

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION NO.31145 OF 2018

Date : 03.10.2018

Between:

Dr V Balaji Pawar S/o Gaburu, Aged 56 years,
working as District Medical and Health Officer
Rangareddy District, Telangana State.

....Petitioner

and

The State of Telangana, rep. by its Principal Secretary,
Health Medical and Family Welfare Department,
Secretariat, Hyderabad & others.

....Respondents



The Court made the following:

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ORAL ORDER:

On promotion, petitioner was posted as District Medical and Health Officer in Ranga Reddy District. By the order impugned, petitioner is transferred and posted as CSRMO, Institute of Mental Health, Hyderabad.

2. Heard learned senior counsel Sri M Surender Rao for petitioner and learned Government Pleader for respondents 1 and 2.

3. The only ground urged against transfer of the petitioner is that the appointing authority is Government and Government alone is competent to transfer and as Incharge Director is not competent to transfer the petitioner, the order of transfer is liable to be set aside on the said ground alone. Rule 38 of Telangana State and Subordinate Service Rules, vests power to transfer on various authorities depending on the status of the officer. In terms thereof, as the Government is appointing authority for the post of Civil Surgeon, Government alone is competent to transfer. However, along with the counter affidavit, the orders of Government in G.O.Rt No.495 HM & FW(B1) Department dated 30.8.2018 are enclosed, where-under the decision of the Director to transfer the petitioner and few other officers is ratified.

4. In view of the order of the Government ratifying the decision of the Director, the only issue for consideration is whether such ratification would validate the illegal order passed by incompetent authority.

5. According to learned senior counsel as Director lacks competence to transfer, the order of transfer is void abinitio and therefore, it can not be validated by way of ratification. Ratification can not save the inherent infirmity in the order of transfer. In support of his contention, learned senior counsel placed reliance on the decision of the Supreme Court in **The Marathwada University Vs Seshrao Balwant Rao Chavan**¹ and the decision of the Division Bench of this Court in **Mohd.Dilawar Ali Vs A.P. Muslim Wakf Board**².

6. *Per contra*, according to learned Government Pleader, Government is competent authority to transfer and as Government has ratified the decision of the Director to transfer petitioner, the order of transfer becomes valid from the inception. In support of his contention, he placed reliance on the decision of Supreme Court in **Maharashtra State Mining Corporation Vs Sunil**³

7. In **The Marathwada University**, respondent was working as Controller of Examinations. Disciplinary action was initiated against him on certain allegations. As per Marathwada University Act, 1974, the Executive Council is competent authority to take disciplinary action. However, Executive Council authorized the Vice Chancellor to initiate disciplinary action. He in turn appointed Enquiry Officer. Charges were framed. Findings were recorded holding the charges as proved. Based on the findings of the Enquiry Officer, the Vice Chancellor passed orders to dismiss the respondent from service. Said decision was challenged before the High Court. During the pendency of the writ petition,

¹ (1989) 3 SCC 132

² 1967 (1) AndhWR 221= 1967 AIR (AP) 291

³ (2006) 5 SCC 96

Executive Council passed resolution ratifying the decision of the Vice Chancellor confirming the dismissal from service. The High Court set aside the dismissal on the ground that ratification does not validate the illegal order as Vice Chancellor was not competent to take disciplinary action. Before the Supreme Court, plea raised was competent authority has ratified the decision of the Vice Chancellor and therefore the dismissal order is valid. Supreme Court held "The statutory authority cannot travel beyond the power conferred and any action without power has no legal validity. It is *ab initio* void and cannot be ratified".

8.1. In **Mohd.Dilawar Ali**, appellant was appointed as Inspecting Officer in April, 1957. Wakf Board appointed a Committee empowered to make appointments, dismissal or removal of staff. On 21.5.1961 the Committee passed resolution instructing the employees to apply for appointment to several posts mentioned in the resolution and that if they have not applied or not selected, they would be deemed to be terminated. Accordingly, notice was served on the appellant informing him that he would be terminated after one year. Appellant applied to the post of Chief Inspecting Officer, which is higher than the post held by him. In the selections conducted thereon, he was not selected. Accordingly, Administrative Committee passed resolution terminating his services. The resolution of the Administrative Committee was ratified by the Wakf Board and thereon the appellant was terminated. This order of termination was challenged before this Court. Learned single Judge dismissed the writ petition upholding the termination order.

8.2. Before the Division Bench, one of the contentions urged that Board is competent authority to terminate the services of the employee whereas Administrative Committee terminated his services and merely because the decision of the Administrative Committee was ratified by the Board, can not validate the illegal order. Division Bench of this Court held that the ratification by the Board cannot cure defect and termination order of the appellant cannot be justified. Division Bench held that ratification of an order of authority which is illegally or improperly constituted and which inherently suffers from lack of jurisdiction, does not amount, by way of ratification to be an order passed by the competent authority under the powers vested by the statute.

8.3. Effect of validation of illegal order by competent authority has come up for consideration before the Supreme Court in **Maharashtra State Mining Corporation**, wherein respondent was dismissed from service by Managing Director of the appellant. By that date Managing Director was not competent. The order of dismissal was subsequently ratified by the Board of Directors. Before the High Court the decision of the Managing Director dismissing the petitioner as ratified by the Board was challenged on the ground that the order of dismissal was passed by incompetent authority and ratification would not save ex-facie illegal order. The said contention was accepted and order of dismissal was set aside.

8.4. On appeal, the decision of the High Court was reversed by Hon'ble Supreme Court. Supreme Court held as under:

“7. The High Court was right when it held that an act by a legally incompetent authority is invalid. But it was entirely wrong in holding that such an invalid act cannot 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. [See P. Ramanatha Aiyar's *Advanced Law Lexicon*, (2005) Vol. 4, p. 3939 et seq.]

.....

10. In the present case, the Managing Director's order dismissing the respondent from the service was admittedly ratified by the Board of Directors on 20-2-1991 and the Board of Directors unquestionably had the power to terminate the services of the respondent. ***On the basis of the authorities noted, it must follow that 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.*** (emphasis supplied)

8.5. In **National Institute of Technology and another Vs Pannalal Choudhury and another**⁴ disciplinary action was initiated against Registrar/Deputy Registrar (Accounts) on the allegation of serious financial irregularities. The Principal Secretary by order dated 16.8.1996 dismissed the respondent from service of the then Regional Engineering College which later became National Institute of Technology. It appears there were certain resolutions passed by the Board of Governors authorizing the Principal Secretary to take disciplinary action. The decision of the Principal Secretary to dismiss the respondent from service was also considered by the Board of Governors in their meeting held on 22.8.1996. The Board of Governors approved earlier minutes and

⁴ (2015) 11 SCC 669

also approved the action taken against the respondents by the Principal Secretary.

8.6. Before the High Court, it was urged that there is no power vested in the Board of Governors to delegate the power to take disciplinary action on the Principal Secretary and that the decision to ratify the order of the Principal Secretary by the Board of Governors would not validate the ex-facie illegal order. The said contention was found favour before the High Court and writ petition was allowed.

8.7. On review of the precedent decisions and what is meant by 'ratification' the Supreme Court held as under:

“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 v. Hornsby* [*Hartman v. 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.”

.....

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 16-8-1996 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 22-8-1996 approved the previous actions of the Principal and Secretary in passing the respondent's dismissal order dated 16-8-1996, 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 16-8-1996 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 16-8-1996 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.” (emphasis supplied)

9. It is no doubt true that the Director was not competent to transfer the petitioner as the appointing authority is Government and Government alone is competent to transfer. However, by order dated 30th August, 2018, Government ratified decision of Director to transfer petitioner. As competent authority ratified the decision of the Director, as held by the Supreme Court in **Maharashtra State Mining Corporation** and **National Institute of Technology**, the contention that order was given by incompetent authority has no merit. The ratification relates back to the date of original decision taken to transfer the petitioner. Therefore, the transfer of the petitioner was validly made. Accordingly, the writ petition is dismissed. Miscellaneous petitions, if any pending, are closed.

P NAVEEN RAO,J

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TVK

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