

HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

WP.No.14158 of 2021

O R D E R:

This writ petition is filed for the following relief:

“To issue a Writ, Order or Direction more particularly one in the nature of Writ of Mandamus and declare the impugned suspension Proceedings Rc.No. Spl/DMHO/2021 dated 12.07.2021 issued by the 5th respondent who is not competent authority to place the petitioner (frontline warrior) under suspension, without application of independent mind subsequently ratified by the 2nd respondent, vide Proceedings Rc.No3079/VC1B/2021 dated 13.07.2021 as illegal, arbitrary subsequent ratification in the absence of independent application of mind is invalid in terms of the settled Law in case of S.Inayatulla, High Court of Karnataka and also contrary to the Rule 11(18)(ii) of A.P. CS and CCA Rules, 1991 the initial action in violation of the functions deligated under G.O.Ms.No.64 HM and FW(E1) Department, dated 21.06.2021 to the 5th respondent and set aside the same, consequently direct the respondents herein to reinstate the petitioner immediately in to service and to pass....”

This Court has heard Sri Ramalingeswara Rao Kocherla Kota, learned counsel for the petitioner and Sri Rajesh.M. representing Government Pleader for services-IV.

The petitioner is a Doctor, working as a Deputy Civil Surgeon in a Primary Health Care Centre. He was suspended by the Joint Collector. The short and simple point urged by the petitioner is that the order of suspension dated

12.07.2021 issued to the petitioner is contrary to the law, since it is only the Director of Health and Family Welfare, who could impose a punishment or suspend the petitioner. Relying upon Andhra Pradesh Civil Services (Classification Control and Appeal) Rules, 1991 and in particular the Rules regarding suspension, it is argued that it is only the Director of Health and Family Welfare who could impose a punishment or suspend the petitioner. Subsequent ratification of the impugned order by the Director of Public Health and welfare is also questioned on the ground that the State cannot ratify an act, which is incorrect in the beginning and also the authority imposing the suspension did not apply their mind. Relying upon the judgment of the learned single Judge of the Karnataka High Court in **S.Inayathulla v. Deputy Conservator of Forests Chickmagalur** (WP.No.8738 of 1982), which is filed along with the writ petition, it is argued that the initial suspension and the subsequent ratification are both bad in law.

In reply to this, Sri M.Rajesh appearing for the third respondent, who is the main contesting respondent, argued that as there are very serious allegations against the petitioner, the order of suspension had to be passed considering the gravity. It is submitted that there was a misuse of covid-19 vaccine during the vaccination programme and basing upon a preliminary enquiry conducted into the issue, the petitioner was placed under suspension on

12.07.2021. This was immediately ratified on 13.07.2021 and it is argued that considering the gravity of the case and to prevent misuse of Covid vaccine, the order of suspension was ratified. Learned Government Pleader argues that the scope of enquiry is very little in such cases and the Court should lightly interfere in such matters. He points out that a reading of the ratification order also shows that the authority had considered the documents and examined the matter before ratifying the suspension.

Sri K.Ramalingeswara Rao, learned counsel for the petitioner argues that the judgment of the Karnataka High Court is squarely applicable and as the initial suspension is invalid in law, it cannot be ratified. It is also submitted that there is no application of independent mind before the suspension order is ratified.

COURT:

The law on the subject of suspension is a well settled and need not be reiterated. The scope of enquiry in a petition challenging the suspension is also very limited.

In the case on hand, the suspension is challenged on the ground that the initial order of suspension dated 12.07.2021 was passed by an Officer, who had no authority over the petitioner and that the same cannot also be ratified. In addition, it is argued that there is no independent

application of mind also. The petitioner relied upon the judgment of the Karnataka High Court.

However, this Court notices that this is not the only law on the subject. The judgment of the Hon'ble Supreme Court of India reported in ***Maharashtra State Mining Corportion v. Sunil***¹ is also applicable in the opinion of this Court.

This is a case of an order passed by a Board of Directors in a meeting that was not validly convened. Before the Hon'ble Supreme Court also it was argued that the initial order itself is invalid in law and therefore it cannot be ratified. However, the Hon'ble Supreme Court of India noticed the definition of ratification in para 9 of the judgement which is as follows:

9. The same view has been expressed in several cases in other jurisdictions. Thus in *Hartman v. Hornsby* [142 Mo 368, 44 SW 242, 244] it was said:

“ ‘Ratification’ is the approval by act, word, or conduct, of that which was attempted (of accomplishment), but which was improperly or unauthorisedly performed in the first instance.”
(Emphasis supplied)

Thereafter, the Supreme Court of India held that even though the initial order was invalid, the subsequent order is passed in a duly constituted board meeting ratifying the earlier order. Therefore, the Hon'ble Supreme Court came to a conclusion that this ratification is valid. A similar issue also fell for consideration before a learned single Judge of the

¹ (2006) 5 SCC 96

Madras High Court in a case reported in ***S.Rasalam v. The Commissioner, Chennai***².

If the present case is examined against the backdrop of these cases, it is clear that as the petitioner is a Doctor in the State Cadre, it is only the Director of Public Health and Family Welfare, who can suspend the petitioner. But, even if the initial order passed is “invalid”, this Court is of the opinion that the subsequent ratification of the order relates back to the date of original order. The very concept of ratification implies the approval of an earlier action.

In fact, if the first order dated 12.07.2021 is taken into consideration, the Joint Collector noticed that the preliminary enquiry report did find a *prima facie* case against the petitioner and after the examination of the preliminary report, the Joint Collector thought it fit to place the petitioner under suspension pending enquiry. The Joint Collector also immediately requested in the Director of Public Health and Family Welfare to ratify the order. On the very next day that is on 13.07.2021, the action taken by the Joint Collector is ratified by the Director of Public Health and Family Welfare. This Court also cannot lose sight of the fact of the gravity of the offence. The issue involved is the irregularity in the vaccination process and the alleged misuse of 4000 to 5000 doses of vaccination. This was in the period when the Covid-

² W.P.(MD).No.4683 of 2013

19 was on its peak and the Government was struggling to vaccinate the general public.

In these circumstances, this Court holds that the situation demanded an emergency response. The same was taken and immediately ratified also. The fact that the order dated 12.07.2021 was ratified on 13.07.2021 makes it clear that there is no ulterior motive behind the suspension. Emergency situations demand emergency responses. Therefore, this Court upholds ratification dated 13.07.2021 by which the petitioner was placed under suspension.

As far as application of 'independent' mind is concerned, this Court is of the opinion that in such cases, it cannot be expected that the order would be written like a judgment by a judicial Officer. Medical Doctors at the ground level are not like trained judicial Officers to write a detailed multi page reasoned orders. The Joint Collector relied upon the preliminary report. The authority concerned has examined the letter of the Joint Collector suspending the petitioner on the basis of the preliminary enquiry report and thereafter, after mentioning that "after careful examination of the matter", the Director of Public Health and Family Welfare has decided to ratify the action.

In that view of the matter, this Court is of the opinion that the authority concerned has applied its mind to the

circumstances and thereafter ratified the order. Therefore, on this ground also the order is upheld.

For both these reasons, the writ petition is dismissed. No order as to costs. As a sequel, the miscellaneous petitions if any shall stand dismissed.

D.V.S.S.SOMAYAJULU, J

Date: 16.09.2021
KLP