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W.A.No.1976 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2023

CORAM :

THE HON'BLE MR. JUSTICE R. MAHADEVAN

AND

THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ

W.A.No.1976 of 2021 &
C.M.P.Nos.12737 and 12909 of 2021

Dr.F.Biravinth Solomon

Vs.

... Appellant

1.The Vice Chancellor,
Dr.MGR University,
Guindy, Chennai - 600 032.

2.The Chairman,
The Medical Council of India,
MCI Building, Pocket 14,
Sector 8, Dwakra Phase-I,
New Delhi - 110 077.

3.The Principal,
The Christian Medical College,
Vellore - 632 002.

... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 09.10.2020 passed by the learned Judge in W.P.No.14596 of 2020.

For Appellant : Mr.V.Prakash, Senior Advocate for
M/s. Ganesh & Ganesh

For respondents : M/s.Ramalingam Associates for R1
M/s.Shubaranjani Ananth for R2
Mr.Krishna Srinivasan for
M/s.S.Ramasubramaniam &
Associates for R3



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JUDGMENT

(Judgment of the Court was made by R. MAHADEVAN, J.)

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This writ appeal is directed against the order dated 09.10.2010 passed by the learned Judge in W.P.No.14596 of 2020.

2.The facts giving rise to the present appeal are as follows:

The appellant / writ petitioner was appointed as a senior Resident in the third respondent college and Hospital on 08.09.2018 and to pursue the course of M.Ch. Cardio Thoracic Surgery. While so, he was issued with a charge memo dated 27.11.2019, alleging certain act of subversive of discipline and directing him to give explanation. Pursuant to the same, he submitted his explanation on 27.11.2019. Consequently, another charge memo and suspension order dated 15.06.2020 came to be passed alleging that the appellant took a set of expensive text books from the library and office without following the protocol of the Department and refused to return the same and thereby committed the act of breach of trust. Subsequently, the appellant was issued with one more charge memo dated 19.06.2020, for certain allegation of theft of books from the department library and directed him to give explanation as to why disciplinary action should not be taken against him. Challenging the charge memo dated 19.06.2020, he preferred WP.No.14596 of 2020 to quash the same and direct the third respondent to permit him to pursue the course. However, by order dated 09.10.2020, the learned Judge dismissed the writ petition as the same was bereft of factual or legal sense. Instead of availing the



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appeal remedy before this court, the appellant approached the Hon'ble Supreme Court by filing S.L.P.(C) No.1797 of 2021, which, by order dated 29.06.2021, was dismissed with liberty to approach the High Court to file an appeal against the order passed by the learned Single Judge. Accordingly, the appellant is before this court with the present writ appeal against the order of the learned Judge dated 09.10.2020 passed in W.P.No.14596 of 2020.

3.The learned senior counsel appearing for the appellant submitted that the third respondent-College did not serve the appellant with any rule book regarding the charges mentioned in the charge memorandum. Adding further, the learned senior counsel submitted that the appellant is a student under the third respondent and the rules of employment applied to an employee, will not apply to him and hence, the charge memorandum was against the principles of natural justice. Without taking note of the same in a proper perspective, the learned judge dismissed the writ petition, by the order impugned herein, which is erroneous and contrary to law.

4.The learned senior counsel for the appellant further submitted that the appellant was very sincere in his studies and duties, even spending extra hours in the hospital due to personal interest. However, in 2019, misunderstandings arose between him and the Head of the Department, leading to the issuance of a charge memo dated 27.11.2019 containing vague allegations. The appellant duly replied to



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the same on the same day. Since then, the appellant has been personally targeted and harassed by Dr. Gnanamuthu, Head of the Department of Cardio Thoracic Surgery in the third respondent College. On 15.06.2020, the appellant received another memo with serious allegations of theft of books from the department library and refusal to return the same, due to which, he was suspended with effect from 16.06.2020. According to the learned senior counsel, the main reason for issuing the second memo against the appellant was that he had requested the books taken by Dr.Gnanamuthu from the library, but he responded with unparliamentary words, leading to an altercation, in which, the appellant snatched the books, Shield General Thoracic Surgery-2 Volumes, from him. Stating so, the appellant filed his reply on 17.06.2020, which was not accepted. Subsequently, one more charge memorandum dated 19.06.2020 was issued against the appellant, against which, the writ petition was filed and the same ended in dismissal.

5.The learned senior counsel for the appellant also submitted that the appellant has achieved this current position in the medical field solely through his hard work and dedication. Prior to enrolling in the super-speciality program at the third respondent institution, he had a spotless record with no complaints from previous medical institutions, where he worked. However, the third respondent institution has falsely accused him of theft, thereby tarnishing his reputation and damaging his career prospects. The learned Judge, without due regard to the facts and circumstances of the case, erred in dismissing the writ petition, which requires interference at the hands of this court.



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6. On the contrary, the learned counsel appearing for the third respondent would submit that the appellant was charged with various misconducts viz., willfully absented from duty, arriving late for work, failing to attend the emergency phone calls regarding patient issues, neglecting the duties assigned, while treating patients, and unwilling to follow instructions from the senior faculty on multiple occasions, during the training course in the Department of Cardio Thoracic Surgery at the third respondent College. An internal inquiry was conducted, in which, the appellant was given a fair chance to explain the situation and thereafter, the Committee submitted its report on 24.12.2019, with a recommendation that the appellant has to undergo medical evaluation in Psychiatry and submit a medical report. However, he did not undergo the evaluation and was hostile and extremely insubordinate and rude toward staff, colleagues and even the senior-most consultants. Furthermore, due to his lack of basic clinical competence, aggressive and insubordinate behavior, the Head of the Department lost faith with him. As far as the charges framed against the appellant vide memo dated 15.06.2020, with respect to taking a set of expensive textbooks from the departmental library, the learned counsel submitted that there are protocols for borrowing books from the Library and without following the same, the appellant took three books and refused to return the two books that had already been taken.

7. Continuing further, the learned counsel for the third respondent submitted that as the reply to the charge memo filed by the appellant was not satisfactory, the



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third respondent called upon the appellant to submit an explanation through proceedings dated 19.06.2020, as to why disciplinary action should not be taken against him. The appellant submitted his explanation on 25.06.2020, which was not satisfactory and hence, enquiry was ordered on 20.07.2020. After conducting the enquiry and providing sufficient opportunities to the appellant, the Enquiry Officer submitted a report dated 12.11.2021, stating that all the charges leveled against the appellant were proved, except the charge related to willfully being absent from duty without any prior permission or approval from the immediate supervisor. Subsequently, by proceedings dated 23.03.2022, the third respondent terminated the appellant from service. As this writ appeal emanates from the charge memo dated 19.06.2020, which culminated in the final order of termination from service, the same has become infructuous. Thus, the learned counsel sought for dismissal of this appeal.

8.On the above submissions, we have heard the learned counsel appearing for the respondents 1 and 2 and also perused the materials placed before us.

9.Concededly, the appellant is not only a student, but also served as a resident doctor in the third respondent college and hospital. In discharging his duties, he was charged with various allegations by the third respondent College and was also suspended from service with effect from 16.06.2020. Challenging the charge memo dated 19.06.2020, the appellant filed WP.No.14596 of 2020, which



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was dismissed by the learned Judge, by order dated 09.10.2020. However, the appellant did not prefer any writ appeal against the said order of the learned Judge, but he preferred SLP(C) No.1797 of 2021. The Hon'ble Supreme Court, by order dated 29.06.2021, dismissed the said appeal with liberty to challenge the order of the learned Judge by filing writ appeal before the High Court. Based on the same, the appellant has come up with the present writ appeal before this court.

10.Though the learned senior counsel appearing for the appellant and the learned counsel appearing for the third respondent have made elaborate submissions to substantiate their respective stands and produced voluminous documents relating to enquiry proceedings, it is evident from the same that during the pendency of this appeal, enquiry was conducted into the charges framed against the appellant and he was given due opportunity to put forth his defence and thereafter, enquiry report dated 12.11.2021 was filed to the effect that the charges are proved against him; and that, based on the enquiry report, the appellant was terminated from the position as Sr. Post Graduate Registrar with effect from 23.03.2022, *vide* memorandum of the third respondent dated 23.03.2022. Further, a special committee has also been constituted to ascertain the competency of the appellant to work as a Cardiothoracic surgeon and ultimately, it was concluded by the committee by report dated 16.02.2023 that there is no positive change in the attitude, disposition or other requirements of the appellant for training in patient care areas.



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11. In view of the subsequent developments as referred to above, this writ appeal stands disposed of, leaving it open to the appellant to challenge the proceedings terminating him from service on 23.03.2022 or any other proceedings passed against him, in the manner known to law, if so advised. No costs. Consequently, connected miscellaneous petitions are closed.

[R.M.D., J.] [M.S.Q., J.]
06.06.2023

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Speaking Order / Non-speaking Order

Internet : Yes

Index : Yes /No

To

1. The Vice Chancellor,
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2. The Chairman,
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MCI Building, Pocket 14,
Sector 8, Dwarka Phase-I,
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