016 issued by the first respondent, placing him under 'deemed suspension' with effect from 30.05.2016 FN until further orders, stating that a criminal case has been registered by the DVAC against the petitioner. In continuation of the suspension order, the petitioner was served with another order in S.O.Ms.No.73, LAS, dated 31.05.2016, not permitting him to retire from service, but retaining him in service until enquiry into charges contemplated and criminal offence under trial against him are concluded and final orders are passed thereon by the competent authority.

5. Hence, the petitioner gave a detailed representation,

dated 18.09.2015 to the Speaker of the Assembly, who has the disciplinary, administrative and consultative control over the service conditions of the staff of the LAS, stating that the petitioner was wrongly implicated in the criminal case, there was no loss to the exchequer and no pecuniary gain to any body and the entire exercise of registration of FIR against the petitioner was based on an infructuous note and therefore, the petitioner requested the Speaker to intervene and advise suitably the first respondent so that the petitioner's retirement due on 31.05.2016 shall be peaceful. As the said representation has not been duly considered, the petitioner has filed this Writ Petition challenging the said two orders, dated 31.05.2016 seeking to quash the same and for direction to the first respondent to permit the petitioner to retire from service on superannuation.

6. When the Writ Petition is taken up for consideration, learned counsel appearing for the petitioner submitted that the petitioner being Class-I Officer holding the post of Joint Secretary, Rule 29 of the TNLAS Service Rules specifically contemplates that suspension of Class-I Officers shall be done only by the Governor. The further order not permitting the petitioner to retire from service and retaining him in service under F.R.56(1)(c) has to be issued only by the appointing authority, who is the Governor. In this case, before placing the petitioner under deemed suspension and issuing the order retaining him in service, no circulation order has been obtained from the Governor.

7. In the above context, learned counsel for the petitioner submitted that the TNLAS in which the petitioner is working, is a separate unit and the recruitment and service conditions of persons appointed to the Secretariat staff of the Legislative Assembly, are governed by separate service Rules framed under Article 187(3) of the Constitution of India by the Governor, after consulting the Speaker of the Legislative Assembly and the said Rules are called as TNLAS Service Rules, and hence, the Tamil Nadu Civil Services (Discipline and Appeal) Rules are not applicable to the petitioner. In the case of recruitment and service conditions of the persons appointed by the State, the same are governed by the Rules framed under Article 309 of the Constitution of India and the Rules framed under Article 309 are not applicable to the staff of the Legislative Assembly Secretariat (LAS), unless the TNLAS Service Rules specifically provides for adoption or applicability of such Rules.

8. Learned counsel for the petitioner, by inviting the attention of this Court to Rule 21 of the TNLAS Service Rules, submitted that under the said Rule 21, a specific provision has been made for applicability of certain Rules framed under

Article 309 of the Constitution and the Fundamental Rules had been specifically made applicable to the employees of the TNLAS, however, the Tamil Nadu Civil Services (Discipline and Appeal) Rules do not find a place in it and hence, the same are not applicable to the staff of the TNLAS.

9. Learned counsel for the petitioner, by further inviting the attention of this Court to Rule 46 of the TNLAS Service Rules, submitted that a provision has been made under sub-clause (a) stating that wherever there is no specific provision in these Rules analogous to the provisions contained in the Tamil Nadu State and Subordinate Service Rules, the latter Rules shall apply to the members of the service, which means that there are specific provisions in the TNLAS Service Rules and the provisions contained in the Tamil Nadu State and Subordinate Service Rules shall not apply.

10. Learned counsel for the petitioner further submitted that under Appendix-I under Rule 5, the appointing authority for the post of Under Secretary and above, is the Governor, and since admittedly the petitioner herein is holding the post of Joint Secretary, the appointing authority is the Governor for the petitioner. He further submitted that under Rule 29, the authority competent to place Class-I Officers under suspension, pending investigation or enquiry into grave charges under sub-rule (e) of Rule 33, shall be the Governor. The petitioner herein who is a Joint Secretary, i.e., a Class-I Officer, had been placed under suspension by the first respondent, by the impugned order dated 31.05.2016, i.e. on the last day of the petitioner's retirement on superannuation by invoking Rule 33(e) of the TNLAS Service Rules and on the same day, another order under Rule 56(1)(c) of the Fundamental Rules, was passed, not permitting him to retire, but retaining him in service until enquiry into charges contemplated, are concluded and final orders are passed thereon by the competent authority.

11. Learned counsel for the petitioner further submitted that since both the above said orders had been issued without the approval of the Governor who is the 'authority' under Rule 29 to place the petitioner under suspension and the 'appointing authority' under F.R.56(1)(c) and as such, the impugned orders are bad in law and void-ab-initio and hence, the same are liable to be quashed. In support of this contention, learned counsel for the petitioner relied on a judgment of the Supreme Court reported in 1980 (3) SCC 734 (Steel Authority of India Vs. Presiding Officer), wherein, the Supreme Court considered the question of whether the authority who framed the charge against the respondent therein and constituted the Enquiry Committee, had the power to do so as per the Discipline and Appeal Rules of the Company and held that the Discipline and Appeal Rules of the

Company which had been approved by the Directors, did not authorise the Chief Medical Officer to frame charges against the respondent therein or to constitute the Enquiry Committee and concurred with the findings of the High Court and the Labour Court holding that the dismissal order passed by some other Officer, who has no authority, was bad. Learned counsel for the petitioner further relied on the judgment of the Madurai Bench of this Court reported in 2008 (2) MLJ 949 (V.Murugan Vs. Commr., Madurai Corporation) in support of his contention that FR.56(1)(c) clearly states that the appointing authority is competent to retain any person in service beyond the date and when there is such a specific Rule, which empowers an authority to exercise the said power, it cannot be presumed at all that the higher authority can also exercise the said power, since this power flows from the statute and unless the statute provides for such a power for the higher authority, such a liberal interpretation cannot be held and it is only for the appointing authority to pass an order retaining an employee in service and no other authority can exercise the said power, though the said authority happens to be the higher authority. For such proposition, this Court relied on the decision of the Supreme Court reported in 2007 (6) SCC 276 (Union of India Vs. Shardinu). Learned counsel for the petitioner therefore submitted that from the above said judgments, it is clear that it is only for the appointing authority to pass an order retaining a person in service and no other authority much less the higher authority assumes the power of the appointing authority on that aspect.

12. Learned counsel for the petitioner drew the attention of this Court to paragraph 10 of the counter affidavit filed by the first respondent, in which, it is stated that the Tamil Nadu Civil Services (Discipline and Appeal) Rules shall apply to all members of the Tamil Nadu State and Subordinate Services and to the holders of all civil posts whether temporary or permanent in any such service except to the extent otherwise expressly provided by or under any law for the time being in force or in any Rule and submitted that the said statement made in the counter affidavit is not correct, because, there is no provision in Rule 21 of the TNLAS Service Rules making the said Tamil Nadu Civil Services (Discipline and Appeal) Rules applicable to the members of the TNLAS Service. In the very same paragraph 10 of the counter affidavit, it is also stated that in view of grave charges and in the public interest, the petitioner was placed under suspension and not permitted to retire from service and the file has been sent to the Governor for post-facto approval. On this aspect, learned counsel for the petitioner relied upon the judgment of the Bombay High Court reported in CDJ 2004 BHC 1347 (Pravinkumar R.Salian Vs. Hon'ble Chief Minister and Minister of Co-operation and others) and submitted that for

valid ratification, three conditions must be satisfied; firstly, the person whose act is sought to be ratified, must have acted for the other; secondly, the other person on whose behalf the act was performed by the former, must be a competent person to perform the act which has been performed and must continue to be so competent legally even at the time of ratification, and thirdly, the person ratifying the act to do so with full knowledge of the act ratified. All these conditions must be established by cogent materials to be placed on record by the person who wants to claim the benefit of ratification. In the instant case, the first respondent himself has no power to suspend the petitioner from service or initiate disciplinary action. That being so, the question of ratifying the impugned orders, does not arise.

13. It is the further submission of the learned counsel for the petitioner that 'deemed suspension' ordered by the first respondent, is illegal and not contemplated under the TNLAS Service Rules and the concept of 'deemed suspension' will come into play only in case where the staff member is arrested and detained for more than 48 hours. So far as this case is concerned, the petitioner was never arrested or detained for more than 48 hours, and hence, placing him under 'deemed suspension' is illegal. Therefore, looking at from any angle, learned counsel for the petitioner submitted that the impugned orders are not legally sustainable and liable to be quashed.

14. Countering the above submissions, learned Advocate General, assisted by learned Government Advocate, appearing for the respondents, produced a copy of G.O.No.28, Legislative Assembly Department, dated 16.02.1984 and submitted that from the said G.O., it could be seen that in the reference G.O. first mentioned therein, i.e. by G.O.Ms.No.2648, Public (Ele.III) Department, dated 04.08.1956, the Legislative Secretariat was made a separate Department like any other Departments of Secretariat with the same status and administrative powers under the disciplinary control of the Speaker/Chairman. In this regard, learned Advocate General also invited the attention of this Court to various clauses of the said G.O.No.28 and submitted that it empowers the first respondent to issue orders of suspension and after passing the suspension order, the file had been sent to the Governor for post-facto approval. He therefore submitted that even if the 'authority' who passed the impugned orders, had no power to issue such orders, when once the orders are ratified by the competent authority (appointing authority), the orders would take retrospective effect. In support of this contention, learned Advocate General relied on a decision of the Supreme Court reported in 2015 (11) SCC 669 (National Institute of Technology Vs. Pannalal Choudhury).

15. Learned Advocate General further submitted that as per Clause 11 of paragraph 4 of the said G.O.28, all orders of the Governor shall be authenticated by the Secretary, Legislative Assembly Secretariat under Clause (2) of Article 166 of the Constitution. He further submitted that as per Article 166 of the Constitution of India, all Executive action of the Government of a State shall be expressed to be taken in the name of the Governor and orders and other instruments made and executed in the name of the Governor, shall be authenticated in such manner as may be specified in Rules to be made by the Governor and the validity of an order or instrument, which is so authenticated, shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor. In this regard, learned Advocate General relied on the decision of the Supreme Court reported in 1996 (2) SCC 305 (State of M.P. Vs. Dr.Yashwant Trimbak).

16. With regard to the submission made by the learned counsel for the petitioner that the "deemed suspension" ordered in this case, is illegal and not valid as per the TNLAS Service Rules, it is replied by the learned Advocate General that, no doubt, the words "deemed suspension" were wrongly stated in the impugned order, but the concept of "deemed suspension" will come into play only when a staff member is arrested for more than 48 hours. The words "deemed suspension" had been mistakenly quoted in the impugned order, but it does not take away the power which is otherwise available to the authority. In this regard, learned Advocate General relied on a decision of the Supreme Court reported in 1990 (3) SCC 60 (D.G. and I.G. of Poice Vs. K.Ratnagiri).

17. By way of reply, learned counsel for the petitioner submitted that the submission of the learned Advocate General that under paragraph 4(1) of the said G.O.28, the Legislative Assembly Department will henceforth be known as 'The Legislative Assembly Secretariat' with all powers and status of a Department of Government in the Secretariat including the powers of circulation and under paragraph 4(11), all orders of the Governor shall be authenticated by the Secretary of the Legislative Assembly Secretariat under Clause (2) of Article 166 of the Constitution, and therefore, the contention of the learned Advocate General that the impugned orders passed by the first respondent are valid, does not hold good, because, even under paragraph 4(11), the first respondent shall only authenticate the orders of the Governor and it does not give power to the first respondent to assume the powers conferred on the Governor under the TNLAS Service Rules, which is a statute framed under Article 187(3) of the Constitution of India. Learned counsel for the petitioner further submitted that the

submission made by the learned Advocate General that the orders and instruments made and executed in the name of the Governor, shall be authenticated in such manner as may be specified in Rules to be made by the Governor and the validity of an order or instrument which is so authenticated, shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor, is not legally sustainable. In this regard, learned counsel for the petitioner relied on a decision of the Supreme Court reported in 2016 (9) SCC 20 (Brajendra Singh Yambem Vs. Union of India) and submitted that the submissions of the learned Advocate General by placing reliance on the decision of the Supreme Court reported in 1996 (2) SCC 305 (stated supra), could not be sustained, because, the principles laid down in the said decision reported in 1996 (2) SCC 305, had already been over-ruled by the Supreme Court in the latest decision reported in 2016 (9) SCC 20 (cited supra). Hence, for these reasons, learned counsel for the petitioner prayed for quashing the impugned orders.

18. Keeping in mind the above submissions made on either side, I have carefully considered the same and perused the materials available on record.

19. The sum and substance of the submissions made by the learned counsel for the petitioner is that the first respondent is the appointing authority only up to the cadre of Section Officer and from the cadre of Under Secretary to the cadre of Secretary, the Governor is the appointing authority. The petitioner herein was promoted as Under Secretary with effect from 16.11.2007 and then promoted as Committee Officer (PAC) with effect from 28.11.2011 by the order of the Governor. Since criminal case was pending against the petitioner for the alleged offences under Sections 420, 477-A, 409, 511 read with 409 IPC read with Section 13(2) read with 13(1)(d) and Section 15 of the Prevention of Corruption Act, the first respondent passed the two impugned orders, both dated 31.05.2016, one under Rule 33(e) of the TNLAS Service Rules, whereby the petitioner was ordered to be under the "deemed suspension" and the other under Rule 56 (1)(c) of the Fundamental Rules not permitting him to retire from service on the date of superannuation, i.e. on the afternoon of 31.05.2016, but retained in service until enquiry into charges contemplated and criminal offence under trial against him are concluded and final orders are passed thereon by the competent authority.

20. It is the further submission of the learned counsel for the petitioner that since the petitioner was holding the post of Joint Secretary, appointed by the Governor, as per Rule 29 of the TNLAS Service Rules, only the Governor has powers to place him under suspension and further, the impugned order not

permitting the petitioner to retire and retaining him in service, has to be issued only by the Governor. Since the Tamil Nadu Legislative Assembly Secretariat Service Rules (TNLAS Service Rules) is a separate code by itself, covering the entire service conditions of employment including the disciplinary procedures from Class-I to Class-IV of the said TNLAS Service Rules, and hence, the Tamil Nadu Civil Services (Discipline and Appeal) Rules will not apply to the case of the petitioner. In this regard, learned counsel for the petitioner made detailed arguments by inviting Rule 21 of the TNLAS Service Rules and submitted that under Rule 21, a specific provision has been made for applicability of certain Rules framed under Article 309 of the Constitution of India and in the said Rule, the Fundamental Rules had been specifically made applicable to the employees of the TNLAS, but however, the Tamil Nadu Civil Services (Discipline and Appeal) Rules do not find a place therein, and hence, the Tamil Nadu Civil Services (Discipline and Appeal) Rules are not applicable to the staff of the TNLAS.

21. Learned counsel for the petitioner further submitted that under Rule 46 of the TNLAS Service Rules, a provision had been made under sub-clause (a) stating that wherever there is no specific provision contained in these Rules, analogous to the provisions contained in the Tamil Nadu State and Subordinate Service Rules, the latter Rules will apply, which means that there are specific provisions in TNLAS Service Rules and the provision contained in the Tamil Nadu State and Subordinate Service Rules shall not apply. Hence, according to the learned counsel for the petitioner, since as per Rule 29 of the TNLAS Service Rules, only the Governor has powers to place the petitioner under suspension, the impugned suspension order passed by the first respondent is liable to be quashed and when once the order of suspension is quashed, since it was issued by the first respondent who is not competent to issue the same, then automatically, the other consequential order passed under F.R.56(1)(c), not permitting the petitioner to retire, should go. In my considered opinion, absolutely, there cannot be any quarrel in accepting the said legal proposition. But it is pertinent to note that the Government had already passed G.O.28 as early as 16.02.1984 with the consultation of the Governor and the Speaker, which provides certain power to the Secretary of the Legislative Assembly Secretariat under the disciplinary control of the Speaker as that of any other Secretaries to Government in the Government Secretariat therein. Hence, it would be appropriate to quote the relevant portion of the said G.O.28 :

"4. As far as Tamil Nadu is concerned, a separate Legislature Secretariat Service Rules under Article 187(3) have been framed and the Departments of Legislative Assembly and Legislative Council are

substantially functioning as commended by the Prime Minister and Speaker, Lok Sabha and the nomenclature has led to certain misconceptions. To remove this misconceptions, the Governor in consultation with the Government and the Speaker has decided to adopt the following:-

(1) The Legislative Assembly Department will henceforth be known as 'The Legislative Assembly Secretariat' with all the powers and status of a Department of Government in the Secretariat including powers of circulation.

(2) The Secretary of the Legislative Assembly Secretariat shall be the administrative head of the Secretariat under the disciplinary control of the Speaker and shall have the status, powers, privileges as that of any other Secretaries to Government in the Government Secretariat. "

22. On a reading of the said G.O., it is seen that the Legislative Assembly Department will have all powers and status of a Department of Government in the Secretariat, including the powers of circulation. This G.O. definitely gives powers to issue orders to the Secretary, Tamil Nadu Legislative Assembly Secretariat. In view of this G.O., the submissions made by the learned counsel appearing for the petitioner, by relying upon various judgments, totally falls to the ground.

23. Further, the orders passed by an authority could be ratified subsequently by the Governor, after issuance of the same. In this regard, learned Advocate General relied on a judgment of the Supreme Court reported in 2015 (11) SCC 669 (National Institute of Technology Vs. Pannalal Choudhury), wherein it has been held as follows:

"29. The expression "ratification" means "the making valid of an act already done". This principle is derived from the Latin maxim "ratihabitio mandato aequiparatur" meaning thereby "a subsequent ratification of an act is equivalent to a prior authority to perform such act". It is for this reason, the ratification assumes an invalid act which is retrospectively validated.

30. The expression "ratification" was succinctly defined by the English Court in one old case, Hartman Vs. Hornsby (142 Mo 368 : 44 SW 242 at p.244 (1897)) as under:

" 'Ratification' is the approval by act, word, or conduct, of that which was attempted (of accomplishment), but which was improperly or unauthorisedly performed in the first instance."

31. The law of ratification was applied by this Court in Parmeshwari Prasad Gupta Vs. Union of India (1973 (2) SCC 543). In that case, the Chairman of the Board of Directors had terminated the services of the General Manager of a Company pursuant to a resolution taken by the Board at a meeting. It was not in dispute that the meeting had been improperly held and consequently the resolution passed in the said meeting terminating the services of the General Manager was invalid. However, the Board of Directors then convened subsequent meeting and in this meeting affirmed the earlier resolution, which had been passed in improper meeting. On these facts, the Court held: (SCC pp.546-47, para 14):

"14. Even if it be assumed that the telegram and the letter terminating the services of the appellant by the Chairman was in pursuance of the invalid resolution of the Board of Directors passed on 16.12.1953 to terminate the services, it would not follow that the action of the Chairman could not be ratified in a regularly convened meeting of the Board of Directors. The point is that even assuming that the Chairman was not legally authorised to terminate the services of the appellant, he was acting on behalf of the Company in doing so, because, he purported to act in pursuance of the invalid resolution. Therefore, it was open to a regularly constituted meeting of the Board of Directors to ratify that action which, though unauthorised, was done on behalf of the Company. Ratification would always relate back to the date of the act ratified and so it must be held that the services of the appellant were invalidly terminated on 17.12.1953."

That view was approved by this Court in High Court of Judicature of Rajasthan Vs. P.P.Singh (2003 (4) SCC 239 = 2003 SCC (L&S) 424.

32. The aforesaid principle of law of ratification was again applied by this Court in Maharashtra State Mining Corpn. Vs. Sunil (2006 (5) SCC 96 = 2006 SCC (L&S) 926). In this case, the respondent was an employee of the appellant Corporation. Consequent to a departmental enquiry, he was dismissed by the Managing Director of the appellant. The respondent then filed a writ petition before the High Court. During the pendency of the writ petition, the Board of Directors of the appellant Corporation passed a resolution ratifying the impugned action of the Managing Director and also empowering him to take decision in respect of

the officers and staff in the grade of pay the maximum of which did not exceed Rs.4700 p.m. Earlier, the Managing Director had powers only in respect of those posts where the maximum pay did not exceed Rs.1900 p.m. The respondent at the relevant time was drawing more than Rs.1800 p.m. Therefore, at the relevant time, the Managing Director was incompetent to dismiss the respondent. Accordingly, the High Court held (Sunil Vs. Maharashtra State Mining Corpn., 2005 SCC Online Bom 758 : 2006 (1) Mah.L.J. 495) the order of dismissal to be invalid. The High Court further held that the said defect could not be rectified subsequently by the resolution of the Board of Directors. The High Court set aside the dismissal order and granted consequential relief. The appellant then filed the appeal in this Court by special leave. Ruma Pal, J. speaking for the three-Judge Bench, while allowing the appeal and setting aside the order of the High Court held as under: (Sunil case-Maharashtra State Mining Corpn. Vs. Sunil, 2006 (5) SCC 96 = 2006 SCC (L & S) 926), SCC pp.96g-h & 97a-b):

"The High Court rightly held that an act by a legally incompetent authority is invalid. But it was entirely wrong in holding that such an invalid act could not be subsequently 'rectified' by ratification of the competent authority. Ratification by definition means the making valid of an act already done. The principle is derived from the Latin maxim *ratihabitio mandato aequiparatur*, namely, 'a subsequent ratification of an act is equivalent to a prior authority to perform such act'. Therefore, ratification assumes an invalid act which is retrospectively validated.

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In the present case, the Managing Director's order dismissing the respondent from the service was admittedly ratified by the Board of Directors unquestionably had the power to terminate the services of the respondent. Since the order of the Managing Director had been ratified by the Board of Directors such ratification related back to the date of the order and validated it."

33. Applying the aforementioned law of ratification to the facts at hand, even if we assume for the sake of argument that the order of dismissal dated 16.08.1996 was passed by the Principal and Secretary who had neither any authority to pass such

order under the Rules nor was there any authorisation given by the BoG in his favour to pass such order yet in our considered view when the BoG in their meeting held on 22.08.1996 approved the previous actions of the Principal and Secretary in passing the respondent's dismissal order dated 16.08.1996, all the irregularities complained of by the respondent in the proceedings including the authority exercised by the Principal and Secretary to dismiss him stood ratified by the competent authority (Board of Governors) themselves with retrospective effect from 16.08.1996 thereby making an invalid act a lawful one in conformity with the procedure prescribed in the Rules.

34. In such circumstances, the respondent's grievance that the dismissal order had not been passed by the competent authority i.e. the BoG no longer survived.

35. In the light of the foregoing discussion, we differ with the view taken by the High Court and accordingly hold that the dismissal order dated 16.08.1996 was passed by the competent authority, namely, the BoG as prescribed in the Rules and hence it was legal and proper. It is accordingly upheld

....."

24. Applying the above dictum of the Supreme Court to the case on hand and on perusing the said G.O.28, it is seen that the first respondent is empowered to issue the impugned orders in the name of the Governor, which could be subsequently ratified by the appointing authority, namely the Governor. When once it is ratified, even if it is assumed for a moment that there is any irregularity, the said orders would get ratified retrospectively from the date of the order.

25. Yet another submission made by the learned counsel for the petitioner is that "deemed suspension" order had been passed against the petitioner, but the question of keeping a person under "deemed suspension" would arise only if that person is arrested and detained for more than 48 hours, and hence, the impugned orders are legally not sustainable. In this regard, the judgment of the Supreme Court, relied on by the learned Advocate General, reported in 1990 (3) SCC 60 (D.G. and I.G. of Police Vs. K.Ratnagiri) gives a fitting answer, wherein it has been held that wrong wordings in any order, do not take away the power of an authority, if it is otherwise available. Hence, the words "deemed suspension" stated in the impugned order, by itself, will not make the same illegal.

26. Therefore, I do not find any infirmity or illegality in

the impugned orders passed by the first respondent. Hence, this Court is not inclined to accept the submissions made by the learned counsel for the petitioner. The Writ Petition is liable to be dismissed. Accordingly, the Writ Petition is dismissed. No costs. Consequently, the Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

cs

Copy to

1. The Secretary,
Tamil Nadu Legislative Assembly Secretariat,
Fort St.George, Chennai-600 009.
2. The Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Chennai City-IV, Chennai.

+1cc to Mr.N. Anand Venkatesh, Advocate, S.R.No.71432
+1cc to the Government Pleader, S.R.No.71648

mp (CO)
md(30/12/2016)

W.P.No.19396 of 2016

सत्यमेव जयते

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