

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2018

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.S.No.212 of 2009

Lt. Col. Vasant Kumar

... Plaintiff

Versus

M/s.Srilankan Airlines,
represented by its Manager,
Tamil Nadu & Karnataka,
Vijaya Towers, No.4, Kodambakkam High Road,
Nungambakkam, Chennai - 600 034.

... Defendant

Plaint filed under Order IV Rule 1 of the Original Side Rules read with
Order VII Rule 1 of Civil Procedure Code praying to pass a judgment and
decree:

(a) for a declaration declaring that the order of
dismissal from service dated 30.04.2007 issued by the
defendant against the plaintiff is illegal, invalid, inoperative
and non-est in the eyes of law and not binding upon the
plaintiff;

(b) for recovery of Rs.25,42,100/- as compensation and
damages with further interest at 18% per annum from the date
of plaint to date of realization and

(c) for cost of the suit.

For Plaintiff : Mr.K.M.Ramesh

For Defendant : Mr.M.Vijayan

for M/s. King and Partridge

J U D G M E N T

The suit is one for declaration that the order of dismissal from service dated 30.04.2007 issued by the defendant against the plaintiff is illegal, invalid, inoperative and for recovery of a sum of Rs.25,42,100/- as compensation/ damages with further interest at 18% per annum.

The case of the plaintiff in brief is as follows:-

2. The plaintiff who was Lieutenant Colonel in Indian Army was appointed as the Security Manager by the defendant at its Airlines Office in Chennai on 02.12.2003 for a period of one year upto 15.12.2004. An order of confirmation of service was also issued by the defendant on 29.07.2004. His service was extended for a further period of one year on 12.10.2004 upto 15.12.2005 and on 09.12.2005 the contract was again extended for a further period of one year till 14.12.2006.

3. It appears that the defendant had issued a communication on 22.11.2006 intimating the plaintiff of its intention to terminate the contract

of service from 14.12.2006. Upon receipt of the same the plaintiff had filed a suit in O.S.No.755 of 2006 on the file of the District Munsif at Alandur for an order of permanent mandatory injunction restraining the defendant Airlines from terminating the plaintiff's services by invoking the clause with respect to notice period at page 5 of the appointment order dated 02.12.2003. He has also filed an application for interim injunction in I.A.No.3305 of 2006 and was favoured with an order of injunction.

4. Upon receipt of the order of injunction, the defendant Airlines by its letter dated 29.11.2006 withdrew its letter dated 22.11.2006 and informed the plaintiff of its intention to launch disciplinary proceedings against him for certain lapses committed by him during the course of his employment. Subsequently, the defendant issued a show cause notice on 15.12.2006 charging the plaintiff with certain dereliction of duty and breach of 'Code of Conduct and Business Ethics'. The Management also placed him under suspension from 29.11.2006.

5. The plaintiff has sent a reply, on 20.12.2006, to the show cause notice dated 15.12.2006. Thereafter, the defendant appointed an enquiry Office who initiated the disciplinary proceedings. During the course of the

enquiry the plaintiff had sought for legal assistance. The plaintiff was informed to take the help of co-employee of his choice who is presently in service in the Company to assist him in the enquiry.

6. When the disciplinary proceedings commenced, the plaintiff had appeared before the enquiry Officer and insisted that he should be provided legal assistance for conduct of the enquiry. The said request was however denied by the defendant. Upon denial of the said request it appears that the plaintiff walked out of the enquiry proceedings and refused to participate in the same. Hence, the Enquiry officer had set him *ex parte* and had proceeded with the enquiry. After recording oral and documentary evidence of the defendant Management, the enquiry Officer on the basis of the materials available filed a report on 28.03.2007 concluding that the plaintiff is guilty of the misconducts alleged.

7. A copy of the enquiry report was furnished to the plaintiff along with a letter dated 03.04.2007 and he was asked to show cause as to why the report of the enquiry officer should not be accepted. The plaintiff issued a lawyers notice dated 16.04.2007 claiming that the suit in O.S.No.755 of 2006 is pending and the action of the Management in

proceeding with the enquiry amounts to contempt of Court. It has also been claimed that the enquiry is in violation of principles of natural justice.

8. On 23rd April 2007, the defendant Airlines issued a letter proposing to impose the punishment of dismissal from service for the proved charges and the plaintiff was asked to show cause as to why he should not be removed from service. Since the plaintiff had not sent any reply to the said show cause notice dated 23.04.2007, he was removed from service by the order dated 30.04.2007. It is this dismissal order that is challenged in the present suit.

9. The defendant Management had filed a written statement, wherein, it is contended that the suit is one for enforcement of a contract for personal service and hence it is not maintainable under 14(1)(b) of the Specific Relief Act. It was also contended that the plaintiff was only a contract employee and his contract of service having come to end on 14.12.2006, he is not entitled to maintain the suit.

10. The management would contend that there were serious misconducts committed by the plaintiff in jeopardising the Airlines and its

operations. With a view to avoid any stigma, the management decided not to continue the service of the plaintiff beyond 14.12.2006, the date on which the period of his contractual employment dated 09.12.2005 will automatically expire, but the plaintiff has moved to Civil Court and obtained an order of injunction restraining the Management from terminating the service of plaintiff by invoking the said clause. This forced the Management to launch disciplinary proceedings. As far as the disciplinary proceedings are concerned, the management would contend that even during the course of the disciplinary proceedings, the plaintiff attempted to derail the same by falsely claiming that the disciplinary proceedings had been stayed by the Court.

11. The Management has filed a Civil Revision Petition in CRP.PD.No.2753 of 2007 and the proceedings in OS.No.755 of 2006 were stayed by this Court and eventually the CRP was disposed of by recording the fact that OS.No.755 of 2006 itself had become infructuous, in view of the subsequent developments and the dismissal of the plaintiff on 30.04.2007.

12. It is further claimed by the defendant that the enquiry proceedings were conducted in free and fair manner and it was the plaintiff who was determined to derail the enquiry proceedings and refused to appear before the enquiry officer. The Enquiry Officer considered the evidence that was placed on record and had concluded that the plaintiff was guilty of several misconducts which were very serious in nature, considering his duty as security Officer. The report of the enquiry officer was also forwarded to the plaintiff and since he did not show cause as to why the report should not be accepted, the report was accepted by the Management and the plaintiff was ultimately removed from service on 30.04.2007.

13. It is also contended by the Management that even assuming that the suit is maintainable, the scope of the suit is limited and this Court cannot re-appraise the evidence let in before the enquiry officer and merely because of different conclusion is possible on such reappraisal the order of dismissal cannot be declared to be null and void.

14. On the above rival contentions this Court had framed the following issues:

1. *Whether the order of dismissal from service dated 30.04.2007 is legal?*

2. *Whether the order of dismissal passed by the defendant is binding on the plaintiff?*

3. *Whether the plaintiff is entitled to recover a sum of Rs.25,42,100/- as compensation and damages with interest from the defendant?*

4. *To what other reliefs the parties entitled to?*

15. At trial the plaintiff was examined as PW1 and one Rukmani Manohar was examined as DW1. Exs.P1 to P45 were marked on the side of the plaintiff and Exs.D1 and D2 were marked on the side of the defendant.

16. I have heard Mr.K.M.Ramesh, learned counsel appearing for the plaintiff and Mr.M.Vijayan for M/s.King and Partridge appearing for the defendant.

Issue No.1:-

17. Though a plea was taken in the written statement that the suit itself was not maintainable, it appears that the said plea was not pressed ahead and no issue has been framed. Mr.M.Vijayan, learned counsel appearing for the defendant would concede that he is not questioning the

maintainability of the suit in view of categorical pronouncement of the Hon'ble Supreme Court in ***Premier Automobiles Limited (C.A.922 (N.L. of 1973) Automatic Electric Private Limited (C.A.2317 (N.L.) of 972) versus Kamlakar Shantaram Wadke and others; Engineering Mazdoor Sabha and others*** reported in (1975) 2 LLJ 445, wherein the Hon'ble Supreme Court had held that the suit for declaration that an order of dismissal of an employee from service is maintainable. The said decision of the Hon'ble Supreme Court in ***Premier Automobiles Limited*** case has been followed by the Hon'ble Supreme court in ***Rajasthan S.R.T.C. and others Versus Mohar Singh*** reported in (2009) 1 LLJ 149.

18. In view of the settled position of law that unless the employment is governed by the provisions of Industrial Disputes Act and the right claimed can be said to be a statutory right, a suit questioning the order of dismissal would be maintainable, the employee may not be entitled to reinstatement in service in view of section 14(1)(b) of the Specific Relief Act. He would however be definitely be entitled to a declaration that the order of dismissal is invalid or illegal and he can seek the relief of damages before the Civil Court.

19. Mr.K.M.Ramesh, learned counsel for the plaintiff would contend that the enquiry proceedings are vitiated due to the following factors:

1.The plaintiff was denied legal assistance by the defendant who was represented by its presenting Officer who was a retired Police official and a legally trained mind.

2.There was violation of principles of Natural Justice inasmuch as the plaintiff was not given opportunity to defend himself in enquiry proceedings.

3.No evidence was let in, to prove the alleged misconducts on the part of the plaintiff.

4.The entire enquiry proceedings are vitiated by malafidies.

20. Mr.K.M.Ramesh, learned counsel would also rely upon the judgment of the Hon'ble Supreme Court in ***Board of Trustees of the Port of Bombay Versus Dilipkumar Raghavendranath Nadkarni and others*** reported in ***(1983) 1 Supreme Court Cases 124***, wherein, the Hon'ble Supreme Court had held that if the Management is represented by a legally trained person and the delinquent employee is denied of legal assistance at the domestic enquiry the same would vitiate the domestic enquiry.

21. According to Mr.K.M.Ramesh, the presenting Officer of the defendant being the retired Police Officer, he is a legally trained person and therefore, the denial of the legal assistance to the plaintiff had resulted in prejudice to him and the order of dismissal would result in stigma and would affect his future carrier. Therefore, the order of dismissal is vitiated because of the refusal of legal assistance at the enquiry.

22. The law is now well settled to the effect that if the Management is represented by a presenting officer who is a legally trained person, the delinquent employee would also be entitled to legal assistance during the course of domestic enquiry. In fact *Board of Trustees of the Port of Bombay Versus Dilipkumar Raghavendranath Nadkarni and others* reported in (1983) 1 Supreme Court Cases 124 the Hon'ble Supreme Court has held that if the Management is represented by a legally qualified presenting officer then the denial of such legal assistance to the employee would vitiate the proceedings.

23. In the case on hand, we find that the Management was represented by one Mr.Rohan Upasena who is the retired Police Official. A retired police official cannot be said to be legally trained mind in respect of

disciplinary proceedings. The letter dated 26.01.2007 makes it clear that the plaintiff would be entitled to have the help of co-employee who is in service of the Company to assist him during the enquiry. The entire records of the enquiry have been produced and marked as exhibits in this proceeding. It is seen from the proceedings of the enquiry officer that the plaintiff has not appeared for the enquiry on 09.02.2007 and the enquiry has been adjourned to 19.02.2007 at 2.00 p.m. On 19.02.2007 it is seen that the plaintiff had demanded that he should be permitted to have assistance of his lawyer and claimed that without legal assistance he will not participate in the enquiry. It also appears that he had handed over a letter to the enquiry officer and claimed that unless his claims in the letter are met with he will not allow the enquiry to commence. It is seen from the enquiry report that the enquiry officer had informed the plaintiff that he would not be allowed assistance of a lawyer and he was asked to participate in the enquiry and the enquiry was adjourned to 01.03.2007. On the same day that is on 19.02.2007 the plaintiff has addressed a letter to the enquiry officer making it clear that he is not in a position to participate in the enquiry without the assistance of his lawyer. He had also accused the enquiry officer requiring him to sign in a blank paper with only four lines typed on it.

24. It is seen from Ex.P31 that the plaintiff has filed an application in I.A.No.774 of 2007 in O.S.No.755 of 2006 on the file of the District Munsif seeking stay of the enquiry proceedings. It is an admitted case that no stay was granted by the Civil Court. When the enquiry was taken up on 01.03.2007, it appears that the plaintiff has sent a telegram to the Management stating that the enquiry has been stayed by the District Munsif, Alandur. Hence, the enquiry was again adjourned to 15.03.2007. The proceedings of the enquiry officer dated 01.03.2007 have been produced as Ex.P32.

25. Since no stay was granted by the Court the enquiry was proceeded with on 15.03.2007 and witnesses were examined with reference to each of the charges contained in the show cause notice dated 15.12.2006. The enquiry officer after analyzing the evidence has come to the conclusion that the charges have been proved and the copy of the enquiry report was also furnished to the plaintiff.

26. The plaintiff had sent a legal notice on 16.04.2007 alleging that the enquiry which was conducted during the pendency of the proceedings before the Civil Court is in violation of orders of injunction passed in

I.A.No.3305 of 2006. However, the 2nd show cause notice appears to have been issued to the plaintiff on 23.04.2007 proposing to impose punishment of dismissal. The plaintiff had not sent reply which resulted in order of dismissal being passed on 30.04.2007.

27. The above facts would indicate that except the rejection of legal assistance sought for by the plaintiff there was no other cause for him to complain. He had made it clear that he would not participate in enquiry if legal assistance is not granted. He was also made aware of the fact that he was not entitled to legal assistance by enquiry officer even on 01.02.2007 when the enquiry commenced.

28. Therefore, the plaintiff was aware that the enquiry would proceed even if he does not participate, therefore, he could not complaint about the non-compliance of the principles of natural Justice. It is also seen that at the earliest point of time the proceedings of the enquiry has been furnished to him and he has produced them as documents before the Court.

29. Mr.K.M.Ramesh, appearing for the plaintiff would contend that the presenting officer of the Management who is the retired Police Officer

is legally trained mind and therefore, the denial of legal assistance to the plaintiff would vitiate the entire enquiry proceedings.

30. I am unable to agree, admittedly the plaintiff was employed as security Officer, the charges against him are very serious, atleast the 1st charge against him is very serious. It has been found that under his instructions the security stickers and tags were removed from two of the baggages after the baggages have been scanned and while they were moving to the baggage makeup area, which resulted in two baggages being not loaded in the Aircraft and were removed and kept in a area as unclaimed baggages which resulted in the intervention of security officers of security agency like Bomb Detection Squad and others. It also resulted in aircraft being delayed and the baggages which were to be loaded in the aircraft were not loaded resulting in severe loss of face for the airlines.

31. The plaintiff would admit that he had adviced the staff to remove the sticker and tags, but, it is claimed that it was done to check the effectiveness of the security system. This appears to be very weak explanation. If only he had removed or directed removal of stickers and tags from the two of the baggages to see whether the security system is working

properly, he should have got the baggages rescanned and loaded on to the aircraft. That was not apparently done. It is proved by evidence that the two baggages from which the security stickers and tags were removed were notified as unclaimed baggages, which resulted in involvement of various security agencies including Bomb Detection Squads.

32. This is a very serious charge against the person who occupies the very sensitive post of security officer in an International Airport. As regards the other charges also viz., the misuse of official car and the behavior of the plaintiff with the other officers present in the airport. The fact that the plaintiff misused the official car has been spoken to by three of the staff of the Company and it is not the case of the plaintiff that these witnesses had something against him.

33. A perusal of the report of the enquiry officer shows that he had considered entire evidence and come to a conclusion. As rightly contended by Mr.M.Vijayan, learned counsel appearing for the defendant it is not for me to re-assess the evidence and come to my own conclusion.

34. The report of the enquiry officer was accepted by the defendant and on such report the plaintiff has been removed from service. It is not in dispute that the plaintiff has crossed the age of superannuation also, even if he continued to work with the defendant airlines he would have retired by now.

35. Therefore, I do not find that any of the grounds raised by Mr.K.M.Ramesh, learned counsel for the plaintiff to challenge the proceedings have been substantiated and I do not see any reason to come to a conclusion that the enquiry is vitiated.

36. If the enquiry is not vitiated by violation of principles of Natural Justice, I do not think the plaintiff would be entitled to declaration that the order of dismissal dated 30.04.2007 is vitiated or illegal. Hence, issue no.1 is answered against the plaintiff and in favour of the defendant.

Issue No.2:-

37. It is the plaintiff who had invited the disciplinary proceedings by filing a suit and obtaining an injunction restraining the defendant from invoking the termination clause in the order of appointment. Even in the

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plaint filed in O.S.No.755 of 2006 which has been marked as Ex.P12, the plaintiff has alleged that it is open to the defendant to take disciplinary proceedings and the order of injunction granted in I.A.No.3305 of 2006 has been marked Ex.P14 and it only injuncts the defendant from terminating his service by invoking the termination clause in the order of appointment. There was no order prohibiting the defendant from proceeding with disciplinary enquiry, therefore, the defendant management was entitled to proceed with the disciplinary enquiry as it did and it had concluded that the continuation of plaintiff in service will be detrimental to the interest of the defendant Company.

38. Considering the sensitivity of the post, I find that the management was right in discontinuing the services of the plaintiff. Therefore, the order of dismissal would be definitely binding on the plaintiff. Hence, the issue No.2 is answered against the plaintiff.

Issue No.3:-

39. This issue relates to damages. The plaintiff no doubt would be entitled to damages only if it is found that his removal from service was vitiated. While answering issue No.1 it has been concluded that removal

from service by order dated 30.04.2007 is not vitiated. Hence, there is no question of plaintiff being entitled to any damages. Even otherwise, the plaintiff has to prove that he has sustained damages.

40. As PW1 the plaintiff has admitted that he has been gainfully employed in another Company SUT Hospital, Kochi, Trivandrum, immediately after his removal from service from the defendant airlines. Therefore, I do not think the plaintiff, even on facts, has suffered any financial loss or damages due to the dismissal. Hence, issue No.3 is answered against the plaintiff and in favour of the defendant.

41. In the result, it is found that the plaintiff is not entitled to any relief prayed for in the suit. Hence, the suit is dismissed. However, in the circumstances of the case there will be no order as to costs.

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02.02.2018

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Index : Yes/ No

Internet : Yes/ No

Speaking Order/ Non-speaking Order

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List of the witnesses examined on the side of the plaintiff:

PW1 - Lt. Col. Vasant Kumar

List of Exhibits marked on the side of the plaintiff:

Sl. No.	Exhibits	Description	Dated
1	Ex.P1	The true copy of e-mail.	21.11.2003
2	Ex.P2	The photocopy of appointment.	02.12.2003
3	Ex.P3	The copy of job description.	25.06.2004
4	Ex.P4	The photocopy of confirmation letter.	29.07.2004
5	Ex.P5	The original extension of contract.	12.10.2004
6	Ex.P6	The photocopy of my annual increment letter.	10.12.2004
7	Ex.P7	The photocopy of appreciation letter.	17.12.2004
8	Ex.P8	The photocopy of extension of contract.	09.12.2005
9	Ex.P9	The photocopy of my annual increment letter.	10.01.2006
10	Ex.P10	The copy of e-mail downloaded from the official web site relating to my performance for the year 2005 - 2006.	--
11	Ex.P11	The copy of e-mail.	15.11.2006
12	Ex.P12	The copy of plaint in O.S.No.755 of 2006.	--
13	Ex.P13	The certified copy of affidavit in I.A.No.3305 of 2006 in O.S.No.755 of 2006.	--
14	Ex.P14	The certified copy of petition and order in I.A.No.3305 of 2006 in O.S.No.755 of 2006.	--
15	Ex.P15	The original letter.	29.11.2006
16	Ex.P16	The photocopy of the counter filed in I.A.No.3305 of 2006 in OS.No.755 of 2006.	04.12.2006
17	Ex.P17	The copy of written statement filed in O.S.No.755 of 2006.	--
18	Ex.P18	The copy of the letter with postal	05.12.2006

Sl. No.	Exhibits	Description	Dated
	series	acknowledgment.	
19	Ex.P19	The original letter from the defendant to the plaintiff.	--
20	Ex.P20	The photocopy of the letter from the plaintiff to the defendant along with photocopy of postal acknowledgment.	20.12.2006
21	Ex.P21	The photocopy of the letter from the defendant to the plaintiff.	28.12.2006
22	Ex.P22	The original letter from the defendant to the plaintiff enclosing cheque towards subsistence allowance.	29.12.2006
23	Ex.P23 series	The photocopy of the letter to the defendant along with the photocopy of postal acknowledgment.	03.01.2007
24	Ex.P24	The photocopy of the notice of enquiry issued by the defendant to the plaintiff.	26.01.2007
25	Ex.P25 series	The photocopy of reply from plaintiff to the defendant with photocopy of proof of delivery.	04.02.2007
26	Ex.P26	The photocopy of letter from the defendant to the plaintiff.	09.02.2007
27	Ex.P27	The photocopy of proceedings of the enquiry.	09.02.2007
28	Ex.P28	The photocopy of proceedings of the enquiry.	19.02.2007
29	Ex.P29	The photocopy of the letter from the defendant to the plaintiff.	19.02.2007
30	Ex.P30	The photocopy of the letter addressed to the enquiry officer.	19.02.2007
31	Ex.P31	The photocopy of affidavit and petition in I.A.No.774 of 2007 in O.S.No.755 of 2006.	--
32	Ex.P32	The photocopy of proceedings of the	01.03.2007

Sl. No.	Exhibits	Description	Dated
		enquiry.	
33	Ex.P33	The original letter from the defendant to the plaintiff.	01.03.2007
34	Ex.P34	The photocopy of the counter affidavit in I.A.No.774 of 2007 in O.S.No.755 of 2006.	--
35	Ex.P35	The copy of the affidavit and petition in I.A.No.1558 of 2007 in O.S.No.755 of 2006.	--
36	Ex.P36	The photocopy of the letter from the defendant to the plaintiff.	03.04.2007
37	Ex.P37	The photocopy of enquiry findings.	28.03.2007
38	Ex.P38	The original letter from the defendant to the plaintiff.	13.04.2007
39	Ex.P39	The office copy of the advocate notice issued on behalf of the plaintiff to the defendant.	16.04.2007
40	Ex.P40	The photocopy of the show cause notice issue by the defendant to the plaintiff.	23.04.2007
41	Ex.P41	The copy of counter affidavit in I.A.No.1558 of 2007 in O.S.No.755 of 2006.	--
42	Ex.P42	The original order imposing punishment on the plaintiff by the defendant.	30.04.2007
43	Ex.P43	The copy of affidavit and petition in I.A.No.2484 of 2007 in O.S.No.755 of 2006.	--
44	Ex.P44	The copy of counter affidavit in I.A.No.2484 of 2007 in O.S.No.755 of 2006.	--
45	Ex.P45	The photocopy of grounds of CRP.No.2753 of 2007.	--

List of the witnesses examined on the side of the defendant:

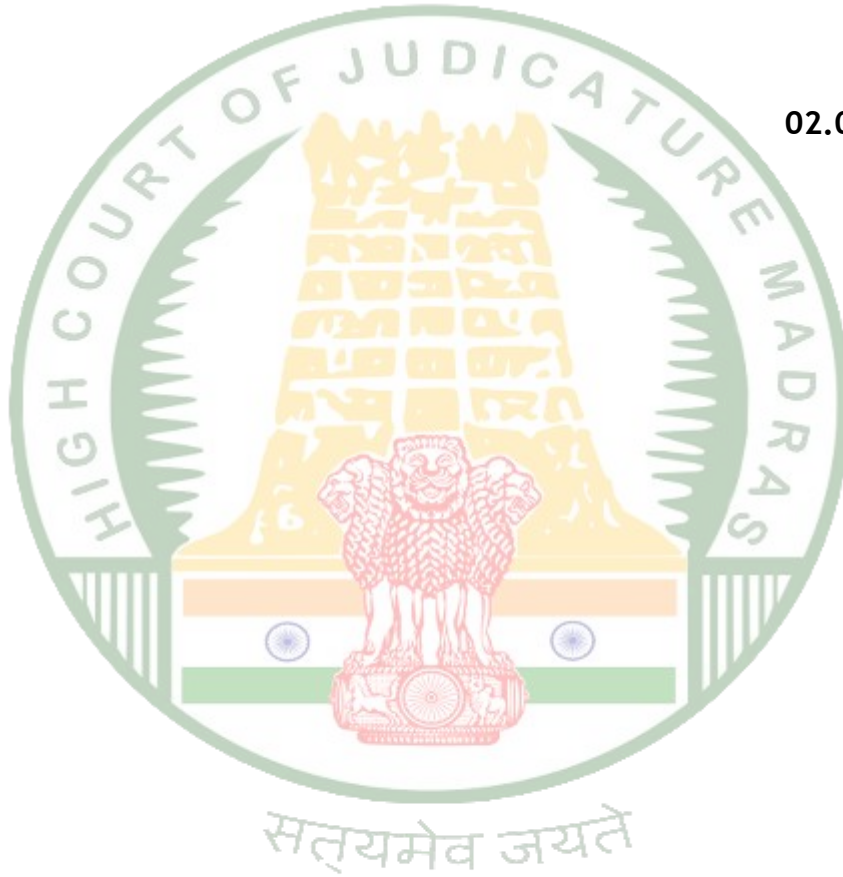
DW1 - Mrs.Rukmani Manohar

List of Exhibits marked on the side of the defendant:

Sl. No.	Exhibits	Description	Dated
1	Ex.D1	The appointment order of Mr.Rajapakse.	21.11.2006
2	Ex.D2	The original authorization letter	28.09.2015

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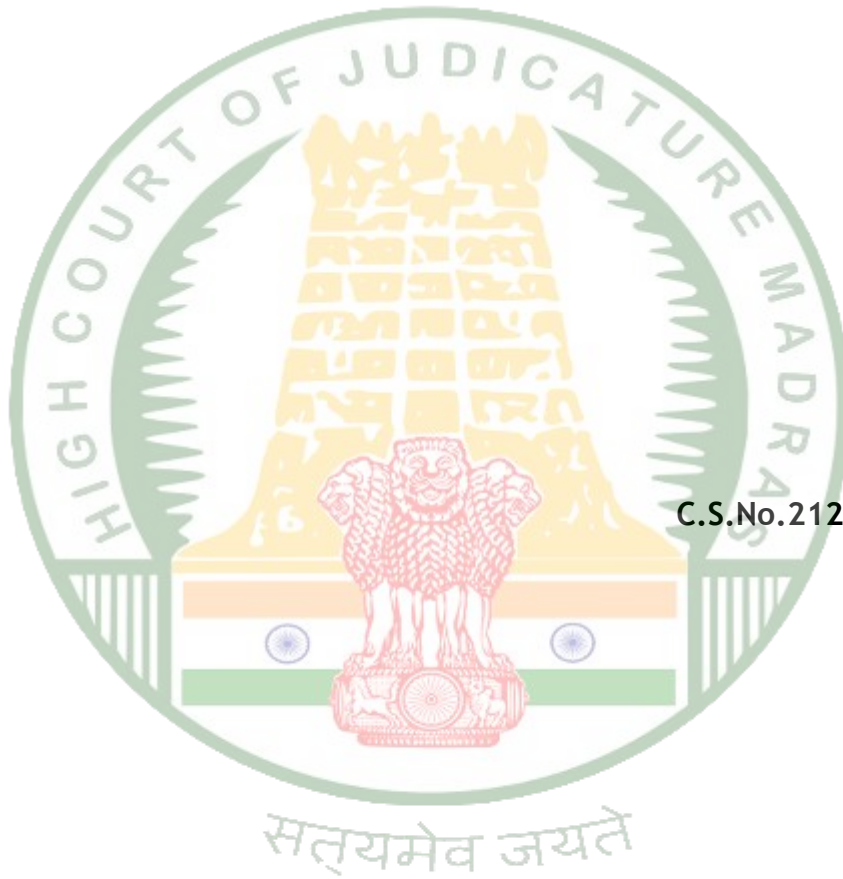
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R.SUBRAMANIAN, J.

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