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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.Nos.28095 of 2021 and 3954 of 2022
and W.M.P.Nos.29672, 29673 of 2021, 4098 of 2022

Dr.K.Chakravarthi

...Petitioner in both writ petitions

Vs.

1. The Director of Medical Education,
No.162, EVR Periyar Salai,
Kilpauk, Chennai - 600 010.

2. The Dean,
Madurai Medical College,
Madurai.

3. Dr.A.Rathinavel,
Dean, Madurai Medical College,
Madurai.

...Respondents in both WP's

Prayer in W.P.No.28095 of 2021: Writ petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorari calling for the records in Ref.No.10686/E1/2/2021 issued by the 2nd respondent dated 06.12.2021 and quash the same.

Prayer in W.P.No.3954 of 2022: Writ petition filed under Article 226 of the Constitution of India, seeking to issue a Writ of Certiorari calling for the records in proceedings No.98588/SCI(3)/2021 dated 24.01.2022 issued by the 1st respondent, received on 03.02.2022 and quash the same.

For Petitioner : Ms.D.Geetha
in both WP's

For Respondents : Mr.M.Bindran,
in both WP's Additional Government Pleader



COMMON ORDER

By consent of both parties, this Writ Petition is taken up for final disposal at the admission stage itself.

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2. Since the issues involved in both the writ petitions are one and the same, a common order is passed.

3. These writ petitions have been filed seeking to quash the proceedings of the second respondent vide Ref.No.10686/E1/2/2021 dated 06.12.2021 to and the proceedings of the first respondent vide No.98588/SCI(3)/2021 dated 24.01.2022.

4. The case of the petitioner in brief:

The writ petitioner is working as a Senior Resident in the Radiology Department under the second respondent. He has been raising several issues pertaining to the functioning of the Senior Doctors in the hospital. While so, the petitioner received a letter dated 01.12.2021 from the Resident Medical Officer and the HOD Department of Radiodiagnostics stating that a complaint has been received against the petitioner and asked him to appear for an enquiry on 03.12.2021 and he also appeared for the enquiry. Thereafter, the second respondent has issued an impugned suspension order to the petitioner on 06.12.2021, alleging that he has committed sexual harassment on the patient viz., Tmt.D.Chitra, but without giving an opportunity to understand the nature of complaint or inviting his explanation to the alleged complaint. The first respondent is the competent authority to issue the order of suspension, but the impugned order was passed by the second respondent. Subsequent to the aforesaid suspension order, the first respondent has passed an order dated 24.01.2022, ratifying the suspension order passed by the second respondent. Challenging the order of suspension passed by the second respondent dated 06.12.2021 and the consequential order of the first respondent dated 24.01.2022, ratifying the order of suspension passed by the second respondent, the petitioner has filed the present writ petitions.

5. The learned counsel appearing for the petitioner would submit that the first respondent is the competent authority to pass the impugned suspension order as per Rule 13 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. But, the second respondent, who is not the competent authority, has passed the suspension order. Subsequently, a ratification order has been passed by the first respondent, which is not permissible under law. She would rely upon the order passed by this Court, in W.P Nos.4594 and 6737 of 2022 dated 31.03.2022 [Dr.S.Subbiah vs. The State of Tamil Nadu, rep. by its Secretary to Government].



6. The learned Additional Government Pleader appearing for the respondents would submit that subsequent to the aforesaid impugned suspension order, a ratification order has been passed by the first respondent. Therefore, the aforesaid impugned suspension order is not sustainable in law.

7. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents and also perused the materials on record.

8. The point for consideration is whether the impugned order of suspension passed by the second respondent is valid in law and also in compliance of Rules 13 and 17(e) of the Tamil Nadu Civil Services (Discipline & Appeal), Rules 1955.

9. According to the writ petitioner, he is a Senior Resident in Radiodiagnosis under the second respondent. Based on the complaint, the petitioner has been suspended from service as per the impugned order passed by the second respondent. Subsequently, the first respondent has passed an order on 24.01.2022, ratifying the said impugned suspension order. In similar writ petitions in W.P Nos.4594 & 6737 of 2022, in the case of Dr.S.Subbiah vs. The State of Tamil Nadu, rep. by its Secretary to Government, this Court had observed as follows:

"9. The primordial contention of the learned Senior Counsel for the petitioner is that the impugned order of suspension has been passed by an incompetent authority / second respondent, without any jurisdiction and also in contravention of relevant Statutory Rules. In this regard, the learned Senior Counsel for the petitioner has relied upon the decision in Marathwada University v. Seshrao Balwant Rao Chavan [(1989) 3 SCC 132], wherein it was held as under:

"20. Counsel for the appellant argued that the express power of the Vice-Chancellor to regulate the work and conduct of officers of the University implies as well, the power to take disciplinary action against officers. We are unable to agree with this contention. Firstly, the power to regulate the work and conduct of officers cannot include the power to take disciplinary action for their removal. Secondly, the Act confers power to appoint officers on the Executive Council and it generally includes the power to remove. This power is located under Section 24(1)(xxix) of the Act. It is, therefore, futile to contend that the Vice-Chancellor can exercise that power which is conferred on the Executive Council. It is a settled principle that when the Act prescribes a particular body to exercise a power, it must be exercised only by that body. It cannot be exercised by others unless it is



delegated. The law must also provide for such delegation. Halsbury's Laws of England (Vol. I, 4th Ed., para 32) summarises these principles as follows:

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"32. Sub-delegation of powers.— In accordance with the maxim *delegatus non potest delegare*, a statutory power must be exercised only by the body or officer in whom it has been confided, unless sub-delegation of the power is authorised by express words or necessary implication. There is a strong presumption against construing a grant of legislative, judicial or disciplinary power as impliedly authorising sub-delegation; and the same may be said of any power to the exercise of which the designated body should address its own mind."

(emphasis supplied)

27. These principles of ratification, apparently do not have any application with regard to exercise of powers conferred under statutory provisions. 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.

28. The counsel for the appellant, however, invited our attention to the case of *Parmeshwari Prasad Gupta v. Union of India* [(1973) 2 SCC 543 : (1974) 1 SCR 304]. It was a case of termination of services of the Secretary of a Company. The Board of Directors decided to terminate the services of the Secretary. The Chairman of the Board of Directors in fact terminated his services. Subsequently, in the meeting of the Board of Directors the action taken by the Chairman was confirmed. In the suit instituted by the Secretary challenging the termination of his services, the court upheld on the principle that the action of the Chairman even though it was invalid initially, could be validated by ratification in a regularly convened meeting of the Board of Directors. Mathew, J. while considering this aspect of the matter, observed: (SCC pp. 546-47, para 14 : SCR pp. 307-08)

"Even if it be assumed that the telegram and the letter terminating the services of the appellant by the Chairman was in pursuance to the invalid resolution of the Board of Directors passed on 16-12-1953 to terminate his services, it would not follow that the action of the Chairman could not be ratified in a regularly convened meeting of the Board of Directors. The point is that even assuming that the Chairman was not legally authorised to terminate the services of the appellant, he was acting on behalf of the Company in doing so, because, he purported to act in pursuance of the



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invalid resolution. Therefore, it was open to a regularly constituted meeting of the Board of Directors to ratify that action which, though unauthorised, was done on behalf of the Company. Ratification would always relate back to the date of the act ratified and so it must be held that the services of the appellant were validly terminated on 17-12-1953. The appellant was not entitled to the declaration prayed for by him and the trial court as well as the High Court was right in dismissing the claim."

29. These principles of ratification governing transactions of a company where the general body is the repository of all powers cannot be extended to the present case. We were also referred to the decision of the Court of Appeal in *Barnard v. National Dock Labour Board* [(1953) 1 All ER 1113] and in particular the observation of Denning, L.J.: (All ER 1118 and 1119)

"While an administrative function can often be delegated, a judicial function rarely can be. No judicial tribunal can delegate its functions unless it is enabled to do so expressly or by necessary implication. In *Local Government Board v. Arlidge* [1915 AC 120 : 84 LJKB 72] the power to delegate was given by necessary implication, but there is nothing in this scheme authorising the board to delegate this function and it cannot be implied. It was suggested that it would be impracticable for the board to sit as a board to decide all these cases, but I see nothing impracticable in that. They have only to fix their quorum at two members and arrange for two members, one from each side, employers and workers, to be responsible for one week at a time.

Next, it was suggested that, even if the board could not delegate their functions, at any rate they could ratify the actions of the port manager, but, if the board have no power to delegate their functions to the port manager, they can have no power to ratify what he has already done. The effect of ratification is to make it equal to a prior command, but as a prior command, in the shape of delegation, would be useless, so also is a ratification."

The said decision was also followed in the subsequent decision in *Rakesh Kumar Agarwala and another v. National Law School of India University, Bengaluru and Others* [(2021) 1 SCC 539]. The aforesaid decisions clearly laid down the well settled principle that when the Act prescribes a particular body to exercise a power, it must be



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exercised only by that body and it cannot be exercised by others, unless it is delegated.

10. The concept of ratification was dealt with by the Hon'ble Supreme Court in Maharashtra State Mining Corpn. v. Sunil [(2006) 5 SCC 96] wherein it was held as under:

"The High Court rightly held that an act by a legally incompetent authority is invalid. But it was entirely wrong in holding that such an invalid act could not 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 rati habitio 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."

11. The decision in Maharashtra State Mining Corpn case (supra) was subsequently considered by the Hon'ble Supreme Court in National Institute of Technology and another v. Pannalal Choudhury and another [(2015) 11 SCC 669] which was relied on by the learned Advocate General to the effect that an order passed by the incompetent authority could be validly ratified by the competent authority. The Hon'ble Supreme Court in the said decision, has held as follows:

"31. The law of ratification was applied by this Court in Parmeshwari Prasad Gupta v. Union of India [Parmeshwari Prasad Gupta v. Union of India, (1973) 2 SCC 543] . In that case, the Chairman of the Board of Directors had terminated the services of the General Manager of a Company pursuant to a resolution taken by the Board at a meeting. It was not in dispute that the meeting had been improperly held and consequently the resolution passed in the said meeting terminating the services of the General Manager was invalid. However, the Board of Directors then convened subsequent meeting and in this meeting affirmed the earlier resolution, which had been passed in improper meeting. On these facts, the Court held: (SCC pp. 546-47, para 14)

"14. ... Even if it be assumed that the telegram and the letter terminating the services of the appellant by the Chairman was in pursuance of the invalid resolution of the Board of Directors passed on 16-12-1953 to terminate his services, it would not follow that the action of the Chairman could not be ratified in a regularly convened meeting of the Board of Directors. The point is that even assuming that the Chairman was not legally authorised to



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terminate the services of the appellant, he was acting on behalf of the Company in doing so, because, he purported to act in pursuance of the invalid resolution. Therefore, it was open to a regularly constituted meeting of the Board of Directors to ratify that action which, though unauthorised, was done on behalf of the Company. Ratification would always relate back to the date of the act ratified and so it must be held that the services of the appellant were validly terminated on 17-12-1953."

This view was approved by this Court in High Court of Judicature of Rajasthan v. P.P. Singh [High Court of Judicature of Rajasthan v. P.P. Singh, (2003) 4 SCC 239 : 2003 SCC (L&S) 424] .

32. The aforesaid principle of law of ratification was again applied by this Court in Maharashtra State Mining Corpn. v. Sunil [Maharashtra State Mining Corpn. v. Sunil, (2006) 5 SCC 96 : 2006 SCC (L&S) 926] . In this case, the respondent was an employee of the appellant Corporation. Consequent to a departmental enquiry, he was dismissed by the Managing Director of the appellant. The respondent then filed a writ petition before the High Court. During the pendency of the writ petition, the Board of Directors of the appellant Corporation passed a resolution ratifying the impugned action of the Managing Director and also empowering him to take decision in respect of the officers and staff in the grade of pay the maximum of which did not exceed Rs 4700 p.m. Earlier, the Managing Director had powers only in respect of those posts where the maximum pay did not exceed Rs 1900 p.m. The respondent at the relevant time was drawing more than Rs 1800 p.m. Therefore, at the relevant time, the Managing Director was incompetent to dismiss the respondent. Accordingly, the High Court held [Sunil v. Maharashtra State Mining Corpn., 2005 SCC OnLine Bom 758 : (2006) 1 Mah LJ 495] the order of dismissal to be invalid. The High Court further held that the said defect could not be rectified subsequently by the resolution of the Board of Directors. The High Court set aside the dismissal order and granted consequential relief. The appellant then filed the appeal in this Court by special leave. Ruma Pal, J. speaking for the three-Judge Bench, while allowing the appeal and setting aside the order of the High Court held as under: (Sunil case [Maharashtra State Mining Corpn. v. Sunil, (2006) 5 SCC 96 : 2006 SCC (L&S) 926] , SCC pp. 96G-h & 97a-b)



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"The High Court rightly held that an act by a legally incompetent authority is invalid. But it was entirely wrong in holding that such an invalid act could not 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.

In the present case, the Managing Director's order dismissing the respondent from the service was admittedly ratified by the Board of Directors unquestionably had the power to terminate the services of the respondent. 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."

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."

Relying upon the aforesaid judgment, the learned Advocate General would contend that the first respondent has passed the ratification order, ratifying the impugned order of suspension passed by the second respondent and therefore, the impugned order of suspension is perfectly valid in law".

10. In the present case on hand, the respondents have not placed any material to show that the delegated power is vested with the second respondent to pass the aforesaid impugned suspension order. Therefore, in the light of the



aforesaid decision of this Court, this Court comes to a conclusion that the impugned suspension order passed by the second respondent and the subsequent ratification order passed by the first respondent, are not sustainable in law and the same is liable to be quashed on the ground that the second respondent is not the competent authority to pass the aforesaid impugned suspension order.

11. In view of the forgoing reasons, this Court is inclined to pass the following order:

(i) The impugned order passed by the second respondent in Ref.No.10686/E1/2/2021 dated 06.12.2021 and the subsequent ratification order passed by the first respondent vide proceedings No.98588/SCI(3)/2021 dated 24.01.2022 are quashed, with a liberty to the first respondent to pass orders afresh, if he is so advised.

(ii) The petitioner is entitled for the subsistence allowance during his suspension period.

12. With the above observation, these writ petitions stand allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CCC)

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Sub Assistant Registrar

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To

1.The Director of Medical Education,
No.162, EVR Periyar Salai,
Kilpauk, Chennai - 600 010.

2.The Dean,
Madurai Medical College,
Madurai.

+1cc to Government Pleader SR. No.24914

W.P.Nos.28095 of 2021,
3954 of 2022
and W.M.P.Nos.29672,
29673 of 2021, 4098 of 2022

MG (CO)
PR (27/04/2022)