



W.P.Nos.17641 & 17642 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.08.2024

Pronounced on : 24.09.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.17641 & 17642 of 2020 and
WMP.Nos.21871, 21872, 21873 & 21874 of 2020

WP.No.17641 of 2020

D.Sivakumar

... Petitioner

Vs.

- 1.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai 600 004
- 2.The Commissioner of Police,
Greater Chennai Police,
Vepery, Chennai 600 007
- 3.The Deputy Commissioner of Police,
Armed Reserve,
Greater Chennai Police,
Chennai
- 4.The Assistant Commissioner of Police,
Home Guard(North), i/c Armed Reserve,
Greater Chennai Police,
Chennai

... Respondents

PRAYER:

Writ Petition is filed under Article 226 of Constitution of India
praying to issue a Writ of Certiorari calling for the records pertaining to



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the order of the 3rd Respondent vide proceedings in PR.No.198/4(2)/2012 dated 20.08.2012, order of the 2nd Respondent vide proceedings in C.No.Appeal -01/PR-IV (2)/ 2014 dated 10.05.2014 and the order of the 1st Respondent vide proceedings in Rc. No.74072/AP.3(2)/2018 dated 03.11.2018 and quash the same and consequently direct the respondents herein to regularize the period of suspension undergone by the petitioner with all monetary and attendant benefits.

For Petitioner : Mr.K.Venkataramani,
Senior Counsel
for Mr.M.Muthappan

For Respondents : Mr.V.Manoharan,
Additional Government Pleader

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D.Sivakumar

... Petitioner

Vs.

- 1.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai 600 004
- 2.The Commissioner of Police,
Greater Chennai Police,
Vepery, Chennai 600 007
- 3.The Deputy Commissioner of Police,
Armed Reserve,
Greater Chennai Police,
Chennai



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4.The Assistant Commissioner of Police,
Armed Reserve-II,
Greater Chennai Police,
Chennai

... Respondents

PRAYE2R:

Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorari calling for the records pertaining to the order of the 3rd Respondent vide proceedings in PR.No.271/4(2)/2010 dated 16.04.2011 and the order of the 1st Respondent vide proceedings in Rc. No.74073/AP.3(2)/2018 dated 02.11.2018 and quash the same.

For Petitioner : Mr.K.Venkataramani,
Senior Counsel
for Mr.M.Muthappan

For Respondents : Mr.V.Manoharan,
Additional Government Pleader

COMMON ORDER

The writ petition in WP.No.17641 of 2020 has been filed challenging the order passed by the third respondent dated 20.08.2013 thereby imposed punishment of postponement of next increment for three years which shall operate as future increment and the order passed by the



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second respondent dated 10.05.2014 thereby confirmed the order passed by the third respondent and the order passed by the first respondent dated 03.11.2018 thereby confirmed the order passed by the first appellate authority.

2. The petitioner was initially appointed as Constable Grade-II on 01.11.1995. Subsequently, he was promoted to the post of Grade-I Constable on 01.08.2006 and thereafter promoted to the post of Head Constable on 03.11.2008. He got married one, Mohana on 06.11.2000 and gave birth to two children. Thereafter, there was misunderstanding between them and as such they got separated. His wife had gone to her parents' house and lodged complaint on 26.08.2003 before the Inspector of Police, All Women Police Station, Royapuram as against the petitioner and the same was registered in crime No.947 of 2012 for the offence punishable under Sections 498A, 406 & 506(i) of IPC. In the meanwhile, private complaint was also filed for the offence punishable under Section 494 IPC and the same was taken cognizance in CC.No.5318 of 2009 on the file of the XV Metropolitan Magistrate, George Town, Chennai



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alleging that the petitioner got married another lady called Rani when the first marriage is very much in existence. In the police complaint, after completion of investigation, final report was filed and the same was taken cognizance in CC.No.599 of 2013 on the file of the XV Metropolitan Magistrate, George Town, Chennai. In the meanwhile, the petitioner filed petition for divorce on the ground of cruelty in HMOP.No.513 of 2005 and the same was decreed in favour of the petitioner since his wife was set *ex parte*. Thereafter, the decree was set aside and the same was transferred to Sub Court, Gudiyatham and renumbered as HMOP.No.37 of 2006. Subsequently, it was transferred to Sub Court, Vellore and renumbered as HMOP.No.15 of 2017. By the compromise entered between the petitioner and his wife, the same was decreed by the judgment and decree dated 25.02.2019 thereby the marriage solemnised between the petitioner and his wife was dissolved. While pending trial in the criminal case, the petitioner was served with charge memo consisting two charges under Rule 3(b) of Tamilnadu Police Subordinate Service (Discipline and Appeal) Rules, 1955 on 15.12.2012 and the charges are as follows:



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20.03.2012 முதல் Judicial Academy வளாகத்தில் உள்ள வினாத்தாள்

பாதுகாப்பு காப்பின் பொறுப்பு தலைமை காவலராக பணிபுரிந்து வந்த பிழையாளர் கடந்த 15.09.2012 அன்று 10.15 மணிக்கு உணவு நேர ஓய்வில் சென்றவர் அன்று மதியம் 14.15 மணிக்கு காப்பில் அறிக்கை செய்யாமல் எவ்வித தகவலோ முன் அனுமதியோ விடுப்போ பெறாமல் தன்னிச்சையாக ஆப்சென்டாகி இருந்து காவல்நிலை ஆணை எண்.279(3)ன்படி ஆப்சென்டில் இருந்தது ஒழுக்கமும், கட்டுப்பாடும் நிறைந்த காவல்துறையில் இது ஒழுங்கீனமாக செயலாகும்.

முதல் மனைவிக்கு தெரியாமல் ராணி என்கிற பெண்ணை இரண்டாவது திருமணம் செய்ததால் முதல் மனைவியின் புகாரின்பேரில் பழைய வண்ணாரப்பேட்டை (W13) அனைத்து மகளிர் காவல்நிலையத்தில் 15.09.2012 அன்று மாலை 18.00 மணிக்கு Cr.No.08/2012 u/s. 498(a), 494, 506(ii) 406 and 4 of TNWPH Act, dt. 15.09.2012 ன்படி பிரிவின் கீழ் வழக்கு பதிவு செய்து, பழல் மத்திய சிறையில் அடைக்கப்பட்டு தற்போது பணியிடை நீக்கம் செய்யப்பட்டள்ளார். ஒழுக்கமும், கட்டுப்பாடும் நிறைந்த காவல்துறையில் இது ஒழுங்கீனமான செயலாகும்.

2.1 After receipt of explanation from the petitioner, enquiry officer was appointed and detailed enquiry was conducted. Enquiry officer found that both the charges held proved. Thereafter, the petitioner was issued show cause notice and the third respondent imposed



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punishment by order dated 20.08.2013 as postponement of next increment for three years which shall operate his future increments. Aggrieved by the same, the petitioner preferred appeal before the second respondent and the same was rejected and the same was also confirmed by the first respondent.

3. The writ petition in WP.No.17642 of 2020 has been filed as against the order of the third respondent dated 16.04.2011 thereby imposed punishment of reduction of pay by two stages for a period of two years and the period of reduction shall operate to postpone the petitioner's future increments.

3.1 The petitioner was served with charge memo on 27.09.2010 consisting the following two charges:

a) கடந்த 06.11.2010 அன்று திருமதி. மோகனா என்பவரை முறைப்படி திருமணம் செய்து கொண்டு வாழ்ந்து வந்த நிலையில் தமிழ்நாடு காவல் சார்நிலை, பணியாளர் நடத்தை விதிகளுக்கு எதிராக ராணி என்பவருடன் தவறான தொடர்பு வைத்துக் கொண்டு இருந்ததன் காரணமாக ராணி என்பவர் அஸ்வினி என்ற பெண் குழந்தையை 14.04.2007 அன்று பெற்றதும்,



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ராணி மற்றும் குழந்தை அஸ்வினி ஆகியோரை H-1 காவல் குடியிருப்பில் குடிவைத்து ஒன்றாக வசித்து வந்ததும் காவல் துறையில் வன்மையாக கண்டிக்கத் தக்க செயலாகும்.

b) புது எண்.19, மேற்கு கிருஷ்ண கிராமணி தோட்டம், 1வது தெரு, பழைய வண்ணாரப்பேட்டை, சென்னை-21 என்ற முகவரியில் உள்ள 1320 சதுர அடி நிலத்தை உமது பெயரிலும், உமது தம்பி திரு.பிரேம்குமார் பெயரிலும், பதிவு செய்ததும் மற்றும் இந்நிலத்தை வாங்கிய பிறகும் இது சம்மந்தமாக அரசுக்கு தகவல் தெரிவிக்காமலும் இருந்துள்ளது. தமிழ்நாடு காவல் சார்நிலை பணியாளர் நடத்தை விதிகளுக்கு எதிரான செயலாகும். மேற்கண்ட உமது இச்செயல்கள் ஒழுக்கமும், கட்டுப்பாடும் நிறைந்த காவல் துறையில் மிகவும் கண்டிக்கத்தக்க செயல்களாகும். இது உம்மீதான குற்றச்சாட்டுகளாகும்.

3.2 The wife of the petitioner lodged private complaint for the offence punishable under Section 494 of IPC alleging that the petitioner got married another lady one, Rani and gave birth to a child. When the first marriage is very much in existence, he got married another lady. That apart, the petitioner had purchased property in his name along with his brother's name without obtaining prior permission from the Department. Enquiry officer found both the charges held proved. After



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serving the second show cause notice, the petitioner was imposed with punishment of reduction of pay by two stages for a period of two years and the period of reduction shall operate to postpone his future increments. Aggrieved by the same, the petitioner preferred appeal before the first respondent and the same was also rejected by an order dated 02.11.2018.

4. *Mr.K.Venkataramani*, the learned Senior Counsel appearing for the petitioner would submit that the criminal cases instituted as against the petitioner ended in acquittal. The petitioner was served with charge memo only on registration of FIR as against the petitioner and pursuant to the registration of FIR, he was arrested and remanded to judicial custody on 15.09.2012. Further, the petitioner was unauthorisedly absent from 15.09.2012. Therefore, both the charges are unconnected and though enquiry officer found both the charges held proved, the very same set of charge was taken cognizance by the trial court and acquitted the petitioner.



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4.1 He further submitted that the private complaint filed by the erstwhile wife of the petitioner also ended in acquittal for the charges under Section 494 of IPC. No witness had spoken about his marriage with another lady and gave birth to one child. Further, insofar as the offences under Sections 498A, 406 and 506(i) of IPC are concerned, no witness had spoken about the occurrence and the trial court acquitted the petitioner. Apart from the registration of FIR as against the petitioner and the private complaint, the petitioner was served with charge related to purchase of property by the petitioner along with his brother without any prior permission and also post permission. The petitioner and his brother had shared their ancestral property and as such, he purchased property along with his brother jointly. In support of his contention, he relied upon the judgment of the Hon'ble Division of this Court rendered in WA.No.2545 of 2013 dated 13.12.2018.

5. Heard, the learned counsel appearing on either side and perused all the materials produced before this Court.



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6. On perusal of the counters filed by the third respondent, revealed that the petitioner got married one, Mohana on 06.11.2000 and gave birth to two children. While the first marriage was very much in existence, he got married another lady called one, Rani who was residing at Police Quarters and through the said Rani, the petitioner gave birth to a daughter called Ashwini. On the complaint lodged by the said Mohana for the offence punishable under Section 494 IPC, the trial court had taken cognizance in CC.No.5318 of 2019 on the file of the XV Metropolitan Magistrate, George Town, Chennai. In the year 2012, the wife of the petitioner lodged complaint and the same was registered in crime No.947 of 2012 for the offence under Sections 498A, 406, 506(i) of IPC as against the petitioner and his family members. After completion of investigation, final report was filed and the same was taken cognizance by the trial court in CC.No.599 of 2013 on the file of the XV Metropolitan Magistrate, George Town, Chennai. While pending trial in both the cases, the petitioner was served with the above charge memos. Charges were enquired by the enquiry officer and held as proved. Thereafter, the petitioner was imposed punishments on both the



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charges. Though the petitioner was acquitted in both the criminal cases, it has no bearing or relevance on the disciplinary proceedings as standard of proof in both the cases are different and the proceedings operate in difference and have different objections. The criminal court acquitted the petitioner on the ground that the prosecution failed to bring the charges to home. Further, prosecution failed to prove the case beyond doubt. Therefore, the benefit of doubt goes in favour of the accused and acquitted the petitioner. Further, mere acquittal in the criminal case could not give clean chit to the accused.

7. In this regard, it is relevant to rely upon the judgment of the Hon'ble Supreme Court of India, in the case of **Suresh Pathrella vs. Oriental Bank of Commerce** [(2006) 10 SCC 572], wherein it is held that the yardstick and standard of proof in a criminal case different from those in a disciplinary proceeding. While the standard of proof in a criminal case is proof beyond all reasonable doubt, the proof in a departmental proceeding is based on the preponderance of probabilities. Therefore, acquittal in the criminal case shall have no bearing or



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relevance to the facts of the departmental proceedings, as the standard of proof in both cases are totally different. In a criminal case, the prosecution has to prove its case beyond all reasonable doubt, whereas in a departmental proceeding, the department has to prove only the preponderance of probabilities.

8. It is also relevant to extract the judgment of the Hon'ble Supreme Court of India in the case of ***State of Rajasthan and others vs. Heem Singh*** [(2021) 12 SCC 569], which held as follows:-

“38. In the present case, we have an acquittal in a criminal trial on a charge of murder. The judgment of the Sessions Court is a reflection of the vagaries of the administration of criminal justice. The judgment contains a litany of hostile witnesses, and of the star witness resiling from his statements. Our precedents indicate that acquittal in a criminal trial in such circumstances does not conclude a disciplinary enquiry. In Southern Railway Officers Assn. v. Union of India [Southern Railway Officers Assn. v. Union of India, (2009) 9 SCC 24 : (2009) 2 SCC (L&S) 552] , this Court held : (SCC p. 40, para 37)



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“37. Acquittal in a criminal case by itself cannot be a ground for interfering with an order of punishment imposed by the disciplinary authority. The High Court did not say that the said fact had not been taken into consideration. The revisional authority did so. It is now a well-settled principle of law that the order of dismissal can be passed even if the delinquent official had been acquitted of the criminal charge.”

(emphasis supplied)

39. In State v. S. Samuthiram [State v. S. Samuthiram, (2013) 1 SCC 598 : (2013) 1 SCC (Cri) 566 : (2013) 1 SCC (L&S) 229] , a two-Judge Bench of this Court held that unless the accused has an “honourable acquittal” in their criminal trial, as opposed to an acquittal due to witnesses turning hostile or for technical reasons, the acquittal shall not affect the decision in the disciplinary proceedings and lead to automatic reinstatement. But the penal statutes governing substance or procedure do not allude to an “honourable acquittal”. Noticing this, the Court observed : (SCC pp. 609-10, paras 24-26)

“Honourable acquittal

24. The meaning of the expression “honourable acquittal” came up for consideration before this Court in RBI v. Bhopal Singh Panchal [RBI v. Bhopal Singh Panchal, (1994) 1 SCC 541 : 1994 SCC (L&S) 594] . In



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that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions “honourable acquittal”, “acquitted of blame”, “fully exonerated” are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression “honourably acquitted”. When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted.

25. In R.P. Kapur v. Union of India [R.P. Kapur v. Union of India, AIR 1964 SC 787] it was held that even in the case of acquittal, departmental proceedings may follow where the acquittal is other than honourable. In State of Assam v. Raghava Rajgopalachari [State of Assam v. Raghava Rajgopalachari, 1972 SLR 44 (SC)] this Court quoted with approval the views expressed by Lord Williams, J. in Robert Stuart Wauchope v. Emperor [Robert Stuart Wauchope v. Emperor, 1933 SCC OnLine Cal 369 :



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ILR (1934) 61 Cal 168] which is as follows : (Raghava case [State of Assam v. Raghava Rajgopalachari, 1972 SLR 44 (SC)] , SLR p. 47, para 8)

‘8. ... The expression “honourably acquitted” is one which is unknown to courts of justice. Apparently it is a form of order used in courts martial and other extra-judicial tribunals. We said in our judgment that we accepted the explanation given by the appellant, believed it to be true and considered that it ought to have been accepted by the government authorities and by the Magistrate. Further, we decided that the appellant had not misappropriated the monies referred to in the charge. It is thus clear that the effect of our judgment was that the appellant was acquitted as fully and completely as it was possible for him to be acquitted. Presumably, this is equivalent to what government authorities term “honourably acquitted”.’ (Robert Stuart case [Robert Stuart Wauchope v. Emperor, 1933 SCC OnLine Cal 369 : ILR (1934) 61 Cal 168] , ILR pp. 188-89)

26. As we have already indicated, in the absence of any provision in the service rules for reinstatement, if an



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employee is honourably acquitted by a criminal court, no right is conferred on the employee to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile, etc. In the case on hand the prosecution did not take steps to examine many of the crucial witnesses on the ground that the complainant and his wife turned hostile. The court, therefore, acquitted the accused giving the benefit of doubt. We are not prepared to say that in the instant case, the respondent was honourably acquitted by the criminal court and even if it is so, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so.”

(emphasis supplied)



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9. Further, it is relevant to extract the judgment of the Hon'ble Supreme Court of India in the case of ***State of Rajasthan and others vs. Heem Singh*** [(2021) 12 SCC 569], which held as follows:-

“37. In exercising judicial review in disciplinary matters, there are two ends of the spectrum. The first embodies a rule of restraint. The second defines when interference is permissible. The rule of restraint constricts the ambit of judicial review. This is for a valid reason. The determination of whether a misconduct has been committed lies primarily within the domain of the disciplinary authority. The Judge does not assume the mantle of the disciplinary authority. Nor does the Judge wear the hat of an employer. Deference to a finding of fact by the disciplinary authority is a recognition of the idea that it is the employer who is responsible for the efficient conduct of their service. Disciplinary enquiries have to abide by the rules of natural justice. But they are not governed by strict rules of evidence which apply to judicial proceedings. The standard of proof is hence not the strict standard which governs a criminal trial, of proof beyond reasonable doubt, but a civil standard governed by a preponderance of probabilities. Within the rule of preponderance, there are varying approaches based



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on context and subject. The first end of the spectrum is founded on deference and autonomy — deference to the position of the disciplinary authority as a fact-finding authority and autonomy of the employer in maintaining discipline and efficiency of the service. At the other end of the spectrum is the principle that the court has the jurisdiction to interfere when the findings in the enquiry are based on no evidence or when they suffer from perversity. A failure to consider vital evidence is an incident of what the law regards as a perverse determination of fact. Proportionality is an entrenched feature of our jurisprudence. Service jurisprudence has recognised it for long years in allowing for the authority of the court to interfere when the finding or the penalty are disproportionate to the weight of the evidence or misconduct. Judicial craft lies in maintaining a steady sail between the banks of these two shores which have been termed as the two ends of the spectrum. Judges do not rest with a mere recitation of the hands-off mantra when they exercise judicial review. To determine whether the finding in a disciplinary enquiry is based on some evidence an initial or threshold level of scrutiny is undertaken. That is to satisfy the conscience of the court that there is some evidence to support the charge of misconduct and to guard against



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perversity. But this does not allow the court to reappreciate evidentiary findings in a disciplinary enquiry or to substitute a view which appears to the Judge to be more appropriate. To do so would offend the first principle which has been outlined above. The ultimate guide is the exercise of robust common sense without which the Judges' craft is in vain.

10. Thus, it is clear that the Courts exercising power of judicial review are entitled to consider whether, while inferring the commission of misconduct on the part of a delinquent officer, a relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence that meets the requirements of legal principles. To determine whether the finding in a disciplinary enquiry is based on some evidence, an initial or threshold level of scrutiny is undertaken. That is to satisfy the conscience of the Court that there is some evidence to support the charge of misconduct and to guard against perversity. But this does not allow the Court to re-appreciate evidentiary findings in a disciplinary enquiry or to substitute a view that appears to the Judge to be more appropriate.



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11. Mere acquittal by the criminal Court would not give a clean chit to the delinquent in disciplinary proceedings. As stated supra, the manner in which the proceedings were conducted and the trial, due to which the petitioner was acquitted from the criminal charge, therefore, the judgment of the criminal Court cannot be considered in the disciplinary proceedings.

12. Further, insofar as the divorce petition is concerned, though the wife of the petitioner was set *ex parte* in the divorce proceedings and the divorce petition was decreed in favour of the petitioner. Subsequently, the petitioner's wife filed petition to set aside the *ex parte* decree and contested the divorce petition. While pending the divorce petition, the petitioner had paid substantial money to his wife and children. In view of the same, the wife had entered into compromise and divorce petition was decreed in favour of the petitioner. Therefore, the allegation of cruelty was not proved before the Famil Court by which the petitioner sought for divorce. That apart, before enquiry officer, all the charges were held proved against the petitioner. Though the criminal



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case ended in acquittal, it is nothing to do with the disciplinary proceedings.

13. In view of the above, this Court finds no infirmity or illegality in the impugned orders. As such, both the writ petitions are devoid of merits and liable to be dismissed. Accordingly, both the writ petitions are dismissed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

24.09.2024

Neutral Citation: Yes/No
Index: Yes/No
Speaking/Non-speaking order
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To

- 1.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai 600 004
- 2.The Commissioner of Police,
Greater Chennai Police,
Vepery, Chennai 600 007
- 3.The Deputy Commissioner of Police,
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Chennai
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- 5.The Assistant Commissioner of Police,
Armed Reserve-II,
Greater Chennai Police,
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G.K.ILANTHIRAIYAN, J.

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W.P.Nos.17641 & 17642 of 2020

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