IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.01.2025

PRONOUNCED ON : 30.04.2025

CORAM :

THE HONOURABLE DR.JUSTICEANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.A.No. 3054 of 2023
and C.M.P.Nos. 25307 of 2023 & 20111 of 2024

Christian Medical College,
Rep. By its Principal,
Vellore – 632 002. .. Appellant

vs

1.Dr.F.Biravinth Solomon
S/o. Late Mr.S.Francis,
No.43, 2nd PillaiyarKovil Street,
Perungudi, Chennai.

2.National Medical Commission,
Rep. By its Secretary,
Pocket – 14, Sector – 8, Dwarka Phase 1,
New Delhi – 110 077.

3.The Vice Chancellor,
Tamil Nadu Dr.MGR Medical University,
No.69, Anna Salai Road,
Guindy, Chennai – 600 032.
(R3 impleaded vide order dated 25.09.2024
Made in CMP No.20111 of 2024 and
W.A.No.3054/23 and CMP No. 25307/23) .. Respondents

Prayer : Writ Appeal filed under Clause 15 of Letters Patent against order dated 10.10.2023 made in W.P.No. 34942 of 2022.

For Appellant : Mr.Krishna Srinivasan
Senior Counsel
For M/s. Ramasubramaniam Associates

For Respondents : Mr.NGR Prasad
For Mr.S.Gowtham for R1

Ms.Shubaranjani Ananth,
Standing Counsel for R2

Mr.A.Mohd. Gouse for R3

JUDGMENT

(Per :- Dr. ANITA SUMANTH.,J)

Facts and Background

Dr.F.Biravinth Solomon (in short 'Dr.Solomon'/'R1') had completed his MS in General Surgery from the Madurai Medical College. He appeared for the NEET examination for Super Speciality Course seeking a specialization in Cardio Thoracic Surgery in Christian Medical College (CMC/appellant/college) in academic year 2018-19. He was granted provisional allotment to the Master of Chirurgiae (M.Ch.) course, on 11.06.2018 in CMC and order dated 08.09.2018 was issued by CMC

appointing him as Senior P.G.Registrar in the Department of Cardio Thoracic Surgery.

2. While so, he was issued with two Charge Memos, one on 27.11.2019 (Charge Memo I) and another on 19.06.2020 (Charge Memo II), to both of which he responded. The proceedings culminated in an order of termination of his services as an employee, a Senior P.G.Registrar in the Department of Cardio Thoracic Surgery, with effect from 23.03.2022 holding that the charges stood proved in the course of enquiry.

3. The order of termination was challenged in W.P.No.34942 of 2022. One of the grounds was that his tenure in the college was in the capacity of a student notwithstanding that he had been given the title of Senior P.G.Registrar in the Department of Cardio Thoracic Surgery. Thus, while seeking a quash of the termination order, he sought a direction to CMC to treat him as a student and not as an employee and to permit him to complete the M.Ch. course as scheduled.

4. The Writ Petition came to be allowed on 10.10.2023, the Writ Court accepting the contentions of R1 that he was not an employee of the college and was only a student and trainee. Hence, the impugned proceedings involving Departmental enquiry and application of the Staff Service Rules of CMC were

held to be unsustainable. The National Medical Commission (NMC) had also been heard and the Court took note of the Regulations of the NMC and the conditions set out therein which would debar a student from writing the examinations and/or completing the course.

5. Those Regulations stipulated that only a shortfall in attendance or serious misconduct, such as ragging or other similar offences, would stand in the way of the student continuing the course. The Court hence held that there was no such circumstance in the present matter that would justify the impugned proceedings.

6. As far as the enquiry report, which was adverse to R1 was concerned, the Writ Court concluded that it contained elements of bias against him. The learned Judge records that he had interacted with R1 in the presence of the counsel and was of the view that '*his intellectual level is very high, he has already qualified his Postgraduate degree in M.S (General Surgery) and thereafter pursing M.Ch.'*.

7. The learned Judge thus concluded that the entirety of the proceedings had emanated only on account of the differences of opinion among Doctors and in any event, CMC had no jurisdiction to initiate disciplinary proceedings against a student. The Writ Petition came to be allowed, permitting R1 to

undergo one more year and write the final examinations.

8. Since there was no compliance with order dated 10.10.2023, R1 has filed Contempt Petition No.106 of 2024, wherein the learned Judge has, vide order dated 12.01.2024 issued statutory notice to CMC, returnable 23.02.2024. In the present writ appeal, the statutory notice issued by the learned Judge in Contempt Petition No.106 of 2024 has been kept in abeyance, vide order dated 22.02.2024. The matter has thereafter been taken up for final hearing.

Submissions on behalf of the Appellant College/CMC

9. Mr.Krishna Srinivasan, learned Senior Counsel appearing for M/s.Ramasubramaniam Associates for CMC would refer to the charges, pointing out that they were very serious in nature. He would draw attention to the fact that CMC is a college of repute and admission there is highly sought after. Undoubtedly, R1 has obtained a seat on merit.

10. He was thus issued a provisional allotment order and thereafter an appointment order on 08.09.2018 appointing him as a Senior P.G. Registrar in the Department of Cardio Thoracic Surgery. The duties that R1 would perform as Senior P.G. Registrar are of great responsibility and directly touch upon patient care.

11. He refers to appointment order dated 08.09.2018 appointing R1 as a

Senior P.G. Registrar which specifically states that he *'will be governed by the Regulations of this institution'*. Hence, there is no question of treating R1 as a student as he is a qualified doctor with a postgraduate degree to boot when he joined CMC as a Super Speciality trainee.

12. He reiterates the position that despite the status of R1 as an M.Ch. candidate, he was already a qualified postgraduate doctor at the time of his joining the institution and hence his appointment to the responsible post of Senior P.G. Registrar was based on his existing qualifications. It is for that purpose that he was being granted a stipend as well.

13. Mr.Krishna Srinivasan would maintain that the procedure followed for the conduct of the internal enquiry was in line with the Staff Service Rules of CMC and that an opportunity had been extended at every stage to ensure that R1 had been heard and his contentions taken note of.

14. R1 had challenged charge memo dated 19.06.2020 by way of W.P.No.14596 of 2020. That Writ Petition came to be dismissed on 09.10.2020, as against which, R1 had approached the Supreme Court by way of SLP (C) No.1797 of 2021 which was dismissed on 29.06.2021 granting permission to R1 to approach the High Court by way of appeal. Hence, W.A.No.1976 of 2021 had come to be filed challenging dismissal of

W.P.No.14596 of 2020.

15. In the course of the hearing, a Special Committee had been constituted by the Bench to look into the charges framed against R1. R1 had been given an opportunity to put forth his defence before the Special Committee. That Committee had concluded, by report dated 16.02.2023, that they did not find any positive change in the attitude, disposition or other requirements of R1 for training in patient care areas.

16. The Writ Appeal thus came to be disposed leaving it open to R1 to challenge the termination order in an appropriate manner. It is hence that W.P.No.34942 of 2022 came to be filed paving the way for the present appeal.

17. Mr.Krishna Srinivasan would draw attention to the adverse findings of the Special Committee against R1 as noted in order dated 06.06.2023 that directly militates with the observations of the Writ Court in allowing the Writ Petition. He would firstly insist that there has been no bias as against R1. Secondly, he would argue that the status of R1 in CMC was as an employee and hence the application of Staff Service Rules to him was appropriate.

18. Thirdly, he would object to the observations of the Writ Court in regard to the intellectual capacity of the candidate pointing out that such an assessment ought to be left to persons best qualified to do so, with the requisite

skills to evaluate his technical performance and all connected and relevant parameters.

19. He relies on the following judgments:

(i) *Apparel Export Promotion Council V. A.K.Chopra*[1]
(ii) *State of Karnataka and another V. N.Gangaraj*[2]
(iii) *State Bank of India V. Ram Lal Bhaskar and another*[3]
(iv) *Raj Kumar Thakur V. Dr.Y.S.Parmar, University of Horticulture and forestry, Solan and another*[4]

Submissions on behalf of R1

20. Mr.N.G.R. Prasad, learned counsel appearing for Mr.S.Gowtham, learned counsel for R1 submits that there was no employer – employee relationship between CMC and R1. He had been allotted a seat in M.Ch. Course after his commendable performance in the NEET Super Speciality examinations.

21. He draws attention to the fact that the academic performance of R1 has been exemplary throughout his career and the admission obtained by him in CMC, Vellore was no exception. He had remitted one-time fee of Rs.1,58,950/- and regular fees thereafter for the course, establishing his status therein as only a student. The title as Senior P.G. Registrar would have no bearing upon his

1 (1999) 1 SCC 759
2 (2020) 3 SCC 423
3 2012 (5) AWC 4748 (SC)
4 1990 SCC Online HP 29

status as a student.

22. That apart, what he was receiving from the College was only a stipend and not as a salary, further buttressing the fact that his engagement with CMC was only as a student and not an employee. Mr.Prasad submits that there were no allegations or reports of bad or non-performance at any point in time till the issuance of the charge memos dated 27.11.2019 and 19.06.2020, which came as a bolt from the blue. The charges themselves are very vague and contain no specifics.

23. He relies on the following judgments to support the proposition that a charge memo, in order to be valid, has to be detailed in respect of the allegations that are put against the noticee:

(i) Anant R. Kulkarni v YP Educational Society and others[5]
(ii) Union of India and others v Gyan Chand Chattar[6]
(iii)Anil Gilurker V. Bilaspur Raipur KshetriyaGramin Bank and another[7]
(iv) K.Palani V. Superintending Engineer, Vellore Electricity System and another[8]
(v) Manoj Singhania, Dr. V. Union of India &Ors.[9]

24. He takes us in detail to the charges to show that they are absolutely unsupported by any details whatsoever. He would argue that R1 has been

5(2013) 6 SCC 515
6(2009) 12 SCC 78
7 (2011) 14 SCC 379
8 1967 SCC Online Mad 385
9 2008 (103) DRJ 464

victimized and that the charges are nothing but a concoction of falsehoods, intended to deny him of his rightful entitlement as a student in the college.

25. He would also argue that being a student, it was incumbent upon CMC to have addressed the matter only from that perspective. While his primary argument is that the college has misdirected itself in initiating disciplinary proceedings against R1 treating him as an employee, he would alternatively submit that in the absence of any material provided by the college to establish that the performance of R1 as a doctor/student was below average or found wanting in any respect, the impugned proceedings cannot be sustained.

Submissions on behalf of NMC

26. Ms.Shubaranjani Ananth, learned Standing Counsel for NMC/R2 would support the position that the engagement of R1 with CMC was only as a student. She has relied upon the *Postgraduate Medical Education Regulation (PGMER), 2000* (in short '2000 Regulations') and the *National Medical Commission Registered Medical Practitioner (Professional Conduct) Regulations, 2022* (in short '2022 Regulations').

27. According to her, the above Regulations would establish beyond doubt that the tenure of R1 in CMC would be as a student only, and hence the

approach of CMC treating R1 as an employee was inappropriate and contrary to the Regulations.

28. We have heard all learned counsel and have also devoted our careful attention to the submissions made, the documents placed before us and the case law cited.

Discussion

29. At the outset, we record the position that the admission of R1 in CMC, Vellore was on the basis of his meritorious performance in NEET Super Speciality qualification examination. He was issued an admission letter dated 11.06.2018 allotting him to CMC, Vellore for M.Ch. in the Department of Cardio Thoracic Surgery in Round I of the admission process and accepted the same.

30. On 08.09.2018, he was issued with the post-graduate appointment order, that reads as follows:

CHRISTIAN MEDICAL COLLEGE
VELLORE-632 002, INDIA

Tele No: 0416-2284201,2284508, 2284262
Telegram : MEDICOL
TeleFax:0416-2262788/2262268 /2232035
Email : princi@cmcvellore.ac.in

POSTGRADUATE APPOINTMENT ORDER

EMP NO : 21601
EMP NAME : DR.BIRAVINTH SOLOMON F
DATE OF BIRTH : 04/06/1985
HOSPITAL NO. : 330624H
COURSE NAME : M.CH. CARDIO THORACIC SURGERY
ACCMODATION : ACCOMODATION PROVIDED

DESIGNATION	*PERIOD*	*STIPEND*
Senior Resident I Year	*23/08/2018 – 22/08/2019*	*Rs.48,090/-*
Senior Resident II Year	*23/08/2019 – 22/08/2020*	*Rs.50,495/-*
Senior Resident III Year	*23/08/2020 – 22/08/2021*	*Rs.53,020/-*

Consequent upon your being selected to undergo the above course in this Institution, you are hereby appointed as a SENIOR RESIDENT in the Christian Medical College and Hospital, Vellore as noted above. You will be governed by the regulations of this Institution.

ACCEPTED
Sd/- *Sd/-*
Signature of the Appointee and Date *PRINCIPAL*

31. The above document makes it clear that R1 has been admitted to the M.Ch. Cardio Thoracic Surgery course and his appointment as Senior P.G.Registrar in the Department of Cardio Thoracic Surgery is consequent upon such selection. It also states that he will be governed by the Regulations of the Institution.

32. To a specific query, Mr.Krishna has clarified the position, on

instructions, that CMC, Vellore has only Staff Service Rules in vogue governing the appointments and service conditions of the employees and does not have any rules or regulations for regulating the conduct and disciplinary proceedings of the students while undergoing a course in CMC.

33. It is a matter of surprise to us that an institution of the vintage of CMC has not felt the need to put in place a set of regulations governing the conduct of students during their study there. We are told that regulations are in the draft stage and are of the firm opinion that no further time should be lost in finalising such student guidelines/regulations. Let the same be done at the very earliest. In any event, and be that as it may, reference thus, to '*regulations of this institution'* in the admission order, can only mean Staff Service Rules of CMC, Vellore, as there are no student regulations there.

Is R1 to be treated as a student or employee

34. We now advert to the question of whether R1 is an employee or a student in the college. He has been appointed as ***Senior Resident Post-Graduate Registrar*** in CMC, in-charge of a very responsible position in the Cardio-Thoracic Intensive Care Unit. The question is whether, in such circumstances, R1 should be treated as a Student in CMC or as a member of the Staff/employee.

35. The term 'Registrar' is a term that essentially means a speciality trainee in a hospital, or, in other words, a Doctor who is undergoing training in a specific speciality. The 2000 Regulations deals comprehensively with Post Graduate Medical Education India, including those undergoing super-speciality courses, that finds mention in Regulation 2, indicating the tenure of the course. Regulation 13 deals with 'Training' as an important facet of the educational programme. The Regulations, in so far as relevant to this case, are extracted as under:

> *13. TRAINING PROGRAMME*
> *13.1 The training given with due care to the Post Graduate students in the recognised institutions for the award of various Post Graduate medical degrees / diplomas shall determine the expertise of the specialist and / or medical teachers produced as a result of the educational programme during the period of stay in the institution.*
> *13.2 All the candidates joining the Post Graduate training programme shall work as 'Full Time Residents' during the period of training and shall attend not less than 80% (Eighty percent) of the imparted training during each academic term of 6 months including assignments, assessed full time responsibilities and participation in all facets of the educational process.*
> *13.3 The Post Graduate students undergoing Post Graduate Degree/Diploma/Super-Speciality course shall be paid stipend on par with the stipend being paid to the Post Graduate students of State Government Medical Institutions / Central Government Medical Institutions, in the State/Union Territory where the institution is located. Similarly, the matter of grant of leave to Post Graduate students shall be regulated as per the respective State Government rules.*

13.4 (a) Every institution undertaking Post Graduate training programme shall set up an Academic cell or a curriculum committee, under the chairmanship of a senior faculty member, which shall work out the details of the training programme in each speciality in consultation with other department faculty staff and also coordinate and monitor the implementation of these training Programmes.

(b) The training programmes shall be updated as and when required. The structured training programme shall be written up and strictly followed, to enable the examiners to determine the training undergone by the candidates and the Medical Council of India inspectors to assess the same at the time of inspection.

(c) Post Graduate students shall maintain a record (log) book of the work carried out by them and the training programme undergone during the period of training including details of surgical operations assisted or done independently by M.S./M.Ch. candidates.

(d) The Record (Log) Books shall be checked and assessed periodically by the faculty members imparting the training.

13.5 During the training for award of Degree / Super-speciality/Diploma in clinical disciplines, there shall be proper training in Basic medical sciences related to the disciplines concerned; so also in the applied aspects of the subject; and allied subjects related to the disciplines concerned. In the Post Graduate training programmes including both Clinical and Basic medical sciences, emphasis has to be laid on Preventive and Social aspects. Emergency care, facilities for Autopsies, Biopsies, Cytopsies, Endoscopy and Imaging etc. shall also be made available for training purposes.

13.6 The Post Graduate students shall be required to participate in the teaching and training programme of undergraduate students and interns.

13.7 Training in Medical Audit, Management, Health Economics, Health Information System, basics of statistics, exposure to human behaviour studies, knowledge of pharmaco – economics and introduction to non- linar mathematics shall be imparted to the Post Graduate students.

13.8 Implementation of the training programmes for the award of various Post Graduate degree and diplomas shall include the following:-

(a) Doctor of Medical (M.D.) / Master of surgery (M.S.)

(i) Basic Medical Sciences

Lectures, Seminars, Journal Clubs, Group Discussions, Participation in laboratory and experimental work, and involvement in research studies in the concerned speciality and exposure to the applied aspects of the subject relevant to clinical specialities.

(ii) Clinical disciplines

In service training, with the students being given graded responsibility in the management and treatment of patients entrusted to their care; participation in Seminars, Journal clubs, Group Discussions, Clinical Meetings, Grand rounds, and Clinico - Pathological Conferences; practical training in Diagnosis and medical and Surgical treatment; training in the Basic Medical Sciences, as well as in allied clinical specialities.

(b) Doctor of Medicine (D.M.) / Magister Chirurgiae (M.Ch.)

The training programme shall be on the same pattern as for M.D. / M.S. in clinical disciplines; practical training including advanced Diagnostic, Therapeutic and Laboratory techniques, relevant to the subject of specialisation. For M.Ch. Candidates, there shall be participation in surgical operations.

36. The Regulations of the NMC encompass super-speciality candidates as well. An important component of the education at that advanced level is the training that they are given in the institution concerned and that is dealt with minutely in Regulation 13 extracted above. Thus, we have no qualms in concluding that a post-graduate or super-speciality candidate is only a student in the hospital/college concerned. Their conduct, discipline and activities in the College, and as part of the course are to be governed only by the student

Regulations.

37. In fact, Rule 4.16 of the Staff Service Rules of the CMC proceeds on the same understanding, and aligns with the 2000 Regulations, and is extracted below:

> *4.16 "Trainee" means a person to whom the facilities of the College are extended for training or learning work in a relevant field with or without an allowance of stipend. A Trainee may be charged a fee for the training by the Management. A Trainee is not an employee of the College and has no rights of employment.*

38. Dr.Solomon, as part of his super-speciality course, has been engaged as a Senior Resident Post-graduate Registrar in the College, undergoing training there. Rule 4.16 stipulates that a trainee may or may not be given a stipend, and that he may be charged a fee for the training. In this case, R1 is both receiving a stipend as well as well as paying a fee and hence both stipulations under the above Rule are satisfied. The Rule makes it clear that a Trainee is not an employee and has no rights of employment.

39. CMC has also referred to the *Minimum Standard Requirement For the Medical College 50 MBBS Admissions Annually Regulations, 1999,* to state that R1 was an in-service candidate who was also part of the Staff. *Schedule II,* that deals with *Staff Requirements* states in clause (6), that a *'Teacher in higher specialities like Cardiology, neurology, Neuro-Surgery shall not be counted*

against the complement of teachers required for under graduate medical education'.

40. This does not, however, support the position that R1 was an employee as it relates specifically to teachers in higher specialities who do not to form part of the teaching complement for UG medical education. Then again, the Department-wise Staff requirement list in clinical departments reads thus:

> *(1) GENERAL*
>
> *1. Each department shall have a Head of the Department of the rank of Professor except in the departments of Dermatology Venereology and Leprosy, Psychiatry and Dentistry where Associate Professor may be the Head of the Department who shall have overall control of the Department.*
> *2. The Staffing pattern of the departments shall be organized on the basis of units.*
> *3. A Unit shall have not more than 30 beds in its charge. However, in departments of Tuberculosis & Respiratory Diseases, Dermatology Venereology & Leprosy, Psychiatry, Ophthalmology & ENT one unit shall be of MCI sanctioned strength for that speciality even if the total number of beds is less than 30.*
> *4. The minimum staff complement of each unit shall consist of the following, namely:-*
> *(a) Professor / Assoc. Prof. - 1*
> *(b) Assistant Prof. - I*
> *(c) Senior Resident - 1*
> *(d) Junior Residents (JR) - 2 (Except in the departments of Tuberculosis & Respiratory, Psychiatry and Dermatology Venereology & Leprosy, Otorhino-laryngology and Ophthalmology where JR is one per unit)*
> *In addition to the above staff, additional Sr. Residents and Junior Residents shall be provided according to the load in Burn Ward ICU, emergency, ICCU, Nursery, Labour Room and in other*

critical/intensive care unit/units for providing services round the clock.

41. It has thus been argued on behalf of the College that R1 was an employee, laying emphasis on the fact that Senior and Junior Residents are mentioned in the Staff requirement-list in clinical departments. We however disagree as the mere mention of 'Resident' in Staff list would not lead one to conclude that a Resident is an employee.

42. If we were to hold otherwise, even a PG or UG Student who acts as a junior resident runs the risk of being equated to an 'employee' of the college as even a junior resident figures on the Staff requirement list. Our conclusion on this point is thus that a candidate undergoing a super-speciality course in a College is in the position of a student only, and not an employee, and cannot be treated as such for the purpose of applicability of the employee staff service Rules of the concerned Institution.

43. As a footnote to our conclusion on this issue, we however note that a Resident performs critical duty qua the patients in the hospital and to this extent must be conscious of the responsibility of the task entrusted to him. His status as a student in the College cannot minimise the gravity of the assignment undertaken, and neither can it lessen the consequences of medical negligence or poor professional conduct.

Challenge to Charge Memos as non-speaking and violative of procedure as well as principles of natural justice

44. Mr.Prasad has taken us in detail through the charges under both Charge Memos. Since the charges laid are of some consequence, we extract the same below in full:

Charge Memo 1

OFFICE OF THE PRINCIPAL
CHRISTIAN MEDICAL COLLEGE, VELLORE 632 002.

November 27, 2019

CHARGE MEMORANDUM

Sub: CMC – Dr.Biravinth Solomon (Emp No.21601), Sr.P.G.Registrar, Department Of Cardio Thoracic Surgery – certain allegation of act subversive of subversive discipline – charges framed – explanation called for – reg.

Ref: From Dr.RoyThankachan, Prof & HOD, Department of Cardio Thoracic Surgery,
Dr.Korah Kuruvilla, Prof & HOD, Cardio Thoracic Surgery Unit II,
Dr.Birla Roy Gnanamuthu, Prof & HOD, Cardio Thoracic Surgery Unit III to the Principal, letter dated 9.11.2019.

***

You are working as Sr.P.G.Registrar in the department Cardio Thoracic Surgery.

1. It has been reported that you joined M.Ch. Cardiothoracic Training Programme in the year 2018 and during these period the following charges are alleged against you:

(i) That you are consistently being late to work despite repeated warning letters
issued from the department.
(ii) That you regularly absent from the work place during working hours for long period that you were not contactable during absence from work place.
(iii) That you willfully absent yourself from duty without any prior permission or approval from your immediate superior,
(iv) That while on ICU duty you neglected patient who were under your care.

(v) That you are not behaving in a professional manner with patient and using inappropriate language to patients.
(vi) That when the staff on duty in the ward try to contact you with regard to patient issues you are not attending phone calls and they had to contact the "on call" consultation to clarify the issues.
(vii) That you are argumentative and unwilling to accept instructions from senior faculty on many occasions and you have been verbally abusive to some of the senior consultant
(viii) That your surgical skills and judgment skills are for inferior to what should be expected from an MS General Surgery Post Graduate doctor. On many occasions the consultant surgeon have tried to help you with techniques and procedures; however it is noted by them that you are unwilling to learn and show no improvement in surgical skills over time.
(ix) That it is reported by KN ward staff that you have been asking inpatients why they got admitted in CMC as you felt that charges were very height.

2. As per our staff service rule No.21.3, you are expected to be loyal to our Institution and shall not disparage/defame the college/ its management. But on the contrary it is alleged that you are indulging act i.e. spreading false information among the inpatients that our institution is charging high rate towards treatment of the patients, which is prejudicial to the interest of our institution.

3. As per staff service rules you are expected to act in the best interest of the college at all times. Your about alleged willful absenteeism reporting late for work not attending the phone calls at the required and emergency situation with regard to patient issues and neglecting the duties allotted to you in treating patient shows your lethargic and irresponsible behaviour in attending your duties, which are unbecoming of a hot medical professional. As a medical professional you are expected to be more sincere and dedicated in your duty as your work involves care and safety of patient it lives.

4. It is also reported that you were warned many times by your head of the department orally and through written Communications.

5. That above act of yours, if proved, would constitute misconduct as per Rule No.30.2, 30.3, 31.2, 31.4, 31.29, 31.31, 31.32, 31.33, 31.39 and 31.58, the

extract of which is given below:

- *30.2 Late attendance or absent from duty without notice are permission are leaves.*
- *30.3 Leaving the place of work during working hours without permission or absence without permission from the place of work*
- *31.2 Any act the consequences of which is serious in nature*
- *31.4 Improper behaviour*
- *31.29 Insubordination or obedience*
- *31.31 Habitual late coming*
- *31.32 Gross negligence for habitual neglect of work*
- *31.33 Deliberately or recklessly making false vicious, malicious or defamatory statement against the college*
- *31.39 An act subversive of discipline or good behaviour in college premises or outside the college premises, it effects the discipline or administration of the college or has a bearing on the smooth and efficient working of the college or the reputation of the college.*
- *31.58 Any conduct prejudicial to the interest or reputation of the college of any act or conduct involving moral turpitude whether such act or conduct is committed inside or outside the college premises.*

6. Under the circumstances you are hereby called upon to give your explanation in writing within three days from the receipt of this charge memorandum, as to why disciplinary action should not be taken against you, failing which, it will be presumed that you have no explanation to offer and action will be taken according to disciplinary procedure.

Dr. Anna B. Pulimood
Principal

Charge Memo 2

15.06.2020

Ref:
1. From Dr. Roy Thankachen, Prof. & HOD, Department of Cardio Thoracic Surgery, Dr. Birla Roy Gnanamuthu, Prof. & HOU, Department of Cardio Thoracic Surgery Unit III, Dr. Korah T Kuruvilla, Prof. & HOU, Department of Cardio Thoracic Surgery Unit II, Dr. Madhu Andrew Philip, Professor & Dr. Vinayak Shukla, Professor, Cardio Thoracic Surgery to the Principal, letter dated 13.06.2020.

2. *Charge Memorandum dated 27.11.2019.*
3. *Your explanation dated nil received on 27.11.2019.*
4. *Enquiry Report dated 24.12.2019.*
5. *Our letter dated 21.2.2020*
6. *Memorandum dated 15.6.2020.*

* **

You are working as Sr. P.G. Registrar in the Department of Cardio Thoracic Surgery and you joined M.Ch. Cardiothoracic Training Programme in the year Based on serious allegations against you your services were suspended with effect from 16.6.2020 vide memorandum dated 15.6.2020.

1. In this office memorandum second cited charges were framed against you for various misconducts alleged to have been committed by you during your training course in the department of Cardio Thoracic Surgery, with regard to your willful absenteeism for duty, reporting late for work, not attending the phone calls at the required and emergency situation with regard to patient issues and neglecting the duties allotted to you in treating patient. You submitted your explanation letter for the Charge Memorandum on 27.11.2019.

2. It is further reported that in order to give you fair chance to explain your position an internal enquiry was conducted and the committee submitted its report dated 24.12.2019. In the report the committee recommended you to undergo a medical evaluation in Psychiatry, HRS and PMR and submit the medical report to the undersigned. As you did not complete your medical evaluation the undersigned again instructed you to complete your medical evaluation vide her letter dated 21.2.2020. But, it is reported that till date you did not obey the instructions of the undersigned with regard to your medical evaluation.

3. It is reported that in spite of your superiors offering to help and guide you, you had been very hostile, extremely insubordinate and rude towards staff, colleagues even the senior most consultants. Over the last two years of your training period, due to your lack of basic clinical competence, your aggressive antisocial and insubordinate behaviour your superior and Head of the Department lost faith on you.

4. It is further reported that in your department Library they have a protocol by which Registrars could borrow two books at a time from the

library, after making an entry in the library register. But without following due procedure for taking books from the library you had taken the following books without documentation and without permission.

1. General Thoracic Surgery (Thomas W. Shields) (Volume I 8 II) - 2 books.

2. Cardiac Arrhythmias - 1 book

3. Thoracic Surgery Pearson - 1 book

5. In addition to the above three books you also refused to return the following books which you took from the department library after entering in the library register:

1. *Cardiac Surgery (Kirklin) (Third edition) (Volume 1 & 2) - 2 books.*
2. *The papers of Alfred Blalock (I & II) - 2 books.*

6. As your department had enough evidence to prove that the books were in your possession they enquired to you about the books for which you aggressively refused to return the books and claimed ignorance of some of the books. The approximate cost of the missing books are Rs.60,000/- to Rs.70,000/. Your alleged act of not returning the books to the department library would be considered as stealing of books from the library.

7. The above act of yours, if proved, would constitute misconduct as per Rule No. 31.4, 31.29, 31.39 and 31.50, the extract of which is given below:

31.4 improper behaviour

31.29 Insubordination or disobedience of reasonable order of a superior.

31.39 Any act subversive of discipline or good behavior in the College premises or outside the College premises, if it affects the discipline or administration of the College or has a bearing on the smooth and efficient working of the college, or the reputation of the College.

31.50 theft, dishonesty in dealing with transactions connected with College property.

8. Under these circumstances, you are hereby called upon to give your

explanation in writing, within three days from the receipt of this Charge Memorandum cum suspension order, as to why disciplinary action should not be taken against you, failing which, it would be presumed that you have no explanation to offer and action will be taken according to disciplinary procedure.

45. Mr.Prasad has argued that the charges are vague, bereft of details and hence unsustainable. He has also argued that R1 was never put to notice previously about his alleged short-comings. He has also argued that the procedure followed was improper and no opportunity was given to R1 in the course of enquiry.

46. A synopsis of the events leading to the issuance of Charge Memo I has been set out in the proof affidavit of Dr. Roy Thankachen, professor and head of Cardio-Thoracic Unit III in CMC filed in the course of enquiry, and we extract the same below for completeness in narration:

. . . .

3) I further state that while he was working in the said position, he has committed several misconducts which are given below;
Incident No -1
The charged employee has shown poor punctuality, reporting late for work and regularly absented from the work place during working hours for long period of time and he was not contactable during his absence from work place. Hence, he was issued with a warning letter dated 22.12.2018 and he was instructed to improve his behavior and the quality of work. However he repeated the same behaviour and there has been no improvement despite of warning letters. Copy of the letter dated 22.12.2018 may be marked as Ex.M.W.----
Incident No -2

We have noticed that the charged employee's capabilities are below the standard of what is expected of any surgeon undertaking this higher specialty course. This includes sterile techniques, basic surgical skills and knowledge of the fundamentals of medicine. A few months after he joined the course, it was reported by Dr.Deepak Narayanan, Asst. Professor that the charged employee did not follow the standard protocols of sterile techniques, as a result patients were at risk of developing infections. It was reported by Dr. Vinayak Shukla, Professor that when he assessed the trainees by giving tests periodically the charged employee has scored poor marks and many time he submitted blank answer papers without writing anything.

On many occasions the consultant surgeons have tried to help him learn correct techniques and procedures; but he was unwilling to learn and showed no improvement in surgical skill over time unlike his colleagues. Hence, he was directed to improve his quality of work vide our letter dated 22.12.2018. Despite repeated memos and warnings he repeated the same mistakes and he did not improve his quality of work. Therefore, we requested the Principal through our letter dated 01.07.2019 to take suitable action. Copy of the letter may be marked as Ex.M.W. ---

Incident No-3

In the month of August 2019 when he was assigned as the onsite and on call doctor in the semi ICU, suddenly one of the patients developed acute distress.

Dr Biravinth had been informed by the nurses about this but he ignored them and was in fact very rude to them. Fortunately the on-call consultant Dr. Ravi Shankar was nearby and had to intervene and intubate the patient. This could otherwise have been a very dangerous situation for the patient concerned or even lead to litigation for medical negligence. Hence, Dr. Biravinth was warned for this behavior vide my letter dated 9.8.2019. Copy of the letter may be marked as Ex.M.W.---

Incident No-4

We have received numerous oral complaints from the nursing staff, doctors and from a few of the patients with regard to his rude comments and remarks about patients and other department's staff

which are unacceptable and against our staff service rules. It is reported by Dr.Vinayak Shukla that the charged employee called Dr.Rijoy an idiot for which Dr. Vinayak Shukla summoned him to his office and warned him verbally. For this kind of behavior, he was warned in the above mentioned letter dated 09.08.2019. It is further reported by the heads of all 3 units of cardiothoracic surgery that around this time we had a meeting with Dr. Biravinth to discuss these issues, during this meeting, he angrily called one of the consultants a "useless person".

Incident No-5

On 14.8.2019 the charged employee had requested one day leave to go to Chennai for urgent personal work which was allowed. However he did not later return and report to work and could not be contacted by phone despite many attempts from the cardiothoracic office. This was then informed to the Vice Principal vide our letter dated 19.08.2019. Dr. Biravinth being a trainee of CMC Vellore, it was our responsibility to know the whereabouts of our students and we were obliged to inform the principal's office. Copy of this letter may be marked as Ex.M.W.----. He eventually reported to work after several days. Even after this incident he has absented himself occasionally without prior information or permission from his superiors. Therefore, on 27.08.2019 our principal and vice principal summoned the charged employee and discussed with him the complaints against him. He was again advised to work sincerely; to cooperate with other surgeons; nurses and ward staff; behave in a courteous manner with all the members of the team, inform and get permission from his superiors about all his leave. And also he was warned against repeating the same mistakes. Copy of the minutes of the meeting was sent to us for our information and the same is marked as Ex.M.W.----.

Incident No.6

We have received a few oral complaints from patients that he did not behave professionally and used inappropriate language towards patients. It is reported by Dr.Santhosh R.Benjamin, Asst. Professor that one elderly male Patient was admitted in the ward with chest pain and he was being taken care of by his daughter. The patient was feeling some chest discomfort late at night and Dr. Biravinth

who was on call that night told the patient and his daughter that his chest pain will settle if his wife was called to sleep with him in the night. The daughter was offended by such rudeness shown by the doctor on duty and she made this complaint to Dr. Santosh the next day who in turn reported this to me.

Incident No-7

Staff nurse Sr. Chitra was on duty in the Wards on night and tried to contact the charged employee who was on call with regard to some urgent patient issues. He did not answer repeated phone calls and hence, she called Sr. Jasmine, who the staff In-charge and explained the situation. Sr.Jasmine gave her the contact number of Dr.Rijoy, who was "on call" consultant that day. Thereafter the nurse contacted Dr.Rijoy and he came and clarified the issues.

Incident No - 8

It is reported by KN Ward staff that he had been asking inpatients why they got admitted in CMC as he felt the charges were very high.

……..

i) Communicating with him- It was difficult for them to explain issues regarding basic patient management in the ICU as there would be either no response or an aggressive argumentative outburst.

ii) As an on Duty registrar, his instructions to Nurses regarding patient management were unclear and his assessment and discussion of patient matters with the duty consultants were far from accurate necessitating them at all times to verify most of the time with what was being said. He would sometimes be very difficult to contact during duty hours.

iii) His absolute unwillingness to listen to several of the basic management strategies suggested by the duty consultant and his constant argumentative stance lead to constant difficulties in patient management during his duty periods.

b) We have noticed that Dr Biravinth Solomon's capabilities are far below the standard which is expected of any surgeon undertaking this higher specialty course. His suturing ability and quality of work could jeopardise patient outcome and on many occasions we have

pointed out this to him. To ensure safe surgical practice we have asked for him to be directly supervised by senior colleagues.

However, as most of our candidates come from different training institutes, there is bound to be differences in their levels of training and proficiency which is very acceptable. We had taken note of this and were helping him out by trying to encourage him and covering for his difficulties faced. But, to our utter dismay, this was responded to by an aggressive stance and a feeling of victimisation. It becomes quite impossible to train someone who is not willing to listen.

c) Basic training in cardiothoracic surgery involves supervision and assisting of trainees to institute cardiopulmonary Bypass. In training him to put a patient on bypass, inspite of repeated instructions, on. the steps involved during cannulation of the aorta, his overconfident and impulsive behaviour prevented, him to listen and follow clearly repeated instructions. This led the patient to bleed excessively which could have put the patient in grave danger.

d) He has been very rude to staff and has referred to supervising Doctors as useless (personally verified) and idiot. He has threatened to beat somebody with slippers. With all this aggressive behaviour on his part, his seniors would not be comfortable delegating patient care to him.

4) Since the charged employee has not rectified his mistakes, me and Dr. Roy Thakachen, Prof. & HOU of Department of Cardiothoracic Surgery Unit 1, Dr.Birla Roy Gnanamuthu, Prof. & HOU, Department of Cardio Thoracic Surgery Unit Ill jointly sent a complaint against the charged employee to the Principal vide our letter dated 9.11.2019 to the Principal for suitable action.

……..

3) On a regular working day, the consultants take classes for trainees starting at 7 am sharp, just before ICU rounds, but Dr. Solomon never came on time, always walking in late or never, with not even an excuse or an apology offered for being late.

4) Between the ICU and the ward founds he would disappear often without an explanation, even when it was his turn to present the

cases during rounds. Later, half way through the rounds or during the end of it, he would re appear without any explanation for his absence. When I asked him why he keeps disappearing while he is expected to be present during rounds, he nonchalantly declared that he wanted to eat.

5) His case presentations during rounds were so inaccurate and incomplete that it was obvious to me that he never had examined or studied any of the in patients while he is on duty. He hardly spent time in the ward or patients, even when on duty. He always neglected his patients.

6) Even though all trainees are taught the management of intercostal drainage tubes systematically, how to insert one and how to remove it, I noticed that every time Dr. Solomon removed an ICD, the patient ended up with a collapsed lung. The nurses reported that he is careless and uses improper technique other than what he had been taught. After scores of attempts teach him and correct him, since this complication continued to happen, I did not allow him to remove any more tubes, considering the risk for patient's life. Patient may die due improper management of these tubes.

7) When Dr. Solomon is on duty, either in the ward or ICU, whenever I went in to check on a patient, most of the time, he was missing from the ward, without any intimation to anyone, doctors or nurses. This posed severe danger to the patients' lives, with no doctor to attend to a patient in acute trouble in a ward full of patients with cardiac surgical problems.

8) His attitude to work in the operating room was even worse. He will slowly walk in to the operating room long after the surgery has started, and will scrub in without even attempting to utter an excuse or apology as to why he is late.

9) His basic technique of scrubbing for a case and the practice of sterile techniques desired of any surgeon left much to be desired. These are basics for any surgeon, taught during the 2nd year of medical training. Failure to follow these are potentially dangerous to the life of any patient.

10) During any surgical procedure, he always resistant to teaching and instructions, often uttering unrelated and irrelevant nonsensical comments.

11) Once when we surgically opened a chest to drain infected pus (empyema), at the sight of the dirty pus, he ungloved himself in a huff and walked away, loudly announcing to the team that he does not operate on such "shit" cases.

12) His surgical skills are so extremely poor, even below that of a junior medical student. For the sake of patient safety, we avoided allowing him to even stitch, for fear of the wounds falling apart, getting infected, thus killing the patient. After many attempts to teach him and correct him, since will not amend his ways or try to improve, I had to ban him from even assisting in complicated thoracic cases. Neither did I want to hear uncalled for and hostile remarks and comments during surgery. Even the anaesthetists were perturbed by his weird comments on their skills.

13) While there was work to be done in our theatres, he was frequently walking into other departments' surgical theatres and pass unnecessary and uncalled for comments or suggestions with regards to their surgical procedure and skills.

14) The worst of my experiences with Dr. Solomon was of him stealing three expensive books from my table in the office. At that particular period in time, I was involved in writing up a few a academic papers for publications and hence I was using these three volumes of standard text books to refer (Shield's and Pearson's text books on general thoracic surgery). One afternoon in the office, while I was studying these books, he came to me and told me rudely that he wants those books. Indeed, I refused, saying that since I am using them currently and that I am not in a position to lend him these books. He was visibly annoyed at my refusal and he walked away loudly cursing, muttering and swearing some un understandable words under his breath. I was using those books till the end of that day.

The very next morning, when I resumed my paper writing work, I was shocked to notice that all three volumes of the books were missing and immediately raised an alarm. After searching all around the office, we realized that the books have indeed been removed from the office and perhaps Dr. Solomon was the culprit.

Many attempts to contact him by various phones were futile. After some consultations within the senior staff, we deputed one of the

office attenders Mr. Vinoth and a consultant Dr. Deepak Narayana, to go to his room to meet him personally and inquire of him. While these two and I were walking past the library, we met up with Dr. Solomon in front of the library, and we enquired of him if he has any knowledge of the missing books. He started to rave, rant and curse in anger, denying any knowledge about the missing books. He also threatened me of dire consequences if I continue to ask him about the books that he is not in possession of.

Following the stolen book incidence, the principal suspended him from the course. Subsequently he had, at least 4 times, attempted to accost me in my residence, even in unusual hours despite me requesting him not to confront any staff outside our working places.

47. The submission that R1 was not intimated about the shortcomings at any point in time till the issuance of the Charge Memo does not appear to be factually correct as compilation dated 26.04.2024 filed by CMC does contain several documents setting out the primary details in regard to the allegations as and when the alleged shortcomings had occurred, the persons who had brought the same to the attention of the management, fellow doctors, staff nurses and seniors/HOD of the units in the Cardio-Thoracic Department, and action taken on the complaints by way of letters issued to R1.

48. Correspondences have been sent to R1 even prior to the first charge memo dated 27.11.2019 which reveal that R1 was put to notice about the shortcomings relating to late-coming, absence and more importantly about professional incompetence.

49. CMC has alleged that while on ICU duty, R1 had neglected patients who were under his care, his professional capabilities have been found to be inadequate by his fellow-doctors, staff nurses and seniors. CMC has alleged that he does not behave in a professional manner with patients, using inappropriate language. CMC has alleged that he has been defaming the institution by stating that the charges for services are exorbitant when compared with other hospitals.

50. Since there had been no improvement in performance of R1, Charge Memo 1 dated 27.11.2019 was issued. Explanations were sought and furnished vide reply of R1 of even date. An internal enquiry was conducted by a committee comprising three surgeons from Departments other than his parent department. Report dated 24.12.2019 was submitted by that Committee after hearing the College as well as R1.

51. Inter alia, that Committee had recommended that R1 undergo a medical evaluation in the Psychiatry, HLRS and PMR Departments. The concerned HOD of Physical medicine and Rehabilitation Department was also requested to assess R1 as dexterity of the limbs and fingers, and precise movements are key to the skill of a cardio-thoracic surgeon. However, despite several reminders and directives, he did not turn up for the evaluation.

52. While so, in June 2020, R1 was charged with taking away three textbooks from the library without having properly checked the books out, following procedure. When asked he denied the same. The Proof affidavit of Dr. Roy Thankachen states that an office attendant was sent to retrieve the books from the hostel room occupied by R1.

53. The attendant found the room occupied by an unknown person. The books were found in the room along with a printer being used to photocopy the books. Despite photographs and video footage that CMC produced to prove the aforesaid narration, R1 continued to deny that the books were with him leading to issuance of Charge Memo II.

54. R1 was suspended on 15.06.2020. Charge Memorandum II was issued on 19.06.2020 and an explanation sought. A reply was given by R1 on 25.06.2020. A domestic enquiry was conducted and the College made its submissions before the Enquiry officer as did R1. CMC produced several witnesses, including the Professors and Heads of the Units in the Departments of Cardio-Thoracic surgery to support the allegations against R1. R1, for his part did not produce any witnesses. The result of the domestic enquiry, conducted by an external person, a HR Consultant, was the termination of R1.

55. As far as the charge relating to the library books is concerned, a

pendrive of the recording in the CCTV has been furnished to the Court. The pendrive does not contain raw footage from the CCTV camera, but a recording of the computer monitor upon which it was being viewed. The monitor contains the date and time stamp. R1 is seen entering and leaving a room thrice and every such time he returns with a book that he carries beyond our field of vision. He then leaves the premises with his backpack and the allegation is that the books were taken away by R1 in the backpack that he is seen carrying away from the premises.

56. R1 has not raised any objection to the filing of the pendrive before the Court. However, and in any event, we are saved from having to draw any conclusions from that recording for the reason that, on 19.06.202, upon receipt of the second Charge Memo, R1 had himself returned the books to the College. This allegation has thus been proved by the very conduct of R1.

57. Yet another charge laid is that R1 was asked to subject himself to an evaluation by the Departments of Physical Medicine and Rehabilitation (PMR) and Hard reconstructive surgery (HLRS) as well as for a psychiatric evaluation. He did not comply and this is yet another reason why the proceedings concluded adverse to R1.

58. CMC had noted that R1 had been displaying some difficulty in the

functioning of his hand and, particularly as R1 was a surgeon with the need for precise motor skills, asked him to obtain an evaluation of those skills from the competent departments. R1 has not countered these charges. Neither does he counter the position that he did not obtain the necessary evaluations.

59. Suffice it to say that in the aforesaid circumstances, it was within the right of CMC to seek the evaluations and if at all R1 felt that such evaluations were unnecessary, R1 could well have objected to the same or sought reasons for such a request so that he may have tendered an explanation. However, he did nothing of the sort, leaving no avenue but to draw adverse inference on this score.

60. Very pertinently, CMC has alleged that the surgical and judgment skills of R1 are far inferior to what should be expected from an MS (General Surgery) postgraduate doctor and that when corrected, R1 was unwilling to learn and showed no improvement in surgical skills over time. Though all charges are very serious, this last one is extremely grave as it impinges directly on the aspect of patient care.

61. In *N.Gangaraj*[10] (supra), the Supreme Court has reiterated the settled position that mere discrepancies in evidence should not matter in service law if

10 Foot Note Supra (7)

the departmental enquiry has been carried out following proper procedure, as the Constitutional Court would confine itself only to examining the decision making process to verify whether the conclusion of the disciplinary authority was supported by evidence, was arbitrary or unreasonable.

62. In that case, orders passed by the Tribunal and High Court were set aside as being unsustainable, in light of the aforesaid propositions reiterated in *State of A.P. V. Sree Rama Rao*[11] and *B.C.Chaturvedi V. Union of India*[12], both of three Hon'ble Judges of the Supreme Court, *High Court of Bombay V. Shashikant S. Patil*[13], *State Bank of Bikaner & Jaipur V. Nemi Chand Nalwaya*[14] and *Union of India V. P.Gunasekaran*[15].

63. Per contra, the employee in that case had relied upon the judgment in *Allahabad Bank V. Krishna Narayan Tewari*[16] arguing that where there was a finding recorded by the disciplinary authority that is not supported by any evidence whatsoever or which was unreasonable, such a finding could be interfered with by the Writ Court.

64. In *Gangaraj's*[17] case (supra), the Supreme Court holds that unless it was a case of no evidence or that the findings were perverse, the High Court

11 1963 SC 1723
12 (1995) 6 SCC 749
13 (2000) 1 SCC 416
14 (2011) 4 SCC 584
15 (2015) 2 SCC 610
16 (2017) 2 SCC 308
17 Foot Note Supra (7)

will not interfere even on the touchstone of the test of unreasonableness or arbitrariness. Thus, the take-away is that the threshold for interference would have to be far higher and more palpable than mere unreasonableness or arbitrariness but the Court should be convinced that the findings were perverse or that it was a case of no evidence at all. It is only in the latter situation that the order of the authority would be set aside.

65. In *Ram Lal Bhaskar*[18] too, the same conclusion has been arrived at by three Hon'ble Judges of the Supreme Court relying on the judgment in *Sree Rama Rao* (supra). So too in the case of *Apparel Export Promotion Council*[19], where reference is made to the observations of Lord Hailsham in *Chief Constable of the North Wales Police V. Evans*[20] to the effect that '*The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches, on a matter which it is authorized or enjoined by law to decide for itself, a conclusion which is correct in the eyes of the court'*.

66. Referring to the judgments in *Union of India V. Sardar Bahadur*[21] and *Union of India V. Parma Nanda*[22] as well as other decisions already cited in

18 Foot Note Supra (8)
19 Foot Note Supra (6)
20 (1982) 3 All ER 141 HL
21 (1972) 4 SCC 618
22 (1989) 2 SCC 177

the case of *N.Gangaraj*[23], the Bench reiterates that the disciplinary authority has a final word on factual matters and it is not the function of the High Court to review the materials and arrive at an independent finding on that material. Thus, unless the materials are shown to be non-existent or the appreciation itself is demonstrated to be perverse, the scope of interference in Article 226 of the Constitution of India would be limited.

67. The judgments relied upon by R1 are discussed now. In *Anil Gilurker*[24], the identical argument as R1 has advanced before us now, was raised to the effect that the charges levelled were vague, non-specific and hence the entire enquiry would be vitiated. Repelling that argument, the Court was of the view, citing the judgment in the case of *Gyan Chand Chattar*[25] that enquiry must be conducted having strict adherence to the statutory provisions, principles of natural justice and the charges should be specific, definite and giving the details of the incident which form the basis of charge. They reiterate that no enquiry could be sustained on vague charges.

68. In *K.Palani*[26], referring to the observations of Veeraswami,J. in *Md.Jan V. State of Madras*[27], the learned Judge has stated that it would be

23 Foot Note Supra(7)
24 Foot Note Supra (3)
25 Foot Note Supra (2)
26 Foot Note Supra (4)
27 W.P.No.79 of 1996

impossible to answer a vague charge in the absence of a precise time and place being indicated therein. Thus, he says '*to put a person on trial on such vague charges is to imperil his proper defence, to which he is entitled by the law'*.

69. In the present case, sufficient material has been referenced in the correspondences leading to, and in the course of the enquiry into the charge sheets. The defence of R1 has centered on the technical issue of whether he ought to have been subjected to enquiry as an employee and not a student. There has hardly been any defence or objection, for that matter, to the merits of the allegations. No evidence or witnesses have been produced to disprove the allegations levelled as against R1.

70. In light of this position there is really no avenue to intervene as far as the factual findings are concerned. Accordingly, we conclude that the submission that the Charge memos are unsustainable, non-speaking and bereft of relevant particulars has no merit, and we reject the same.

71. Coming to the aspect of procedure followed, it is a fact that the enquiry has proceeded as though R1 was an employee. However, the question is as to whether this would vitiate the process and the conclusions drawn therefrom.

72. The fact remains that R1 was engaged in patient care at a very senior

level and hence his medical skills, cannot be found to be wanting. In our considered view, and in this light of the matter, his categorization, either as a student or an employee, although important, and decided in the paragraphs supra, would hold only limited value, although undoubtedly, we must ensure that proper procedure has been followed by the college in the process of such enquiry and assessment. Of paramount importance however, is the professional competence of R1.

73. We had asked for his assessment records over the period of the course in CMC, and compilation dated 31.01.2025 that contains documents, stated to be extracts from case records of patients attended by R1. Mr.Prasad would point to the fact that there are neither patient names nor hospital number in the records.

74. However, on instructions from R1, he admits that the case records contain the handwriting of R1. In all the documents, the name *F.Solomon* (R1) is written in hand on the top right. Hence, it is an admitted position that those are extracts of case records written by R1 in his hand, relating to patients under his care during his engagement with CMC.

75. In the document at page 5 of that compilation, there is an endorsement that reads *'Late as well'* and *'Not a single question answered'*.

There is a signature of one V.Shukla, who we are informed is a senior doctor supervising R1. At page 7, there is a score that reads *'0/10'*. At page 8, we find the word *'WRONG'* in the margin and again the score *'0/10'*. There is an endorsement on 27.11.2019 that reads *'Absent'*.

76. At page 11, on 18.12.2019, there is an endorsement '*Not a single word'* with an illegible scrawl underneath. At page 12, we find the phrase *'completely wrong'* and the score '*0/5'*. It is the say of CMC that one of the modes by which progress of a super speciality candidate is measured is by maintaining notes on the case sheets of the patients attended by that candidate.

77. The progress record in this case would indicate that the supervising Doctor had commented adversely on various errors said to have been committed by R1 as well as his sub-par performance during 2019-2021. We are also given to understand that the professional assessment is a continuous one, and only a final examination is written by the candidates at the end of the three year period. The continuous assessment is recorded in a Log Book that the student is expected to maintain.

78. This finds reference in the Tamil Nadu Dr.M.G.R. Medical University Regulations relating to Super Speciality Degree Courses entitled '*Details of Clinical Examinations from the Academic Year 2017-2018*

onwards'. The practical scheme of M.Ch.Vascular Surgery reads as follows:

M.Ch Vascular Surgery
Practical Scheme

Particulars	*Time for candidate to examine the cases*	*Time for examiners to question the candidates*	*Maximum marks*
Long case	*1 case x 60 minutes*	*60 minutes*	*100*
Short case	*2 cases x 15 minutes*	*30 minutes*	*100*
Ward Rounds	*3 patients x 10 minutes*	*30 minutes*	*100*
OSCE	*5 stations x 3 minutes*	*15 minutes*	*50*
Viva Voce		*15 minutes*	*100*
Log Book			*50*
		Total Marks	*500*
Passing Minimum (50% in Total Clinical Marks)			*250*

** Viva including competency assessment – 100 marks (50 + 50)*

79. Thus, 50 marks is assigned for the log book, as may be seen from the tabulation above. We had called for the production of the log book. Since both CMC and R1 stated that the log book is in possession of the other, under docket order dated 31.01.2025, we called for affidavits from CMC and R1 confirming who was in possession of the same. R1 has filed an affidavit dated 03.01.2025 stating at paragraphs 6 and 7 as follows:

> *'6. It was brought to the notice of this Hon'ble Court that in terms of Clause 13.4 (c) of the Medical Council of India Post Graduate Medical education Regulations, 2000, log book must be maintained. I submit that in the log book, my observation regarding the patients and daily training will be there. This used*

to be verified by the faculties periodically. It was always kept in the hospital. Almost, we will be in the hospital every day, not only me every student.

7. I submit all of a sudden, I was suspended on 15.06.2020 and the log book remained in the custody of the Appellant Hospital and it is not with me.'

80. On the contrary, CMC has filed an affidavit dated 04.02.2025 stating as follows:

I, Dr. Solomon Satishkumar, son of Dr. Selvakumar Vettivel aged about 50 years having address at House No. 350, South Road, Christian Medical College Campus, Bagayam, Vellore 632 002 do hereby solemnly affirm and sincerely state as follows:

1. I am the Principal of the Christian Medical College, Vellore, the Appellant herein and I am well acquainted with the facts of the present case. I am filing the present affidavit pursuant to the order passed by this Hon'ble Court on 31.01.2025 directing the Appellant to file an affidavit explaining the procedure for maintenance of logbook by Super specialty candidates and in whose possession the logbook is normally retained.

2. I submit that Post Graduate Medical Education Regulation requires the Post Graduate candidates to maintain a logbook. The logbook is a record of the work done by the PG candidate and the training undergone by such candidate during the PG course. This would include details of operations, minor procedures, surgeries, seminars and case presentations, discussion topics, conferences and CME attended to by the PG candidate.

3. All M.Ch Cardiothoracic surgery candidates, being trained in the Appellant Institution are required to mandatorily maintain this personal logbook containing full details of his/her training. The logbook includes the following:

A. Title page including the name of the candidate;

B. *Dated and signed periodic verification of the records by a Head of Unit or Department;*
C. *Details of surgeries assisted or done by the candidate, with date;*
D. *Details of Minor procedures done by the candidate, with date;*
E. *Details of academic topic discussions attended by the candidate, with date;*
F. *Details of the Seminars and conferences attended by the candidate, with date; and*
G. *List of conferences attended by the candidate, with date.*

A sample of the logbook to be maintained by a PG candidate is annexed as Annexure A1. As can be seen from the same, the logbook is a personal record maintained by PG candidates and the same is required to be verified and signed by the Head of Unit or Department, four times a year. The template for logbook is also available in the department computer desktop and is freely accessible to any candidate to take a print out.

4. I submit that the onus is on the candidate to maintain a logbook and have it assessed at regular intervals by the Unit Head or Head of the Department, the logbook is not retained or maintained by the Institution. The logbooks are taken by the PG candidate upon completion of the course as it is a personal record of the training undergone by the candidate during the tenure of his/her course.

5. I submit that a copy of the logbook of a PG candidate duly filled in during his period of study between 2018-2021 is annexed hereto as Annexure A2. This log book was left behind by a PG candidate in the department to which he was attached during his course of study.

6. At the cost of repetition, it is reiterated that Dr. Biravinth Solomon's logbook was never handed over to the Appellant Institution for verification or assessment and the same which is required to statutorily be maintained has to be available only with

the PG candidate and not with the Institution. Since weightage is given to the logbook at the time of final assessment of the candidate's progress upon conclusion of the course, it is all the more essential that the candidate maintains the logbook throughout the course. The compilation filed by the Appellant Institution during the hearing on 31.01.2025 is completely irrelevant to the logbook and is a record of the candidate's periodical assessment by the senior doctors of the Department during his period of study. This is a self-assessment progress report filed in by the candidate in his own handwriting based on the questions put to him by his tutor.

7. I submit that the present affidavit may be taken on record and suitable orders may be passed in the interest of justice.

Sd/-
Principal,
Christian Medical College,
Vellore – 632 002, Tamil Nadu, India

81. Along with the affidavit, attested to by its Principal, CMC has annexed as A1, a sample log book and as A2, a copy of the log book of a PG candidate that had been filled in during his study between 2018 and 2021 and left behind in CMC by that candidate. In reply to the above affidavit and documents filed by CMC, R1 has filed an affidavit dated 05.01.2025 (received on 06.02.2025) reiterating that the log book was always retained in the hospital.

82. He states that since he was not allowed to complete the course, the Log Book is still with CMC. He draws support from the fact that Annexure A2 which relates to a PG candidate has been produced by the CMC. Thus,

according to R1, this would establish that the statement of CMC that the Log Book is with the student is utterly false as otherwise CMC would have no occasion to produce Annexure A2.

83. Having considered the rival contentions, we concur with CMC on the aspect that the Log Book is to be maintained by the candidate in question and retained in his/her possession. That is to say, the candidate may choose to leave it behind in the College, but that would not lead to the inference that the Log Book has been collected by the College and is in its possession. Merely because some other candidate had left the Log Book behind in the college and the same has been produced by CMC does not mean that the Log Book was officially in the possession and custody of the College.

84. The following Regulation finds place in the *Post Graduate Medical Education Regulations (PGMER 2000) – Working Principles - Training & Assessment.*

> *Log Book : Maintenance of log book, which would be day to day account of the activities of an educational in which the candidates participate. This would be duly attested by the teacher and available for inspection in the summative examination.*

85. The above Regulation indicates that the Log Book should be maintained by the candidate and be produced periodically before the superiors for inspection, assessment and marking. The Log Book would contain a day-to-

day account and hence, it stands to reason that such a book must be in the possession of the candidate, to be produced before the superiors for necessary endorsement/entries.

86. This is also clear from the use of the phrase *'available for inspection'* which means that the candidate must make it available for inspection in the summative examination. All in all, the non-production of the Log Book by R1 is a lacunae, that leaves us with no avenue to infer what his performance in the college has been thus far. Had the candidate produced the Log Book, it would have facilitated to establish his performance thus far and non-production of the Log Book, coupled with the remarks on the case sheets, vindicates the stand of the College on the competence of R1.

87. We had posed a query to NMC as to what the procedure is for a College to report below-par performance of super-speciality candidates. Written instructions dated 15.10.2024 have been circulated to following effect:

> *'It is pre-requisite to get registered Medical Graduation and Post-Graduate degree before joining Super-Speciality course in NMC/State Medical Council. Further, if any ethical issue arises, the concerned State Medical Council/NMC is empowered to take action as per clause 37 to 44 of NMC Registered Medical Practitioner (Professional Conduct) regulations, 2023 on receipt of a complaint from the College or any other person.'*

88. Registration should be sought and obtained from the State Medical Council by all Doctors upon completion of under-graduate medical degree

entitling them to practice as Doctors. Thus, it is the State Medical Council that is empowered to take action, in terms of Clauses 37 to 44 of the *NMC Registered Medical Practitioner (Professional Conduct) Regulations, 2023,* upon receipt of a complaint from the college or any other person in regard to issues concerning ethics or quality of a registered medical practitioner. This would equally apply in the case of a medical doctor who has completed either Post Graduate or Super Speciality course.

Conclusions

89. In light of the aforesaid stand taken by NMC, we are of the considered view that one course of action open to the College would have been to take action against R1 for dereliction of professional duty by intimating the State Medical Council as per the extant Rules to enquire into his performance as a Doctor in the College. However, this does not exclude other action include disciplinary action to be initiated as against the post-graduate candidate.

90. Though the college has not framed Rules governing the conduct of students, undoubtedly there must be measures to assess professional conduct and performance of the student. It would be a dangerous situation if a teaching hospital is vulnerable and unable to deal with concerns relating to professional performance of their students, particularly those at the post-graduate and super

speciality levels.

91. The operative findings of the Writ Court are as follows:

From the above Rule, it makes it clear that the trainee is not an employee of the College and no rights of the employment. Such view of the matter, this Court is of the view that treating the petitioner, who is admittedly student and trainee as a full time employee of the College, initiating departmental proceedings cannot be sustained in the eye of law. As far as the MCI Regulations, in the event, the petitioner is not having 80% of the attendance as required for examinations, he may not be in a position to take out examinations. Further, only in the serious misconduct like ragging or serious offence, the student can be debarred from writing examinations. However, the student cannot be restricted or debarred from writing the examinations for some whims and fancies of the respondent college.

20. The manner in which the entire enquiry commenced, indicate that stereotype affidavits have been received and charges have been framed for flimsy reasons. Further, the so-called committee also appeared to have assessed the petitioner as if he is not fit to be a surgeon. This Court is of the view that such exercise is made only in order to some or other to throw the petitioner away from the institution. It is not the case of the respondents that he has been involved in any ragging or criminal offences to rusticate him from the college. What has to be seen in the case of trainees are their performance and the mandatory attendance for writing examination. The Regulation 14 deals with Examination and Appendix II deals with guidelines on appointment of Post Graduate Examiners, same stipulates that it has to be done only by the concerned University shall supervise and Co-ordinate the examination on behalf of the University with independent authority. So, when the control of examinations is totally with the university; when the person has qualified in attendance and training, he cannot be non-suited merely on the basis of some vague accusations treating him as a permanent employee of the College.

21. It is the specific stand of the National Medical Commission

in their reply affidavit that as per provisions of Post Graduate Medical Education Regulations, 2000, there is no provision of termination from M.Ch Course by the College without the approval of Regulator. Hence, it is the stand of the NMC that student cannot be terminated under provisions of Staff Service Rules of the College/University only.

22. Such view of the matter, in the absence of any criminal offence or ragging which debars the person from continuing the study as per the statutory rules, merely on some bald accusations, the student selected through NEET, his study cannot be dispensed with and he cannot be terminated. Further, invoking such Staff Rules of the institution, itself, is not in order. Accordingly, the entire proceedings in view of this Court cannot be sustained in the eye of law.

.....

92. The report of the Special Committee that was constituted at the instance of the predecessor Bench also did not find any improvement in the approach of R1, including in his professional capabilities and we extract some portions of the same below:

Report of the Special Committee

. . . .

Soon after Dr. Biravinth was allowed into the board room, another person tried to enter and the committee was surprised. Dr. Biravinth told it was his brother and they both insisted that he needed moral support and because of their demeanour and tone, he was allowed in. However, after entering, the person who accompanied mentioned that he was actually not the brother but he was the local representative of a political party and he was asked by the party office in Chennai to represent him. It was evident from the interaction between the two of them that they had not closely known each other earlier but Dr. Biravinth was quick to tell a lie to get his way. This is not the behaviour expected of a medical professional. Integrity in the workplace is of utmost important, but his integrity is still questionable from his behaviour.

On further discussion with him regarding his perception of the stint as super speciality trainee, the Committee could not identify aspects where he was aware of any deficiencies from his side. He was of the opinion that he was no different from any other trainee. When he was specifically asked what he felt was the possible reason for him going through these situations and whether any course correction is possible, he did not have a satisfactory answer. He was asked what he understood of the word "insight". To the Committee's surprise, in addition to not being aware of the meaning, he came up with his own definition which was completely unrelated and incorrect. This made it obvious to the Committee that he had probably very little insight into the challenges that were encountered with his training. He felt that the complaints listed against him were all very vague and did not warrant dismissal. He said that his mistakes, if any, were accidental and not purposeful. He asked the Committee to define what was permissible as accidental and what was negligence.

As he could not enlist deficiencies in his learning and areas where additional input is required, it was difficult for the Committee to suggest options of graded training to make him a good cardiothoracic surgeon and give him a training that would be safe to patients. As this training involves close interaction with patients with major life-threatening cardiac illnesses, it would be harmful to be under the care of a doctor who is unable to identify his deficiencies and rectify them through appropriate specific training. The Committee is of the opinion that his lack of courtesy and discipline to inform of his absence despite being aware of the meeting schedule reflects poorly on his attitude and demonstrates a careless approach, though the meeting was mandated by the Hon'ble High Court. Such an attitude and behaviour is extremely dangerous for patient care. Hence, it was concluded that the Committee did not identify any positive change in the attitude, disposition, or other requirements that would make it safe for training in patient care areas.

93. The Report states that the behaviour of R1 was not professional and ultimately, he failed to avail the opportunity extended by this Court to prove his abilities. In fact, that Committee would have been the ideal one for R1 to have impressed, as it was comprised of medical professionals whom R1 could have persuaded about his skills. It is certainly not for this Court to consider his competence as a medical professional and we would thus ascribe the testimonials extended to R1 by the Writ Court, as a matter of largesse, but nothing more.

94. The learned Judge however disagrees with the findings and conclusions of the Special Committee constituted by the Bench and has this to say in that regard:

. . . .

The above Report itself indicate that the enquiry report is not based on the scientific valuation, the report is biased for the simple reason that he brought third party and he is not courteous and he has not answered the queries properly. This itself indicate that the entire report is attached with the elements of bias against the petitioner. After seeing this report, this Court has also interacted the petitioner, present in the Court in the presence of the Counsel. On his interaction, this Court is of the view that his intellectual level is very high, he has already qualified his Postgraduate degree in M.S (General Surgery) and thereafter pursuing M.Ch. From his further interactions reveal the fact that there are differences of opinion

among the intellectuals. Therefore, though certain revelations also made, this Court is not going into those details, however, this Court is fully satisfied that the petitioner intellectual capacity is very high and this Court is of the view that the respondent has no jurisdiction to initiate disciplinary proceedings and terminate the petitioner from the college.

25. Such view of the matter, as there is no employer and employee relationship merely on the basis of stipend is paid by the college, the same cannot be taken as a salary paid by the college. In fact, it is a mandate as per the regulations referred above to pay the stipend by the concerned college. Such view of the matter, the entire disciplinary proceedings and termination order stand quashed and the respondents shall permit the petitioner to complete the M.Ch. Course. The petitioner has already completed two years course and he has to undergone one more year and the respondent shall permit the petitioner to undergo the training and writing the examinations.

95. We disagree with the order of Writ Court that only since R1 has not been found guilty of wrong-doing such as ragging or similar acts, he has committed no fault as a student. Surely the assessment of a student at the level of a super-speciality medical course, must address professional standards touching on patient care within the institution. A student, at such a senior stage, cannot be equated with a student at a far junior level, who might engage in acts such as ragging.

96. The gravity of the charges that have been established would have to be dealt with, irrespective of the nature of engagement R1 has with the college/hospital. In fact, the college has the right and responsibility to guard

against professional inefficiency in the best interests of their patients. CMC has conceded to the absence of Student Regulations and has conducted the enquiry based on the Staff service Rules, because these are the only Regulations that the College has.

97. Shorn of technicalities, we find that the procedure followed has been proper, in that more than adequate opportunity has been afforded to R1 to defend himself and respond to the charges. An internal enquiry was conducted followed by an enquiry by an external person. At every stage, R1 was put to notice and his explanations sought. Be it an employee or a student, we cannot lose sight of the fact that the role performed by R1 was as a registered medical practitioner with a Post Graduate degree to boot. To this extent, there is a certain overlap between the roles and responsibilities cast upon R1, and blurring of lines in regard to his role in the College.

98. We are thus of the considered opinion that notwithstanding that R1 has been enquired into following the procedure in the Staff Service Rules, the procedure followed is not found to be whimsical, arbitrary or unfair. The procedure has comprised not one but two levels of enquiry. Two committees. comprising of experts from other Departments, one at the instance of the college and one, at the instance of the Court have been constituted to look into

the matter and have returned findings adverse to R1. We thus find that the procedure followed in this case is proper. Order dated 23.03.2022, impugned in the Writ Petition, stands confirmed.

99. The Delhi High Court in *Manoj Singhania*[28], had set aside the order of the Department terminating the training of that petitioner for the DNB (Medicine) course as being contrary to the principles of natural justice. In that case as well, the question that arose was whether the candidate was to be treated as a resident doctor or a student, and relying on the decision of the Allahabad High Court in *Director, Indian Institute of Technology Kanpur V. Hiyat Khan*[29] the conclusion turned on the aspect of non-grant of opportunity. In appeal, the matter was closed by the Division Bench reporting that a settlement had been arrived at by the parties pending that appeal.

100. Being conscious that we are dealing with the case of a student and for this reason alone, we are inclined to give him a little more rope in the matter. If R1 locates the missing Log Book, and believes that he can vindicate his professional performance, he is at liberty to approach the college even now soliciting yet another opportunity to prove his credentials. He is also required to subject himself to the physical evaluations as sought for by the Enquiry

28 Foot Note Supra (5)
29 ((2000) 3 A.W.C.2256)

Committee.

101. If he does so, the college will grant him yet another opportunity by constituting an Assessment Committee, comprising both internal as well as external examiners, or by any other means deemed fit by the College, to assess his professional capabilities and come to a conclusion as to whether he is fit to complete the course.

102. This Writ Appeal is disposed in terms of this order granting liberty to R1 as aforesaid. No costs. Connected Miscellaneous Petitions are closed.

[A.S.M., J] [G.A.M., J]
30.04.2025

Index:Yes/No
Neutral Citation:Yes/No
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To

1.The Secretary,
National Medical Commission,
Pocket – 14, Sector – 8, Dwarka Phase 1,
New Delhi – 110 077.

2.The Vice Chancellor,
Tamil Nadu Dr.MGR Medical University,
No.69, Anna Salai Road,
Guindy, Chennai – 600 032

DR. ANITA SUMANTH.,J.
and
G.ARUL MURUGAN.,J.

sl

W.A.No. 3054 of 2023
and C.M.P.Nos. 25307 of 2023 & 20111 of 2024

30.04.2025