

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SRI JUSTICE N. BALAYOGI

WRIT APPEAL No. 445 of 2017

ORDER: (*Per VRS,J*)

Aggrieved by the order of the learned single Judge setting aside a penalty of dismissal from service, the Nizam's Institute of Medical Sciences has come up with the above appeal.

2. Heard Mr. A. Sanjeev Kumar, learned Special Government Pleader attached to the Office of the Additional Advocate General for the appellant, and Mr. A. Tulsi Raj Gokul, learned counsel for the respondent.

3. The respondent herein was working as the Public Relations Officer in Nizam's Institute of Medical Sciences. He was placed under suspension on 27.11.2002 and an enquiry was initiated. The enquiry resulted in a final order of dismissal from service passed on 04.02.2003. But, the said final order was set aside by the appellate authority, namely, the Executive Board, by an order, dated 11.10.2003, and a *de novo* enquiry ordered.

4. An Officer, by name, D. Raghunadha Rao, submitted a report, dated 20.01.2005, holding the charges proved. On the basis of the said report, a penalty of dismissal from service was imposed by the proceedings dated 06.06.2006.

5. Challenging the penalty order, dated 06.06.2006, the respondent filed a writ petition in W.P.No.19275 of 2006. The said writ petition was allowed by a learned single Judge, on the ground that the manner in which the enquiry was conducted left much to be desired, and that, therefore, the order could not be sustained. Aggrieved by the said order, the Management is on appeal.

6. The charges framed against the respondent were as follows:

“Charge 1: Based on the news item published in various papers such as Andhra Jyothi, Eenadu, Vartha on 23.11.2002 and 27.11.2002, it is evident that Sri S. Panduranga Rao has demanded and collected money from the patients for extending free treatment and claiming the amount from CMRF/SIAF/PMRF.

Charge 2: Sri S. Panduranga Rao has also produced fake white cards utilizing his contacts and using his good offices in Civil Supplies Department or through some other Agency to extend the treatment benefits by projecting patients as poor and below poverty line.

Charge 3: Sri S. Panduranga Rao also collecting and demanding the amount from the patients on arranging the refund/reimbursement from the institute on receipt of sanction from CMRF/SIAF/PMRF for the advance paid by the patients.

Charge 4: Sri S. Panduranga Rao on getting sanction of CMRF/SIAF/PMRF on institute's name diverting the funds to other private hospitals like Mahavir Hospital, Hyderabad and Usha Cardiac Centre, Vijayawada, by using his offices with the assistance of Revenue Department and Chief Minister's Peshi.

Charge 5: Sri S. Panduranga Rao vide Telegram Dt.25.11.2002 has been instructed to report for duty in view of 3rd Convocation but he failed to report for duty. Sri S. Panduranga Rao was unauthorizedly absented himself from duty with effect from 25.11.2002.”

7. The first order of penalty was set aside by the departmental appellate authority themselves and a fresh enquiry directed to be conducted. Unfortunately, the Enquiry Officer, who was ordered to

conduct the fresh enquiry, did not formally record the oral evidence and take documents on record in a manner known to law. What is more is that the Enquiry Officer virtually substantiated the previous order of dismissal that was already set aside. In other words, the enquiry report, dated 20.01.2005, appeared to be more in the nature of a justification for an order of penalty that was set aside earlier.

8. Though the Enquiry Officer took note of the fact that there were two types of evidence available, one which related to the evidence in the previous enquiry, and the other which related to the later evidence, the procedure for the conduct of an enquiry was hardly followed by the Enquiry Officer.

9. In order to satisfy ourselves as to whether the conclusion of the learned single Judge was correct or not, especially in the light of the seriousness of the charges, we directed the learned Special Government Pleader to produce the entire enquiry proceedings. But, unfortunately, it appears that some of the records are not even available. Therefore, it is not possible to find fault with the conclusions reached by the learned single Judge, especially when there is no indication in the enquiry report about the formal recording of any evidence, either oral or documentary. Hence, in our considered view, the order of the learned single Judge does not call for any interference.

10. The learned Special Government Pleader submitted that the appellant should be given a liberty to proceed afresh, in accordance

with law. But, we find from the impugned order of the learned single Judge that such a liberty is already given by the learned single Judge, and the respondent has not come up with any appeal challenging the said liberty. Therefore, we are of the considered view that the appeal deserves to be dismissed.

11. But, one question that has to be addressed before we dismiss the writ appeal, is as to whether the respondent will be entitled to full pay and allowances upon reinstatement, with liberty to the appellant to proceed further. In order to decide this question, we have to again go back to the timeline of events. As we have pointed out earlier, the respondent was placed under suspension on 27.11.2002 and was dismissed from service on 04.02.2003. The dismissal order was set aside by the appellate authority on 11.10.2003. But, the respondent was again dismissed on 06.06.2006.

12. Therefore, at least for the period from 27.11.2002 till the learned single Judge passed the order on 30.12.2006, the respondent should be deemed to be only under suspension. But, from the date of the order of the learned single Judge, the respondent will be entitled to the pay and allowances. Hence, the Writ Appeal is disposed of, to the following effect:

- 1) The order of the learned single Judge setting aside the order of dismissal from service is confirmed.
- 2) The liberty given by the learned single Judge to the appellant to proceed further in accordance with law is confirmed.

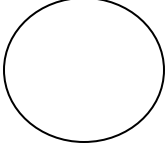
- 3) The respondent should be deemed to be under suspension from 27.11.2002 until the date of the order of the learned single Judge, namely, 30.12.2016, and he shall be paid the subsistence allowance for the entire period, according to the Rules, within a period of two (2) months from the date of receipt of a copy of this order.
- 4) The respondent will be entitled to reinstatement and full pay and allowances from the date of the order of the learned single Judge, namely, 30.12.2016, up to the date of passing of fresh orders or the date of his superannuation whichever is earlier.
- 5) If the appellant choose to initiate a fresh enquiry, it will be open to them to consider, in the facts and circumstances, whether a fresh suspension is necessary.

Consequently, miscellaneous petitions if any pending in the writ appeal shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

N. BALAYOGI, J

12th July, 2017
cbs



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AND
THE HON'BLE SRI JUSTICE N. BALAYOGI



Writ Appeal No.445 of 2017
(disposed of)

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+W.A.No.445 of 2017

% 12-07-2017

Nizam's Institute of Medical Sciences,
Punjagutta, Hyderabad.

.. Appellant

Vs.

\$ S. Panduranga Rao

.. Respondent

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>HEAD NOTE:



! Counsel for appellant

: Mr. A. Sanjeev Kumar, learned
Special Government Pleader
attached to the Office of the
Additional Advocate General

^ Counsel for respondent

: Mr. A. Tulsi Raj Gokul

? CASES REFERRED : ----