

W.P.Nos.4594 and 6737 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESEVED ON: 24.03.2022

DELIVERED ON: 31 .03.2022

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.Nos.4594 and 6737 of 2022
and WMP.Nos.4727 & 6820 of 2022

Dr.S.Subbiah, MS, M.Ch.,
Professor (Surgical Oncology)
Government Kilpauk Medical College/
Institute of Non Communicable Diseases,
and Government Royapettah Hospital,
Chennai.

.. Petitioner in both W.Ps.

vs.

1.The State of Tamilnadu represented
by its Secretary to Government,
Health and Family Welfare (I-1)Department,
Fort St.George, Chennai-600 009.

.. R1 in W.P.No.6737 of 2022

2.The Director of Medical Education,
Kilpauk, Chennai-600 010.

.. R2 in W.P.No.6737 of 2022

Respondent in W.P.No.4594 of 2022

Prayer in W.P.No.4594 of 2022: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records on the file of the respondent in Ref.No.12999/SC1/1/2022 dated 17.02.2022 and quash the same and direct the respondents to reinstate the petitioner in service with all service and monetary benefits forthwith.



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Prayer in W.P.No.6737 of 2022: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records on the file of the first respondent in G.O.(D)No.234, Health and Family Welfare (I-1) Department dated 09.03.2022 and quash the same and direct the respondents to reinstate the petitioner in service with all service and monetary benefits forthwith.

For Petitioner : Mr.Vijayanarayan, Senior Counsel
in both W.Ps. for Mr.B.Rabu Manohar

For Respondents : Mr.R.Shunmugasundaram,
Advocate General
assisted by
Mrs.S.Anitha, Special Government Pleader
for R1 and R2

COMMON ORDER

By consent, these writ petitions are taken up for final disposal. For the sake of convenience, the array of parties in W.P.No.6737 of 2022 is adopted.

2. W.P.No.4594 of 2022 has been filed challenging the impugned order of suspension passed by the second respondent in Ref.No.12999/SC1/1/2022 dated 17.02.2022, with a prayer to quash the same and consequently, direct the respondents to reinstate the petitioner in service with all service and monetary benefits forthwith. W.P.No.6737 of 2022 has been filed



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challenging the consequential order of ratification passed by the first

respondent in G.O.(D) No.234, Health and Family Welfare (I-1) Department

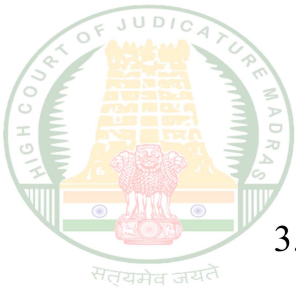
dated 09.03.2022, with a prayer to quash the same and consequently, direct

the respondents to reinstate the petitioner in service with all service and

monetary benefits forthwith

3. The case of the petitioner, briefly narrated, are as follows:

3.1.The petitioner initially joined service as Assistant Surgeon by an order dated 10.02.1992 and on successful completion of M.S. Degree and M.Ch., in Oncology, he was posted as a Senior Assistant Professor of Surgical Oncology. The petitioner's name was included in the panel for promotion to the post of Associate Professor of Surgical Oncology, vide G.O.(D)No.569, Health and Family Welfare Department dated 04.06.2013. An amendment was issued to the said Government Order in G.O.(D) No.695, Health and Family Welfare Department dated 01.07.2013, by virtue of which the petitioner was appointed as Associate Professor of Surgical Oncology, Government Kilpauk Medical College and Surgical Oncologist, Institute of Non-Communicable Diseases and Government Royapettah Hospital, Chennai in the existing vacancy.



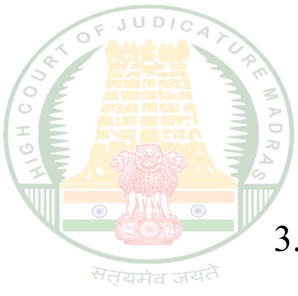
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3.2. By Government Order in G.O.(D)No.1519, Health and Family

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Welfare Department dated 31.10.2016, the petitioner was transferred and posted as Professor of Surgical Oncology, Government Kilpauk Medical College and Surgical Oncologist, Government Royapettah Hospital, Chennai in the retirement vacancy of one Dr.R.Rajaraman. The petitioner would point out at this juncture that his appointment orders as Professor were issued by the Principal Secretary to Government, Health and Family Welfare Department, by order of the Governor and a mere perusal of the letter of the second respondent in Ref.No.68967/E1/1/2016 dated 31.10.2016 would reveal that the role of the second respondent was only to communicate the decision taken by the Government in respect of the petitioner.

3.3. The petitioner states that he had performed more than 5000 major cancer surgeries successfully, which include more than 500 advanced laparoscopic cancer surgeries, which is unique in the entire State Government service. That apart, he had authored 97 scientific journal publications and as many as, 163 Cancer Specialists Doctors from the international medical fraternity, have cited his articles in their scientific journal publications.

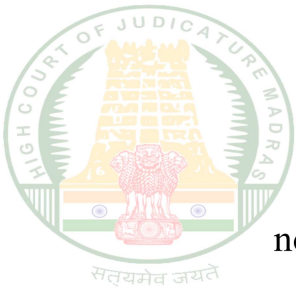


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3.4. While so, to his shock and surprise, all of a sudden, the second respondent has passed an order of suspension in proceedings in Ref.No.12999/SC1/1/2022 dated 17.02.2022 on the alleged ground that complaints and reports against him is contemplated for his association with political organisation, political statement, activities and propaganda expressing disloyal sentiments which is violative of Rule 14 of the Tamil Nadu Government Servants Conduct Rules. Hence, the petitioner was placed under suspension by invoking Rule 17(e) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, until further orders pending enquiry. Challenging the order of suspension passed by the second respondent dated 17.02.2022 and the consequential order of the first respondent in G.O.(D)No234, Health and Family Welfare (I-1) Depart dated 09.03.2022, ratifying the order of suspension passed by the second respondent, the petitioner has filed the present writ petitions.

4. Mr.Vijayanarayan, learned Senior Counsel for the petitioner made the following submissions:

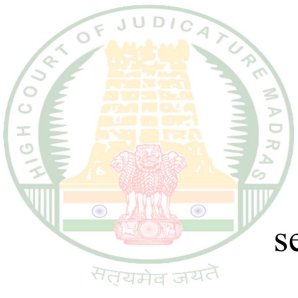
- (i) The impugned suspension order has been passed on untenable grounds, since the petitioner is not a member of any political party and in respect of the reason for the illegal suspension, the petitioner was



not visited with even a single memo all these years.

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- (ii) The petitioner was not issued with any charge memo as on date and the order of suspension was passed on the ground, which does not exist on the date of the order.
- (iii) Rule 17(e)(1) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules contemplates that a member of service may be placed under suspension from service, if an enquiry into grave charges against him is contemplated or is pending. It does not envisage keeping a member of service under suspension, where grave complaints and reports against the petitioner is contemplated.
- (iv) In the judgment in *D.R.P.Sundharam v. Canara Bank, rep by its Executive Director [CDJ 2008 MHC 113]*, this Court held that initiation of disciplinary proceedings means that charge memo should be pending. Unless the petitioner was issued with a charge memo and enquiry into the same is pending, the petitioner cannot be placed under suspension.
- (v) The petitioner during the 31 years of service rendered by him, was not even served with any single memo alleging complaints and reports for any alleged association with political organisation, political statement and activities and propaganda expressing disloyal sentiments and for the first time, these allegations are levelled against the petitioner by the



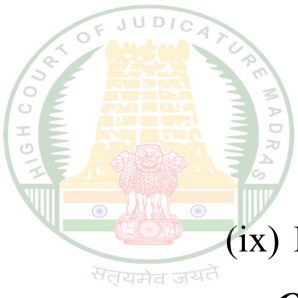
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second respondent in the impugned suspension order dated 17.02.2022 and the same is malice in law, without any factor germane for passing the said order.

- (vi) The petitioner was the President of a non-political organization called ABVP from 2017-2020 and the membership of the said organization will have to be renewed each and every year and he had not renewed the same from the year 2021 and as such, now he is not a member of the said non-political organization. The petitioner had not involved himself in any political activities and he had never made any propaganda expressing disloyal sentiments.
- (vii) The order of suspension dated 17.02.2022 is tainted with malafide motives, illegalities and based on vague allegations.
- (viii) As per Rule 13 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, the Director of Medical Education could impose an order of suspension only on the officers in the cadre of Assistant Surgeon and for other members of State Services, the State Government alone is the competent authority for imposing the suspension. In the instant case, the second respondent / Director of Medical Education has passed an order of suspension against Professor, Surgical Oncology Department, which is vitiated on the ground of incompetency.



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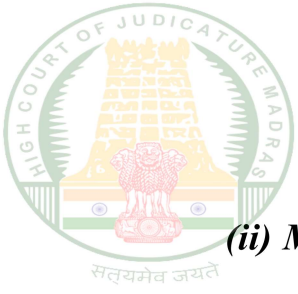
(ix) In the decision in ***Marathwada University v. Seshrao Balwant Rao Chavan [(1989) 3 SCC 132]***, the Hon'ble Supreme Court had categorically held that when a statute prescribes a particular body to exercise a power, it must be exercised by that body alone and not by others, unless it is delegated. In the instant case, in view of Rule 13 of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, the second respondent is totally incompetent to pass an order of suspension against the petitioner and therefore, the impugned order of suspension passed by the second respondent is liable to be quashed.

(x) The order of the first respondent in G.O.(D)No.234, Health and Family Welfare (I-1) Department dated 09.03.2022 is only not an order of ratification, but also an order of modification, modifying the original suspension order dated 17.02.2022.

(xi) In para 12 of the counter affidavit, the second respondent itself has admitted that he is not the competent authority to issue the order of suspension and therefore, the impugned order of suspension is liable to be quashed.

The learned Senior Counsel for the petitioner, in support of his submissions, has also placed reliance upon the following decisions:

(i) Govindarajulu (P) and another v. Superintendent of Police, South Arcot District [W.P.Nos.8623 and 8624 of 1985 dated 23.08.1985] ;



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(ii) Maharashtra State Mining Corporation v. Sunil [(2006) 5 SCC 96]

(iii) Union of India and another v. Ashok Kumar Aggarwal [(2013) 16 SCC 147]

(iv) Rakesh Kumar Agarwalla and Another v. National Law School of India University, Bengaluru and Others [(2021) 1 SCC 539].

5. *Per contra*, Mr.R.Shunmugasundaram, learned Advocate General for the respondents has drawn the attention of this Court to the counter affidavit of the second respondent and would submit that Rule 17(e) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules was rightly invoked by the second respondent, as the petitioner has violated Rule 14 of the Tamil Nadu Government Servants Conduct Rules, 1973 and therefore, he was kept under suspension for the grave charges and complaints levelled against him and the charges will be enquired in detail during the domestic enquiry. It is further contended by the learned Advocate General that the order of suspension passed by the second respondent is neither punitive and hence, the present writ petition itself is not maintainable. The learned Advocate General would further submit that though Rule 17(e) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules does not confer power on the second respondent



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to pass the order of suspension, the second respondent subsequently sent a

proposal to the first respondent, who is the competent authority for

ratification of the order of suspension passed by the second respondent and

the first respondent has ratified the action of the second respondent by

passing G.O.(D)No.234, Health and Family Welfare (I-1) Department dated

09.03.2022 and therefore, the said suspension order is perfectly valid in law.

In this context, the learned Advocate General has relied on the Judgment of

the Hon'ble Supreme Court in *National Institute of Technology and another*

v. Pannalal Choudhury and another [(2015) 11 SCC 669]. The learned

Advocate General lastly submitted that based on the complaint as well as

available materials, disciplinary proceedings will be initiated by the

respondents and in that event, the petitioner may raise his contentions before

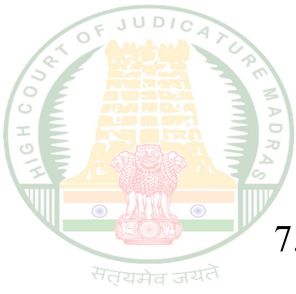
the authorities concerned by way of explanation and shall also cooperate for

early conclusion of disciplinary proceedings.

6. This Court has anxiously considered the rival submissions and also

perused the entire materials on record including the various decisions relied

on by the respective parties.



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

8. Before proceeding to the point for consideration, it is useful to refer to the following Rules:

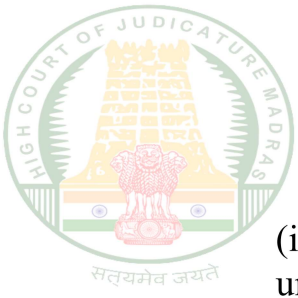
Tamil Nadu Civil Services (Discipline & Appeal) Rules

Rule 13.- The authority which may impose suspension referred to in Rule 17(e) on members of the State Services shall be as follows:

Class of Members of the State Service	Authority which may impose suspension
(1) to (4) ---	-----
(5) All Officers in the cadre of Assistant Surgeons	Director of Medical Services, Chennai, Director of Medical Education, Chennai.
(6) to (10)-----	
(11) Other members of the State Service	State Government

Rule 17(e)- Conditions under which a member of the service be placed under suspension :

- (1) A member of a service may be placed under suspension from service, where-
- (i) where-a disciplinary Proceedings against him is contemplated or is pending; or



(ii) a case against him in respect of any criminal offence is under investigation, inquiry or trial.

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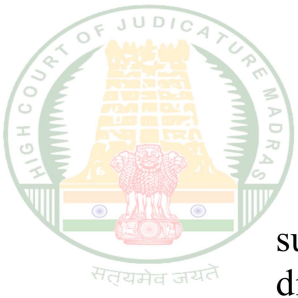
(2) A Government servant who is detained in custody whether on a criminal charge or otherwise, for a period longer than forty-eight hours shall be deemed to have been suspended under this rule.

(3) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant under suspension is set aside in appeal or on review under these rules and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government Servant is set aside or declared or rendered void in consequence of or by a decision of a Court of law and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Government servant shall be deemed to have been placed under suspension by the appointing authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

Provided that no such further inquiry shall be ordered unless it is intended to meet a situation where the Court of law has passed an order purely on technical grounds without going into the merits of the case.

(5) Where a Government servant is suspended or is deemed to have been suspended (whether in connection with any disciplinary proceedings or otherwise) and any other disciplinary proceedings are commenced or any other criminal complaint is under investigation or trial against him during the continuance of that suspension, and where the suspension of the Government servant is necessary in public interest as required under clause (1), the authority competent to place him under



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suspension may, for reasons to be recorded by him in writing, direct that the Government servant shall continue to be under suspension until the termination of all or any of such proceedings including departmental proceedings taken on the basis of facts which led to the conviction in a Criminal Court.

(6) An order of suspension made or deemed to have been made under this rule may at any time be revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate.”

Rule 14 of the Tamil Nadu Government Servant Conduct Rules, 1973:

14. Taking part in politics and Elections and position of Government servants in relation to Elections-

(1) No Government servant shall be a member of or be otherwise associated with any political party or any organisation in respect of which there is reason to believe that the organisation has a political aspect, nor shall he take part in, subscribe in aid of, or assist in any other manner any political movement or activities. He shall also not only maintain political neutrality but shall also appear to do so. He shall also avoid giving room for any suspicion that he is favouring any political party or any candidate in elections.

(2) It shall be the duty of every Government servant to endeavour to prevent any member of his family from taking part in subscribing, in aid of or assisting in any other manner, any movement or activity which is, or tends directly or indirectly to be, subversive of the Government as by law established, and where a Government servant is unable to prevent a member of his family from taking part in, or subscribing in aid of or assisting in any other manner, any such movement or activity, he shall make a report to that effect to the Government.

(3) If any question arises whether a Party is a Political Party or whether any organisation takes part in politics or whether any movement or activity falls within the scope of this rule, the decision of the Government thereon shall be final.

(4) No Government servant shall canvass or otherwise



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interfere or use his influence in connection with or take part in, an election to any legislature or local authority;

Provided that - (i) a Government servant qualified to vote at such election may exercise his right to vote, but where he does so, he shall give no indication of the manner in which he proposes to vote or has voted;

(ii) a Government servant shall not be deemed to have contravened the provisions of this rule by reason only that he assist in the conduct of an election in due performance of a duty imposed on him by or under any law for the time being in force.

Explanation (1) - Nothing contained in this sub-rule shall be deemed to prohibit the wife of a Government servant or any other member of his family living with or in any way dependent on him from standing for Election to any legislature or to any local authority and from canvassing for other candidates;

Explanation (2) - The display by a Government servant on his person, vehicle or residence of any electoral symbol shall amount to using his influence in connection with an election within the meaning of this rule.

(5) Seditious propaganda or the expressing of disloyal sentiments by a Government servant shall be regarded as sufficient ground for dispensing with his services. Such conduct in the case of Government Pensioner shall be dealt with under Article 351 of the Civil Service Regulations.

(6) A Government servant proposing or seconding the nomination of a candidate at an election or acting as a polling agent shall be deemed to have committed a breach of this rule.

(7) The rule shall apply to the Government Pleaders, Public Prosecutors and other officials who are not full time officers but are engaged by the Government to do specified work without prejudice to the regular exercise of their professions in other respects; but this rule shall not apply to the Special Public Prosecutors and Pleaders engaged to do Government work generally in specified local areas or specially in any particular case or class of cases.”

9. The primordial contention of the learned Senior Counsel for the



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petitioner is that the impugned order of suspension has been passed by an

incompetent authority / second respondent, without any jurisdiction and also

in contravention of relevant Statutory Rules. In this regard, the learned

Senior Counsel for the petitioner has relied upon the decision in

Marathwada University v. Seshrao Balwant Rao Chavan [(1989) 3 SCC

132], wherein it was held as under:

“20. Counsel for the appellant argued that the express power of the Vice-Chancellor to regulate the work and conduct of officers of the University implies as well, the power to take disciplinary action against officers. We are unable to agree with this contention. Firstly, the power to regulate the work and conduct of officers cannot include the power to take disciplinary action for their removal. Secondly, the Act confers power to appoint officers on the Executive Council and it generally includes the power to remove. This power is located under Section 24(1)(xxix) of the Act. It is, therefore, futile to contend that the Vice-Chancellor can exercise that power which is conferred on the Executive Council. ***It is a settled principle that when the Act prescribes a particular body to exercise a power, it must be exercised only by that body. It cannot be exercised by others unless it is delegated.*** The law must also provide for such delegation. *Halsbury's Laws of England* (Vol. I, 4th End., para 32) summarises these principles as follows:

“32.*Sub-delegation of powers.*— In accordance with the maxim *delegatus non potest delegare*, a statutory power must be exercised only by the body or officer in whom it has been confided, unless sub-delegation of the power is authorised by express words or necessary implication. There is a strong presumption against construing a grant of legislative, judicial or disciplinary power as impliedly authorising sub-delegation; and



the same may be said of any power to the exercise of which the designated body should address its own mind.”

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(emphasis supplied)

27. These principles of ratification, apparently do not have any application with regard to exercise of powers conferred under statutory provisions. The statutory authority cannot travel beyond the power conferred and any action without power has no legal validity. It is ab initio void and cannot be ratified.

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

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



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must be held that the services of the appellant were validly terminated on 17-12-1953. The appellant was not entitled to the declaration prayed for by him and the trial court as well as the High Court was right in dismissing the claim.”

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

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

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

The said decision was also followed in the subsequent decision in ***Rakesh Kumar Agarwala and another v. National Law School of India University, Bengaluru and Others* [(2021) 1 SCC 539]**. The aforesaid decisions clearly



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laid down the well settled principle that when the Act prescribes a particular body to exercise a power, it must be exercised only by that body and it cannot be exercised by others, unless it is delegated.

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

“The High Court rightly held that an act by a legally incompetent authority is invalid. But it was entirely wrong in holding that such an invalid act could not be subsequently “rectified” by ratification of the competent authority. Ratification by definition means the making valid of an act already done. The principle is derived from the latin maxim *ratihabitio mandato aequiparatur*; namely “a subsequent ratification of an act is equivalent to a prior authority to perform such act”. Therefore ratification assumes an invalid act which is retrospectively validated.”

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



decision, has held as follows:

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

“14. ... Even if it be assumed that the telegram and the letter terminating the services of the appellant by the Chairman was in pursuance of the invalid resolution of the Board of Directors passed on 16-12-1953 to terminate his services, it would not follow that the action of the Chairman could not be ratified in a regularly convened meeting of the Board of Directors. The point is that even assuming that the Chairman was not legally authorised to terminate the services of the appellant, he was acting on behalf of the Company in doing so, because, he purported to act in pursuance of the invalid resolution. Therefore, it was open to a regularly constituted meeting of the Board of Directors to ratify that action which, though unauthorised, was done on behalf of the Company. Ratification would always relate back to the date of the act ratified and so it must be held that the services of the appellant were validly terminated on 17-12-1953.”

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

32. The aforesaid principle of law of ratification was



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

“The High Court rightly held that an act by a legally incompetent authority is invalid. But it was entirely wrong in holding that such an invalid act could not be subsequently ‘rectified’ by ratification of the competent authority. Ratification by definition means the making valid of an act already done. The principle is derived from the Latin maxim *ratihabitio mandato aequiparatur*, namely, ‘a subsequent ratification of an act is equivalent to a prior authority to



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perform such act'. Therefore, ratification assumes an invalid act which is retrospectively validated.

In the present case, the Managing Director's order dismissing the respondent from the service was admittedly ratified by the Board of Directors unquestionably had the power to terminate the services of the respondent. Since the order of the Managing Director had been ratified by the Board of Directors such ratification related back to the date of the order and validated it.”

33. Applying the aforementioned law of ratification to the facts at hand, even if we assume for the sake of argument that the order of dismissal dated 16-8-1996 was passed by the Principal and Secretary who had neither any authority to pass such order under the Rules nor was there any authorisation given by the BoG in his favour to pass such order yet in our considered view when the BoG in their meeting held on 22-8-1996 approved the previous actions of the Principal and Secretary in passing the respondent's dismissal order dated 16-8-1996, all the irregularities complained of by the respondent in the proceedings including the authority exercised by the Principal and Secretary to dismiss him stood ratified by the competent authority (Board of Governors) themselves with retrospective effect from 16-8-1996 thereby making an invalid act a lawful one in conformity with the procedure prescribed in the Rules.”

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

12. In *Pannalal Choudhury case* (cited supra), the facts of the said



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case would disclose that the Managing Director's order dismissing the respondent therein from service was admittedly ratified by the Board of Directors, unquestionably had the power to terminate the services of the respondent and since the order of the Managing Director had been ratified by the Board of Directors by passing resolution, such ratification related back to the date of the order and validated it. However, in the case on hand, there is a specific provision, namely Rule 13 of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, governing the competency of the authority to issue the order of suspension and as such, the decision relied on the learned Advocate General would not be applicable to the case on hand, since the said case pertains to ratification of act done by the Managing Director by way of passing of resolution in the subsequent Board of Directors' meeting.

13. In the case on hand, the petitioner, being the Professor of Surgical Oncology, was placed under suspension by the second respondent. Rule 13 of the Tamil Nadu Civil Services (Discipline & Appeal) Rules clearly envisages that upto the level of Assistant Surgeons, the second respondent is the competent authority and for other members of the State services like the



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petitioner herein, first respondent / State Government is the competent

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authority to issue the order of suspension. As laid down by the Hon'ble

Supreme Court in *Marathwada University case* (cited supra), when the Act

prescribes the particular body to exercise a power, it must be exercised only

by that body. It cannot be exercised by others unless it is delegated. The

respondents are also unable to substantiate by way of relevant statute that the

first respondent can delegate the power to the second respondent to issue the

suspension order. It is also admitted by the second respondent in the counter

affidavit that the second respondent is not the competent authority to issue

the order of suspension. Therefore, this Court has no hesitation to hold that

the impugned order of suspension has been passed by an incompetent

authority / second respondent and its subsequent ratification by the first

respondent are unsustainable in law and are liable to be quashed.

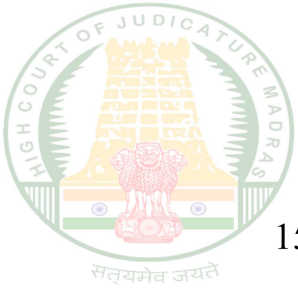
14. Since this Court has dealt above with regard to the competency and

jurisdiction of the second respondent to pass the impugned order of

suspension and the subsequent ratification by the first respondent as

unsustainable in law, the Court has not gone into the other grounds raised by

the petitioner.



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15. In the light of foregoing reasons, this Court passes the following

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(i) The impugned order of the second respondent in Ref.No.12999/SC1/1/2022 dated 17.02.2022 and the subsequent ratification order passed by the first respondent in G.O.(D)No.234, Health and Family Welfare (I-1) Department dated 09.03.2022 are quashed and the respondents are directed to reinstate the petitioner in service with all monetary benefits as per the Rules.

(ii) In the light of the submission made by the learned Advocate General, the respondents may conduct disciplinary proceedings by following the procedure as contemplated under the Tamil Nadu Civil Services (Discipline & Appeal) Rules, 1955 and conclude the same as expeditiously as possible, within a period of twelve weeks from the date of issuance of charge memo. It is also made clear that in that event, the petitioner shall also extend his cooperation for expeditious conclusion of disciplinary proceedings.

16. ***These Writ Petitions stand allowed.*** No costs. Consequently, connected miscellaneous petitions are closed.

31.03.2022

Index : Yes / No
Internet : Yes / No
Jvm

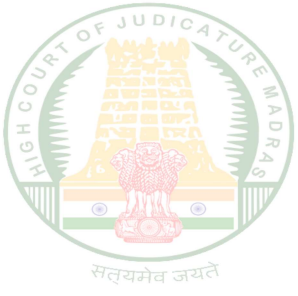


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To

1. The Secretary to Government,
The State of Tamilnadu
Health and Family Welfare (I-1) Department,
Fort St. George, Chennai-600 009.

2. The Director of Medical Education,
Kilpauk, Chennai-600 010.



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D.KRISHNAKUMAR. J

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Common Order in
W.P.Nos.4594 and 6737 of 2022

31.03.2022