

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.38211 of 2018

ORDER:

This writ petition is filed seeking a Writ of Mandamus, declaring the Termination Order dated 11.10.2018 issued by respondent No.1 as malafide and illegal.

2. Heard Narendra Agrawal, the petitioner, as party-in-person, and Sri Salluri Ramesh, counsel for the respondents.

3. It has been contended by the petitioner that initially he was appointed with the respondents as Manager Grade-III on contract basis vide proceedings dated 02.03.2007 with effect from 28.02.2007. Though the petitioner was appointed on contract basis, the selection procedure was followed and the contract period was initially for a period of three years. The petitioner further submitted that even though the initial contract period of three years with effect from 28.02.2007 did not come to an end, the respondents renewed his contract period for further period of three years vide proceedings dated 01.04.2009 and later it was again renewed vide proceedings dated 01.04.2012 for another period of three years. The petitioner was promoted as Manager Grade-II (M2) with effect from 01.04.2013 and since then he has been discharging his duties to the best satisfaction of his superiors and everyone concerned.

4. The petitioner further submitted that while he was discharging his duties, the respondents have directed him to vacate the cabin

during the month of June, 2014, to which he has protested and thereafter he was transferred to Ooty vide proceedings dated 02.01.2015. The petitioner was hospitalized on 04.01.2015 and his wife sent a mail for cashless discharge from the Hospital. Instead of helping the petitioner, the respondents have issued a show cause notice on 06.01.2015 asking the petitioner to submit explanation for his unauthorized absence and proposing to take action under Rules 5, 9 and 11 of the Conduct, Discipline and Appeal Rules, 1999 (for short, 'the CDA Rules') applicable to the employees. The petitioner was asked to vacate the quarters occupied by him by 15.02.2015. Thereafter, vide proceedings dated 24.01.2015, by invoking Clause 18 of the contract of employment, the services of the petitioner were terminated with one month notice.

5. The petitioner also submitted that his initial appointment order categorically stated that the employees' services can be terminated with one month notice or one month salary in lieu of notice, however, when his services were renewed for the third time vide proceedings dated 01.04.2012, the said condition of one month notice or one month salary in lieu of notice was altered to that of three months' notice or three months' salary in lieu of notice and the same was specially stated in the third renewal of contract services of the petitioner, therefore, the termination itself was contrary to the proceedings dated 01.04.2012.

6. It is the further case of the petitioner that challenging the termination order dated 24.01.2015, he has filed W.P.No.4159 of 2015, wherein this Court was pleased to consider the entire case and allowed the writ petition vide orders dated 24.11.2016, and thereafter the respondents have carried the matter in appeal by filing Writ Appeal No.143 of 2017 and the same is still pending before this Court. When the respondents have not reinstated the petitioner into service in pursuance of the orders dated 24.11.2016 passed in W.P.No.4159 of 2015, a Contempt Case was filed and thereafter the respondents have reinstated the petitioner into service.

7. The petitioner further submitted that while he was discharging his duties consequent upon his reinstatement, he has made a complaint called a "protected disclosure" under the Whistle Blower Policy of the respondent company, against the 4th respondent – Managing Director of the 1st respondent Company, before the 5th respondent, but the 5th respondent instead of looking into the complaint made by the petitioner under Whistle Blower Policy, had forwarded the said complaint to the 4th respondent, against whom the petitioner has made a complaint, and the 4th respondent had conducted a sham enquiry with his own subordinates and enquired the case in his own cause and gave a clean chit to himself vide proceedings dated 22.02.2018. The petitioner has been complaining to higher authorities that the respondents are indulging in unfair trade practice by gifting expensive gifts to the doctors so as to promote their business, which is against

the policy of the 1st respondent company. Thereafter, the respondents have issued a charge sheet to the petitioner on 09.04.2018 touching upon the lacunae of the petitioner in respect of confidential information, work front, wasting precious working hours, diploma fee, key result areas, reply e-mail marked to all the employees in the company, taking photos in Karkapatia Canteen, reply e-mail to Dr. G.S.Reddy's farewell, reply to MD's New Year Greetings and various other aspects. On 23.04.2018, the petitioner has submitted a detailed explanation to the charge sheet and thereafter the respondents proceeded with the enquiry. In those set of circumstances, the petitioner filed W.P.No.18397 of 2018 and this Court was pleased to grant stay of the enquiry vide orders dated 08.06.2018. The petitioner further submitted that on the very same set of allegations, he was placed under suspension vide proceedings dated 03.09.2018, therefore, he has filed W.P.No.33991 of 2018 challenging the said suspension orders and the said writ petition is pending before this Court. Thereafter, when the respondents were not acting on the complaint lodged by the petitioner under Whistle Blower Policy of the 1st respondent Company, the petitioner has given a complaint to the 6th respondent - Central Drugs Standard Control Organization to look into the misdeeds of the respondents. Subsequently, the respondents have forcefully taken away the laptop from the petitioner's possession. When the matter stood thus, the respondents have issued a fresh charge sheet to the petitioner on 28.09.2018 alleging some what identical allegations leveled against the petitioner in the earlier charge

sheet, and the petitioner has submitted a detailed explanation to the respondents on 08.10.2018 denying the charges leveled against him. Thereafter, one V.N.Ramachandran, Advocate, was appointed as an Inquiry Officer, but the petitioner has requested the respondents to change the said Inquiry Officer, as the said Inquiry Officer was the counsel for the respondents in some other matters, and no justice would be done if enquiry is conducted by the said Inquiry Officer. Later, the respondents have half way abandoned the disciplinary proceedings initiated against the petitioner and terminated the services of the petitioner vide proceedings dated 11.10.2018 invoking Rule 31 of CDA Rules of the respondent Company and the respondents have paid one month salary in lieu of notice. Challenging the said termination orders, the present writ petition is filed.

8. The petitioner as party-in-person had contended that on 25.10.2018, this Court was pleased to grant interim suspension of the termination orders dated 11.10.2018 and so far the respondents have not complied with the interim orders passed by this Court and filed vacate petition reiterating the very same contentions which were earlier argued by them in W.P.No.4159 of 2015. The principal contention of the respondents is that the writ petition against the respondents is not maintainable. Rule 31 (II) of CDA Rules clearly states that where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in the Rules, the regular procedure

prescribed in Rules 25, 26 and 27 could be dispensed with. Petitioner contended that without conducting enquiry, the respondents have terminated his services by giving one month salary in lieu of notice, therefore the impugned termination order is liable to be set aside as it is contrary to CDA Rules, more particularly when Rule 31 of CDA Rules specifically states that reasons have to be recorded in writing that it is not reasonably practicable to hold an inquiry in the manner provided in the Rules. Petitioner also contended that no reasons are set out in the impugned termination order for coming to a decision that it is not reasonably practicable to hold an inquiry and that in the impugned termination order, a new expression has been used that the respondents have lost confidence. Further, the petitioner contended that the impugned termination order was issued contrary to the conditions of renewal of his employment and also without giving any opportunity to him to prove the allegations leveled against him. It is also submitted that as per the proceedings dated 24.04.2013, one of the service conditions of the petitioner was altered by amending one month notice period to that of three months' notice period, and the issue whether the service of the petitioner can be terminated with one month notice has fallen for consideration before this Court in W.P.No.4159 of 2015, wherein it was categorically held that the termination is contrary to the Rules and, accordingly, termination order 24.01.2015 was set aside. Therefore, the impugned termination order is nothing but vindictive action of the respondents and contrary to the Whistle Blower Policy of the 1st respondent company, and the

identity of the petitioner should have been protected, since he has given a complaint, but on the other hand, with vindictive attitude, the respondents have exposed the identity of the petitioner and terminated the services of the petitioner without giving any opportunity to him. Therefore, the impugned termination order is liable to be set aside.

9. Counsel appearing for the respondents had contended that the writ petition against the respondents is not maintainable and to strengthen his argument, he has relied upon serious of judgments of the Hon'ble Apex Court in **Shri Sohan Lal v. Union of India and another**¹; **P.T. Corporation v. C.A. Imanuel**²; and **K.K. Saksena v. International Commission on Irrigation & Drainage**³. Yet another contention of the respondents is that the writ petition has been filed seeking a writ of Mandamus and that Mandamus can only be sought when statutory duty is imposed on the 1st respondent. Counsel for the respondents also contended that in the instant case, no statutory duty has been imposed on the 1st respondent, as the 1st respondent is a Company incorporated under Companies Act. In respect of merits of the case is concerned, the respondents have contended that in spite of giving several opportunities to the petitioner, the petitioner has not mended his ways and he was acting detrimental to the interest of the respondents and the respondents have lost confidence on the petitioner and, accordingly, by invoking Rule 31 of the CDA Rules, the petitioner was terminated from service. It is also contended by the

¹ AIR 1957 SC 529

² 1969 (1) SCC 585

³ (2015) 4 SCC 670

respondents that when the employer terminates the services of its employee on the ground of loss of confidence, no Courts should normally interfere and come to the rescue of such employee and, as such, there are no merits in the writ petition and the writ petition is liable to be dismissed.

10. This Court, having considered the rival submissions of learned counsel for the parties, is of the considered view that with regard to the principal objection raised by the respondents about the maintainability of the writ petition is concerned, the same was already adjudicated in W.P.No.4159 of 2015, wherein while allowing the said writ petition vide orders dated 24.11.2016, a categorical finding was recorded that the writ petition against the respondents is maintainable, and aggrieved thereby, the respondents preferred appeal by filing writ appeal i.e., W.A.No.143 of 2017. Therefore, it is for the respondents to pursue their contention in respect of maintainability of the writ petition against the respondents, in W.A.No.143 of 2017, but they cannot adjudicate the very same issue before a single Judge. This Court has also taken note of the fact that against the interim order dated 25.10.2018 passed by this Court in I.A.No.1 of 2018 in the present writ petition, the respondents have filed W.A.No.1540 of 2018 and the said writ appeal was dismissed by this Court vide order dated 14.12.2018. Insofar as other contention that a writ of Mandamus is not maintainable as the 1st respondent was not discharging public duty or statutory duty while terminating the services of the petitioner, writ of Mandamus might not have been sought for by the writ petitioner, but

this Court can mould the relief, since always there is alternative relief in the form of passing other order or further orders that are deemed fit and proper in the circumstances of the case. Therefore, this Court is inclined to adjudicate the case on merits.

11. A perusal of the impugned termination order dated 11.10.2018 shows that the same is passed invoking Rule 31 of CDA Rules. Rule 31 of CDA Rules reads as follows:

“Notwithstanding anything contained in rule 25 or 26 or 27, the disciplinary authority may impose any of the penalties specified in rule 23 in any of the following circumstances:

I. The employee has been convicted on a criminal charge or on the strength of facts or conclusion arrived at by a judicial trail; or

II. Where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules; or

III. Where the disciplinary authority is satisfied that in the interest of the security of the Indian Immunologicals Ltd., it is not expedient to hold any inquiry in the manner provided in these rules.”

12. Rule 31 of the CDA Rules details the exceptional circumstances in which the regular procedure prescribed in Rules 25, 26 and 27 could be dispensed with. In the instance case, clause (I) of Rule 31 of the CDA Rules is not applicable. The next issue is about the applicability of clauses (II) and (III) of Rule 31 of the CDA Rules. For applicability of clauses (II) and (III) of Rule 31 of the CDA Rules is

concerned, the disciplinary authority must record reasons in writing that it is not reasonably practicable to hold an inquiry in the manner provided in the Rules or where the disciplinary authority is satisfied that in the interest of security of the Indian Immunologicals Limited, it is not expedient to hold any inquiry in the manner provided in the Rules. A perusal of Rule 31 of CDA Rules makes it clear that the disciplinary authority must give reasons for not holding enquiry, and in the instant case, no such reasons are given and, by order dated 24.01.2015, the services of the petitioner were terminated with one month notice and the same was found fault by this Court in the earlier writ petition i.e., W.P.No.4159 of 2015. When one of the service conditions i.e., notice period of one month was changed to notice period of three months vide proceedings dated 24.04.2013 in respect of employees on contract service, the respondents ought to have followed the same, and more importantly when the respondents have initiated disciplinary proceedings in the form of issuing charge sheet and appointment of Inquiry Officer, they should have proceeded with the same, but they have abandoned the said disciplinary proceedings half way through and invoked Rule 31 of the CDA Rules. If the respondents were initially serious of invoking Rule 31 of the CDA Rules, at the first instance they ought not to have issued charge sheet on 28.09.2018 and after taking into consideration the explanation submitted by the petitioner on 08.10.2018 and after appointment of Inquiry Officer, the respondents cannot abandon the disciplinary proceedings half way through and terminate the services of the

petitioner vide impugned termination order dated 11.10.2018 by invoking Rule 31 of CDA Rules. Therefore, the impugned termination order dated 11.10.2018 is liable to be set aside, as it was passed without following the provisions of Rule 31 of CDA Rules and also contrary to the changed service condition of the petitioner with regard to notice period i.e., three months' notice instead of one month notice.

13. Accordingly, the writ petition is allowed setting aside the impugned termination order dated 11.10.2018 and the respondents are directed to reinstate the petitioner into service with continuity of service and all consequential benefits. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

17th September, 2019

v v