

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.15477 of 2010

1. Rm.Murugappan (Deceased)
2. M.Meyyammai
3. M.Vallikannu (Minor)
4. M.Nachiappan (Minor)

(3 & 4 are Minors represented by
Next Friend and Guardian by their
Mother, 2nd Petitioner Tmt.M.Meyyammai).

5. R.Sigappi Petitioners

(Petitioners 2 to 5 substituted as Legal Representatives in the
place of the Deceased Petitioner as per order dated 28.03.2014
in M.P.No.1/2013 in W.P.15477 of 2010).

vs.

1. The Registrar,
Annamalai University,
(Rajah Muthaiah Institute of Health Sciences),
Annamalai Nagar - 608 002.
2. V.Sabithakumari
3. K.Vageeswari
4. T.Kamalaveni ... Respondents

Writ Petition filed under Article 226 of the Constitution of
India praying for the issuance of a Writ of Certiorarified
Mandamus to call for all the records in the impugned order of
termination in order No.251/2009 (s) dated 15.07.2009 of the 1st
Respondent and quash the same and consequently direct the 1st
Respondent to reinstate the Petitioner with all attendant
benefits, such as seniority, promotion, arrears of pay etc.

For Petitioner	:	No appearance
For 1 st Respondent	:	Mr.V.R.Kamalanathan
For 2 nd Respondent	:	Mr.S.Sathia Chandran
For Respondents 3 & 4	:	Mrs.P.Srividhya

O R D E R

This Writ Petition has been filed challenging the impugned order of termination, dated 15.07.2009 passed by the 1st Respondent vide order No.251/2009(s) against the original Petitioner and for a consequential direction to the 1st Respondent to reinstate him in service with all attendant benefits, such as seniority, promotion, arrears of pay etc.

2. It is represented that, during the pendency of the Writ Petition, the Petitioner passed away and his legal heirs have been brought on record.

3. According to the original Petitioner, he was appointed as Junior Assistant in Rajah Muthiah Medical College on 01.10.1992. Earlier, he was appointed as NMR in the same College on 10.07.1989. Confirmation in the post of Junior Assistant was given on 25.10.1994. He was transferred and posted as Junior Assistant in Medical Records Division of Rajah Muthiah Medical College Hospital vide proceedings in O.O.No.5/N9/99, dated 27.08.1999. Over the years, he was promoted as Deemed Assistant and thereafter, as Deemed Superintendent.

4. On 18.08.2008, the original Petitioner was placed under suspension on the ground that, he misappropriated funds to the tune of Rs.18,410/-. Subsequently, Respondents 2, 3 and 4 herein were also suspended for the same reasons, however, suspension in their case was revoked and they were reinstated into service. But, the Petitioner was charge-sheeted vide proceedings No.20/2009(s), dated 12.01.2009 for manipulation of funds to the tune of Rs.8,41,000/-. Thereafter, he was terminated from service vide order dated 15.07.2009 passed by the 1st Respondent. Challenging the same, the Petitioner is before this Court.

5. Though, various points have been raised, the only issue that arises for consideration in this Writ Petition is, as to whether a detailed enquiry has been conducted on the charges levelled against the original Petitioner, or not.

6. Learned counsel appearing for the 1st Respondent submitted that, the original Petitioner appeared before the Enquiry Committee on 05.01.2009 and admitted his guilt. He has also agreed in the written statement that, during the period from 01.01.2007 to 06.08.2008, he had fraudulently taken cash around Rs.8,41,000/- by manipulating the Receipts and carbon copies from the cash counter and shared the amount to his co-staff members. In this regard, learned counsel drew the attention of this Court to the Minutes of the Enquiry Committee

held on 05.01.2009 at Senate Hall, Annamalai University, Annamalai Nagar.

7. Heard the learned counsel for the parties and perused the material documents available on record.

8. This Court in the case of S.K. Raman vs The Management Of Kundah Rural Co-operative Agricultural Society reported in (1987) ILLJ 487 Madras, has held that, even though an employee admits his/her guilt in writing, enquiry needs to be conducted and if he admits his guilt before the Enquiry Officer, then, further proceedings can be issued. Relevant portion of the said judgment reads thus:

"3. In The Management of Viduthalai Vs. J. Dravida Arasu (1970) 1 M.L.N. (S.N.) 3, Ismail, J, (as he then was), held that whether the employee admits the misconduct or not, the employer must conduct an enquiry to substantiate the misconduct on the basis of which the employer dispensed with the services of the employee, and in the absence of such an enquiry, the order of dismissal would be invalid. The learned Judge dealt with the point in the following language :

"Here again, admittedly, no enquiry was conducted by the petitioner and no evidence was recorded to support the misconduct at such an enquiry. The learned counsel for the petitioner contends that when the employee has admitted the misconduct, such an enquiry and recording of evidence is unnecessary. As the statute stands at present, I do not think that there is any scope for such an argument whether the employee admits the misconduct or not, the employer must conduct an enquiry and evidence must be recorded at the enquiry to substantiate the misconduct on the basis of which the employer dispensed with the services of the employee. On the terms of the statute, in my opinion, the contention of the learned counsel for the petitioner that no such enquiry is necessary simply because the first-respondent had admitted his misconduct cannot stand."

The learned Judge also referred to and followed the ratio of Rajagopala Ayyangar, J.,

(as he then was) in Venkateswara Bank Ltd., Salem Vs. Krishnan (supra). The very same learned Judge, while repelling the contention, that in the absence of an employer holding an enquiry under S. 41(1), the Authority under the Act, could take evidence and uphold the order of the employer observed as follows in Kotak and Co. Vs. Addl. Commissioner, Workmen's Compensation (1970-II-LLJ-364) at p. 379.

"From the language of that Section already extracted, it is clear it is a statutory prerequisite for an employer to dispense with the service of an employee on the ground of misconduct to conduct an enquiry for the purpose of establishing that misconduct. That means, the condition precedent to the exercise of the power of dispensing with the services of an employee on the ground of misconduct is the holding of the enquiry for the purpose of establishing the misconduct by recording evidence at such an enquiry. When a statute states that a particular thing should be done in a particular manner it impliedly prohibits the doing of the same in any other manner. Therefore, when the employer does not follow the statutory prescription and fulfill the condition precedent, the action of the employer dispensing with the services of an employee will be ab initio void. When the appellate authority dismisses the appeal preferred by the employee, it merely sustains or confirms the order of the employer. When the action of the employer is ab initio void, there cannot be any subsequent confirmation or upholding of the same. When an order is ab initio void, in the eye of the law, it has no existence.

In other words, to hold that when the employer himself had not conducted the enquiry contemplated by S. 41(1) of the Act, the Appellate Authority can conduct that enquiry and on the basis of the said enquiry, uphold the order of the employer dispensing with the services of the employee is to wipe out the statutory

requirement and to render the same totally nugatory"

Here we find the first-respondent never pleaded that there was an enquiry into the charge of misconduct conducted by it where evidence was recorded in support of such charge and which it found to be satisfactory and on the basis of which, a warrant was found to dispense with the service of the petitioner. What all the first respondent stated in the counter-statement, as we could see from the extract made above, is that the petitioner only requested for an interview in which a statement was obtained from him and the petitioner admitted some points of allegations made against him. The second-respondent was not strictly in order when he observed that the first respondent in the counter-statement replied that the dismissal was made only after proper enquiry. A mere interview where a statement, may be self incriminating was taken from the employee is certainly not a substitute for an enquiry into the charge of misconduct where evidence should be recorded. To hold so, would be making a mockery of statutory mandate. The charges levelled against the petitioner were elaborate indeed, and they required substantiation by evidence to be recorded at the enquiry. Even the counter-statement filed by the first respondent only states that the petitioner admitted some points of allegations made against him. The second respondent has obviously omitted to take note of the principles governing cases where the employer puts forth a plea of dispensing with the service of an employee on a charge of misconduct. As observed by Ismail, J., as he then was, when a statute states that a particular thing should be done in a particular manner, it impliedly prohibits the doing of the same in any other manner. Since there is an omission on the part of the second respondent to keep in mind and adhere to the principles discussed above, I feel obliged to interfere in writ jurisdiction. Accordingly, the Writ Petition is allowed, and the matter shall stand remitted to the file of the second-respondent for him to consider the same afresh in the light of the above principles and pass the appropriate orders in accordance with law. I make no order as to costs."

9. In the case on hand, the Petitioner has admitted his guilt before the Enquiry Officer on 05.01.2009 and he has given a written communication to the Enquiry Officer, to that effect. In view of the same and in the light of the aforesaid judgment, this Court finds no reason to interfere with the order impugned in this Writ Petition.

Accordingly, the Writ Petition stands dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To:
The Registrar,
Annamalai University,
(Rajah Muthaiah Institute of Health Sciences),
Annamalai Nagar - 608 002.

W.P.No.15477 of 2010

vs (co)
rr ii (04/09/2020)



WEB COPY