

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.09.2017

DELIVERED ON : 25.10.2017

CORAM

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER
AND
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.NOS.7191 AND 7192 OF 2013
AND
W.P.NOS.33494 AND 33495 OF 2014
&
CONNECTED MISCELLANEOUS PETITION

S.Krishnan

.. Petitioner in all W.Ps.

Vs

1. The Government of Tamil Nadu
Rep. By the Secretary to Government,
Home Department,
Fort St. George,
Chennai 600 009.
2. The Registrar General,
High Court of Judicature at Madras,
Chennai 600 104.
3. The Registrar (Vigilance),
High Court of Judicature at Madras,
Chennai 600 104.
4. The Accountant General,
Chennai Circle,
Teynampet,
Chennai 600 018.

.. Respondents in all the WPs

Prayer in W.P.No.7191 of 2013: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the proceedings of the second respondent namely, the Registrar General, High Court, Madras, Chennai 600 104, dated 02.12.2003 in proceedings in R.O.C.No.84/2003-Con.B2 and quash the same and

(i)to consequently direct the respondents herein to re-designate the petitioner as Additional District and Sessions Judge adhoc basis and consequently fix the pay and pension of the petitioner in the said post from 01.06.2009;

(ii)to consequently direct the respondents herein to treat the entire period of suspension from 02.12.2003 to 27.05.2009 in the Cadre of Additional District and Sessions Judge adhoc basis as one of duty for all purposes and pay the petitioner the emoluments and arrears arising there from with interest @ 18% per annum within a short date that may be fixed by this Court:

(iii)to consequently direct the respondents herein to pay the entire terminal benefits withheld by them on account of the disciplinary proceedings initiated against him;

(iv)to consequently direct the respondents herein to pay pension from 01.06.2009 to the petitioner and continue to pay the same every month without any further delay in the cadre of Additional District and Sessions Judge;

(v)to consequently direct the respondents herein to release at least 75% of the terminal benefits withheld by them, pending disposal of the above writ petition;

(vi)to consequently direct the respondents herein to add 5 years of net qualifying service as has been prescribed under Pension Rule 27 and consequently direct the 4th respondent i.e., the Accountant General, Chennai Circle Teynampet, Chennai 600 018 herein to re-issue the authorization letter which was already issued by him on 01.08.2014 by adding the above said period of 5 years of net qualifying service and consequently to rework the Pension and retirement benefit of the petitioner and

(vii)to consequently direct the respondents herein to add a further period of 2 years of net qualifying service from the age of 58 to 60 years and to permit the petitioner to raise additional grounds in W.P.No.7191 of 2013. (Prayer amended as per order dated 29.04.2015 in Mps.1 & 2/14 in WP.7191/13)

Prayer in W.P.No.7192 of 2013: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the proceedings namely, the show cause notice dated 23.12.2011 of the second respondent, namely, the Registrar General, High Court, Madras bearing R.O.C.Nos.6115/2003-B6, 6710/2003-B6 and 8673/2003-B6 quash the same and to grant such further or other relief as this Court may deem fit and proper in the facts and circumstances of the case.

Prayer in W.P.No.33494 of 2014: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent herein relating to the G.O.(D)No.392, Home (Courts-I) Department, dated 29.05.2014, quash the same and consequently, direct the respondents herein to restore the original pension of the petitioner in the post of Additional District Judge, Fast Track Court, Dharmapuri on Adhoc Basis and pay the arrears within a short date that may be fixed by this Court.

Prayer in W.P.No.33495 of 2014:- Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the G.O.(D)No.869, Home (Courts-I) Department, dated 23.10.2013 issued by the first respondent herein and quash the same and consequently, direct the respondents herein to restore the original pension of the petitioner in the post of Additional District Judge, Fast Track Court, Dharmapuri on adhoc basis and pay the arrears within a short date that may be fixed by this Court.

For Petitioner : Dr.A.E.Chelliah,
Senior Counsel
(In all W.Ps.) for M/s.C.Saifullah,
For 1st Respondent : Mr.P.S.Shivashanmugasundaram,
Special Government Pleader.
For Respondents 2&3 : Mr.Haja Mohideen Gisti
For 4th Respondent : Mr.V.Vijay Shankar
(In all W.Ps.)

COMMON ORDER

ABDUL QUDDHOSE, J

Writ Petition No.7191 of 2013 has been filed by the petitioner challenging the suspension order dated 02.12.2003 in R.O.C.No.84/2003-Con.B2 issued by the Registrar General of this Court under Sub Rule (e) of Rule 17 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

2.Writ Petition No.7192 of 2013 has been filed challenging the show cause notice issued by the second respondent dated 23.12.2011.

3.Writ Petition No.33494 of 2014 has been filed by the petitioner challenging the final order dated 29.05.2014 of the first respondent in G.O.[D]No.392, Home (Courts-I) Department, dated 29.05.2014, by which the petitioner was imposed penalty of reduction in pension by 25% for a period of three years.

4.Writ Petition No.33495 of 2014 has been filed by the petitioner challenging the final order dated 23.10.2013 passed by the first respondent in G.O.[D]No.869, Home (Courts-I) Department, dated 23.10.2013, by which the petitioner was imposed penalty of reduction in pension by 25% for a period of five years.

5.Since the impugned orders which are the subject matter of challenge in all the writ petitions arise out of the misconduct of the petitioner and the consequential punishment, a common order is passed by us in all the three writ petitions.

6.The case of the petitioner in brief is as follows:

The petitioner was selected as a Judicial Officer by the Tamil Nadu Public Service Commission on 4.11.1988 and he joined the service as Judicial Magistrate at Rasipuram on 4.11.1988 in the Tamil Nadu State Judicial Service. He has worked in various Courts and was promoted as Additional Subordinate Judge from the date of his joining in the Tamil Nadu State Judicial Service and thereafter promoted as District and Sessions Judge and finally posted as Additional District and Sessions Judge (Fast Track Court), Dharmapuri on adhoc basis. He had performed his duty as Judicial Officer to the utmost satisfaction of his superiors and with utmost integrity, devotion to duty as expected of a Judicial Officer. But to his shock and surprise, while working as Additional District and Sessions Judge (Fast Track Court), Dharmapuri on adhoc basis, by the proceedings of the second respondent in R.O.C.No.84/2003-Con.B2 he was placed under suspension on 02.12.2003 without any enquiry and reverted to the cadre of Civil Judge (Senior Division) by the order of the second respondent with immediate effect, in public interest until further orders. The proceedings further stated that he was entitled to subsistence allowance and dearness allowance as admissible to him under Fundamental Rule 53(1).

7.As per the order of suspension, his headquarters was indicated as Dharmapuri and he was barred from leaving the headquarters without obtaining prior permission from this Court. He was further directed to hand over the charge to the I Additional District Judge, Dharmapuri at Krisnagiri immediately and furnish his residential address to this Court. On his suspension from service, the I Additional District Judge,

Dharmapuri at Krisnagiri was placed in full additional charge of the post of the Additional District Judge (Fast Track Court), Dharmapuri until further orders.

8.The petitioner challenged the order of suspension dated 02.12.2003 and thereafter, two show cause notices were also issued to him. W.P.Nos.7192 and 7193 of 2013 have been filed by the petitioner challenging the show cause notices which were subsequently closed by the orders of this Court since final orders have been issued by the first respondent pursuant to the show cause notices.

9.In W.P.No.7191 of 2013, the petitioner challenges the order of suspension dated 02.12.2003 and in W.P.No.33494 of 2014, the petitioner challenges G.O.(D)No.869, Home (Courts-I) Department, dated 23.10.2003, they are the subject matter of consideration in this common order.

10.Even though suspension order was issued by the second respondent on 02.12.2003, the petitioner challenged the order of suspension only in the month of October 2012 i.e., after a lapse of more than nine years from the date of his suspension by filing W.P.No.7191 of 2013. The said impugned order was passed based on grave charges of misconduct against the petitioner, while he was serving as Additional District Judge (Fast Track Court), Dharmapuri on ad hoc basis and in public interest, the petitioner was placed under suspension with immediate effect.

11.The petitioner filed W.P.No.7191 of 2013 challenging his suspension on the following grounds:

i)The delay in completion of disciplinary proceedings and the prolonged suspension for a period of nine years is in violation of statutory rules and Fundamental Rule 29(2), violation of principles of natural justice and offends Articles 14, 16 and 21 of the Constitution of India. While passing the suspension order and reversion order on 02.12.2003, the petitioner was not issued with a prior show cause notice as to why he should not be reverted to the lower post nor he was given any opportunity to put forth his grievance which is in violation of Fundamental Rule 29(2). The suspension order was not reviewed periodically as contemplated under Section 17(e)(ii) of the Tamil Nadu (Discipline and Appeal) Rules. But the order of suspension was revoked only on 29.05.2009 after a delay of nearly seven years when the petitioner was to retire on reaching the age of superannuation on 31.05.2009.

ii)The petitioner was not only suspended from service but he was also reverted to the lower post of Civil Judge

(Senior Division) without notice which is in violation of principles of natural justice. He was informed in the official memorandum dated 11.05.2011 of the second respondent that further action against him is dropped. Once the Hon'ble Administrative Committee of this Court has decided to drop further action against the petitioner, it is in violation of the principles of natural justice on the part of the second respondent to issue proceedings dated 30.5.2011 asking the petitioner to show cause as to why the punishment of withholding of 25% pensionary benefits for a period of five years should not be imposed on him. The show cause notice dated 30.05.2011 issued to the petitioner is in utter violation of principles laid down by this Court as well as by the Hon'ble Supreme Court. The show cause notice should not indicate the proposed punishment against the delinquent officer but contrary to the law laid down by this Court as well as the Hon'ble Supreme Court, the show cause notice has prejudged the issue and indicated the quantum of punishment to be imposed on the petitioner.

(iii) The petitioner by his representation dated 11.01.2012 to the second respondent has prayed to revoke the order of reversion and permit him to be re-designated as Additional District and Sessions Judge and fix all his pensionary benefits in the District Judge cadre. Despite lapse of six months, no reply was forthcoming from the second respondent and therefore, his right to life under Article 21 of the Constitution of India has been violated as he has not been paid anything from 31.05.2009 and the respondents have taken ten years to conclude the disciplinary proceedings right from the stage of issuance of suspension and reversion order dated 02.12.2003. Hence, the respondents have not followed due procedure established under law in the disciplinary proceedings initiated against the petitioner.

(iv) The petitioner was not permitted to cross examine one lady witness in the enquiry proceedings despite repeated requests have been made by the petitioner. Hence, the failure on the part of the enquiry officer in permitting the petitioner to cross examine the witness vitiates the enquiry and on the ground of violation of principles of natural justice, the entire disciplinary proceedings are liable to be set aside.

(v) The DCRG and retirement benefits can be withheld by the authorities only if any monetary loss is caused to the department by the actions of the Government servant. In the present case, no monetary loss was caused by the petitioner to the Government and hence, the action of the respondents in withholding the DCRG and other retirement benefits is highly arbitrary and is in total violation of the Tamil Nadu Pension Rules. In fact, the petitioner was not even paid the leave

encashment salary and other benefits available to him.

(vi) In view of the disciplinary proceedings, the petitioner was punished four times. Initially, he was suspended and reverted to the lower post by order dated 02.12.2003 without any notice. Secondly, because of the reversion, he lost his further promotion also. Thirdly, when he reached the age of superannuation on 31.05.2009, he was denied the benefit of extension of two years of service since he can work upto 60 years of age citing the pending disciplinary proceedings. Finally, after retirement he would have got a chance to work in Lok Adalat which was also denied to him citing the pending disciplinary proceedings.

12. After the petitioner was suspended from service and reverted as Subordinate Judge on 02.12.2003, the second respondent in R.O.C.No.84/2-3-Con-B2, framed the following charges.

"Charge No.1

That you, Thiru S.Krishnan, formerly Additional District, Fast Track Court, Dharmapuri, reverted to the cadre of Civil Judge [Senior Division], now under suspension was prosecuted under Section 138 of Negotiable Instruments Act before the Court of Judicial Magistrate No.4, Coimbatore in C.C.No.699 of 2002, C.C.No.672/2002 and C.C.No.850/2003 for the dishonour of cheques for Rs.2,00,000/-, Rs.8,04,000/- and Rs.6,00,000/- respectively, and non-Bailable Warrant was issued against you in C.C.No.699/2002 by the Judicial Magistrate No.4, Coimbatore since you had not appeared before the Court from the date of first hearing of the case in C.C.No.699/2002 on the file of Judicial Magistrate No.V, Coimbatore and thus you had not appeared before the Court from the date of first hearing of the case in C.C.No.699/2002 on the file of Judicial Magistrate No.V, Coimbatore and thus you have failed to maintain absolute integrity and committed acts of serious misconduct unbecoming of a Judicial Officer and thereby you have violated Rule 20[1] of the Tamil Nadu Government Servants' Conduct Rules, 1973 and rendered yourself liable to be punished under Rule 8 of the Tamil Nadu Civil Services [Discipline and Appeal] Rules.

Charge No.2

That you, Thiru S.Krishnan, formerly Additional District Judge, Fast Track Court, Dharmapuri, reverted

to the cadre of Civil Judge (Senior Division) now under suspension borrowed money from the complainants viz. Thiru K.P.Murugesan, S/o. Thiru Palanisamy in C.C.No.699/2002, Thiru D.Baladhandapani, S/o. Thiru Duraisamy Chettiar in C.C.No.672/2002 and Thiru K.P.Murugesan, S/o. Thiru Palanisamy in C.C.No.850/2003 on the file of the Judicial Magistrate Court No.V, Coimbatore without obtaining prior permission of the High Court, and issued cheques for a sum of Rs.2,00,000/-, Rs.8,04,000/- and Rs.6,00,000/- respectively to them towards repayment of money you borrowed from them and thus you have committed the acts of serious misconduct unbecoming of a Judicial Officer and thereby you have violated Rules 6[4][aa] and 20[1] of the Tamil Nadu Government Servants' Conduct Rules, 1973 and rendered yourself liable to be punished under Rule 8 of the Tamil Nadu Civil Services [Discipline and Appeal] Rules."

13.In the above two charges, one prosecution witness was examined and documents Exs.P.1 and P.2 were marked on the prosecution side. By another proceedings of the second respondent in R.O.C.Nos.6115/2003-B6, 6710/2003 & 8673/2003-B6 dated 10.10.2007, the second respondent framed five additional charges against the petitioner. The five additional charges framed against the petitioner are as follows:

"Charge No.1

That you, Thiru S.Krishnan, formerly Additional District Judge, Fast Track Court, Dharmapuri, reverted to the cadre of Civil Judge [Senior Division], now under suspension, while functioning as Additional District Judge, Fast Track Court, Dharmapuri applied for unearned leave for 16 days from 13.05.2003 to 28.05.2003 [both days inclusive] and submitted an application dated 13.05.2003 for the said leave which was received by the then Principal District Judge, Dharmapuri at Krishnagiri [Head of Office] only on 19.05.2003 but you went on leave and hence, the then Principal District Judge, Dharmapuri at Krishnagiri could not place some other officer in additional charge of your post during your leave period and thus you have committed the acts of serious misconduct violating the instructions given in High Court's Circular in P.Dis.No.19/1986, dated 28.01.1986 and R.O.C.No.8852/1990-B6, dated 17.12.1990 and exhibited lack of devotion to duty unbecoming of a Judicial Officer and thereby you have violated Rule 20[1] of the Tamil Nadu Government Servants' Conduct Rules, 1973 and rendered yourself liable to be punished under Rule 8 of

the Tamil Nadu Civil Services [Discipline and Appeal] Rules.

Charge No.2:

That you, Thiru S.Krishnan, formerly Additional District Judge, Fast Track Court, Dharmapuri, reverted to the cadre of Civil Judge [Senior Division], now under suspension, while functioning as Additional District Judge, Fast Track Court, Dharmapuri applied for unearned leave on medical certificate for three days from 04.06.2003 to 06.06.2003 [both days inclusive] and submitted an application dated 04.06.2003 for the said leave which was received by the then Principal District Judge, Dharmapuri at Krishnagiri [Head of Office] only on 09.06.2003 but you went on leave and extended the unearned leave for seven days from 07.06.2003 to 13.06.2003 and submitted an application dated 09.06.2003 for the said extension of leave, which was received by the then Principal District Judge, Dharmapuri at Krishnagiri only on 10.06.2003 and hence, the then Principal District Judge, Dharmapuri at Krishnagiri could not place some other officer in additional charge of your post during your leave period and thus you have committed the acts of serious misconduct violating the instructions given in High Court's Circular in P.Dis.No.19/1986, dated 28.01.1986 and R.O.C.No.8852/1990-B6, dated 17.12.1990 and exhibited lack of devotion to duty unbecoming of a Judicial Officer and thereby you have violated Rule 20[1] of the Tamil Nadu Government Servant's Conduct Rules, 1973 and rendered yourself liable to be punished under Rule 8 of the Tamil Nadu Civil Services [Discipline and Appeal] Rules.

Charge No.3

That you, Thiru S.Krishnan, formerly Additional District Judge, Fast Track Court, Dharmapuri, reverted to the cadre of Civil Judge [Senior Division], now under suspension, functioning as Additional District Judge, Fast Track Court, Dharmapuri applied for unearned leave for three days from 16.07.2003 to 18.07.2003 and submitted an application dated 15.07.2003 for the said leave which was received by the then Principal District Judge, Dharmapuri at Krishnagiri [Head of Office] only on 17.07.2003 but you went on leave and hence, the then Principal District Judge, Dharmapuri at Krishnagiri could not place some other officer in additional charge of your

post during your leave period and thus you have committed the acts of serious misconduct violating the instructions given in High Court's Circular in P.Dis.No.19/1986, dated 28.01.1986 and R.O.C.No.8852/1990-B6, dated 17.12.1990 and exhibited lack of devotion to duty unbecoming of a Judicial Officer and thereby you have violated Rule 20[1] of the Tamil Nadu Government Servants' Conduct Rules, 1973 and rendered yourself liable to be punished under Rule 8 of the Tamil Nadu Civil Services [Discipline and Appeal] Rules.

Charge No.4

That you, Thiru S.Krishnan, formerly Additional District Judge, Fast Track Court, Dharmapuri, reverted to the cadre of Civil Judge [Senior Division], now under suspension, while functioning as Additional District Judge, Fast Track Court, Dharmapuri failed to hand over charge of your post to some other nearest Judicial Officer of equal cadre before proceeding on leave on three occasions viz., from 13.05.2003 to 28.05.2003 from 04.06.2003 to 13.06.2003 and from 16.07.2003 to 18.07.2003 thus you have committed the acts of serious misconduct violating the instructions given in High Court's Circular in P.Dis.No.19/1986, dated 28.01.1986 and R.O.C.No.8852/1990-B6, dated 17.12.1990, caused inconvenience to the Head of Office and exhibited lack of devotion to duty unbecoming of a Judicial Officer and thereby you have violated Rule 20[1] of the Tamil Nadu Government Servants' Conduct Rules, 1973 and rendered yourself liable to be punished under Rule 8 of the Tamil Nadu Civil Services [Discipline and Appeal] Rules.

Charge No.5

That you, Thiru S.Krishnan, formerly Additional District Judge, Fast Track Court, Dharmapuri, reverted to the cadre of Civil Judge [Senior Division], now under suspension, functioning as Additional District Judge, Fast Track Court, Dharmapuri proceeded on leave in three spells viz., from 13.05.2003 to 28.05.2003 from 04.06.2003 to 13.06.2003 and from 16.07.2003 to 18.07.2003 without handing over charge of your post; but submitted certificate of transfer of charge of the said leave periods as if you have handed over charge of your post before proceeding on leave i.e. on 13.05.2003 F.N., 04.06.2003 F.N., and 16.07.2003 F.N., respectively, that it is evident from the reports of the then Principal

District Judge, Dharmapuri at Krishnagiri that no officer was placed in additional charge of your post during the said leave periods since your leave application for the said leave period have been received by him belatedly as said in the above charges and from your statements in your three letter dated 04.08.2003 that you were submitting the certificate of transfer of charges as if you had handed over charge on on 13.05.2003 F.N., 04.06.2003 F.N., and 16.07.2003 F.N., and took charge on 29.05.2003 F.N., 16.06.2003 F.N., and 21.07.2003 F.N., respectively, that you have created papers as if you handed over charge of your post before proceeding on leave and took charge on returning to duty after expiry of leave and thus committed the acts of serious misconduct violating the instructions given in High Court's Circular in P.Dis.No.19/1986, dated 28.01.1986 and R.O.C.No.8852/1990-B6, dated 17.12.1990 and exhibited lack of devotion to duty unbecoming of a Judicial Officer and thereby you have violated Rule 20[1] of the Tamil Nadu Government Servants' Conduct Rules, 1973 and rendered yourself liable to be punished under Rule 8 of the Tamil Nadu Civil Services [Discipline and Appeal] Rules.

14. After issuing two charge memos against the petitioner, one for two charges and the other for five charges, the second respondent appointed the Principal District Judge, Dharmapuri as enquiry officer to conduct departmental enquiry against the petitioner. The Enquiry Officer in his report dated 01.08.2011 has held that the two charge memos comprising of seven charges referred to above issued by the second respondent against the petitioner have been proved by the prosecution. Pursuant to the findings of the Enquiry Officer, the second respondent issued second show cause notice to the petitioner proposing to impose punishment of reduction of pension by 25% for a period of three years for the charges held as proved in the two disciplinary proceedings. The petitioner sent a reply dated 11.01.2012 to the said show cause notice. The Administrative Committee of this Court, after considering the reply of the petitioner, passed the following resolution:

"(i) Perused the reply dated 11.01.2012 submitted by the delinquent officer, Thiru S.Krishnan, formerly Additional District Judge, Fast Track Court, Dharmapuri to the show cause notice dated 23.12.2011 and it is found not satisfactory.

[ii] It is resolved to impose a punishment of reduction in pension by 25% for a period of three years

on the delinquent officer.

[iii]Registry is directed to place this matter before the Full Court for its approval."

15.Pursuant to the above resolution of the Administrative Committee of this Court, the matter was placed before the Full Court. The Full Court, in its meeting held on 08.12.2013, passed the following resolution:-

"It is hereby resolved to accept the resolution of the Hon'ble Administrative Committee dated 04.10.2013, imposing a punishment of reduction in pension by 25% for a period of three years on the delinquent Judicial Officer, viz., Thiru S.Krishnan, formerly Additional District Judge, Fast Track Court, Dharmapuri in respect of the proceedings initiated against him in R.O.C.No.84/2003-Con.B2 & R.O.C.Nos.6115/2003-B6, 6710/2003-B6 & 8673/20203-B6."

16.Pursuant to the resolution passed by the Full Court, the second respondent sent a proposal to the first respondent requesting the first respondent to pass final orders imposing punishment of reduction in pension by 25% for a period of three years on the petitioner. In view of the proposal sent by the second respondent, the Hon'ble Governor of Tamil Nadu, after careful and independent examination of the case with connected records, decided to accept the resolution of the Full Court. Accordingly, the first respondent by impugned G.O.[D] No.392, Home (Courts-I] Department, dated 29.05.2014 has imposed the penalty of "reduction in Pension by 25% for a period of three years" on the petitioner, who was formerly Additional District Judge (Fast Track Court), Dharmapuri now retired from service. The petitioner has challenged the said G.O.[D] No.392, Home (Courts-I] Department, dated 29.05.2014 in W.P.No.33494 of 2014 imposing penalty against him on the following grounds:-

(i)There is an inordinate delay in finalizing the disciplinary proceedings initiated against him. It is in total violation of principles of natural justice and there is non application of mind on the part of the first respondent in issuing the impugned Government Order. The show cause notices proposing to impose the penalty of "reduction in pension by 25% for a period of three years" is without jurisdiction and violative of Articles 14, 16, 21 and 233 of the Constitution of India.

(ii)The respondents have violated the guidelines issued by the Government in letter (MS)No.1118/Per.N/87, dated 22.12.1987 due to inordinate delay in initiating disciplinary

proceedings against the petitioner. The petitioner was suspended from service on 02.12.2003 and final orders were passed on 29.05.2014 and there is an inordinate delay of eleven years in finalizing the disciplinary proceedings initiated against the petitioner. The decision of the Administrative Committee and the subsequent copy of the minutes of the Full Court dated 08.12.2013 were never communicated to the petitioner. The petitioner was completely kept in dark about the entire matter and only through the impugned Government Order, he came to know about the punishment imposed based on the decision of the Administrative Committee. The non communication of the report of the Administrative Committee and the copy of the minutes of the meeting of the Full Court dated 08.12.2013 is a serious flaw in the entire disciplinary proceedings and on this score also the entire disciplinary proceedings initiated against the petitioner are liable to be quashed.

(iii) In the impugned G.O.(D)No.392, Home [Courts-I] Department, dated 29.05.2014, the punishment was inflicted on the petitioner by the respondents herein in respect of two charge memos. Such a procedure adopted by the respondents is unheard of in disciplinary proceedings concerning a Government servant. Under Article 233 of the Constitution of India, the Hon'ble Governor of the State is the appointing authority in respect of the District Judges. The natural corollary is that any punishment is to be inflicted only by the Hon'ble Governor and not by any one else who is not the appointing authority. The Hon'ble Governor should have applied his mind independently and imposed the penalty on the petitioner, whereas as stated in the impugned Government Order, the said penalty is based on the finding recorded by the Hon'ble Administrative Committee of this Court.

17. Based on the above mentioned grounds, the petitioner challenged the impugned G.O.[D] No.392, Home [Courts-I] Department, dated 29.05.2014 and sought for quashing the same and consequently to direct the respondents to restore the original pension of the petitioner in the post of Additional District Judge (Fast Track Court), Dharmapuri on ad-hoc basis and pay arrears within a short date that as may be fixed by this Court.

18. W.P.No.33495 of 2014 has been filed by the petitioner challenging G.O.(D)No.869, Home (Courts-I) Department, dated 23.10.2013 issued by the first respondent and for a direction to the respondents to restore the original pension of the petitioner in the post of Additional District Judge, Fast Track Court, Dharmapuri on ad-hoc Basis and pay the arrears within a short date that may be fixed by this Court.

19.The factual matrix in W.P.No.33495 of 2014 in brief is as follows:

The second respondent in C.No.2/2002/V.C. [in ROC.No.40/2002/V.C and 471/2003/V.C] dated 25.06.2007 framed the following four charges against the petitioner after nearly four years from the date of suspension and reversion viz., 02.12.2003:-

Charge No.1

That you, Thiru S.Krishnan, while functioning as Additional District, Fast Track Court, Dharmapuri obtained loan from the Allahabad Bank, Chennai in the name of one Ms.R.Chellam, a retired Teacher, for the purchase of a Xerox machine and started Xerox centre in the name of "Venus Xerox" and employed the said Ms.R.Chellam on monthly salary, but you have not paid the salary regularly and finally made her liable to repay the loan of Rs.3 lakhs to the Allahabad Bank, you also started some more commercial ventures viz., a beauty parlour, marketing agency, STD-ISD both and made her to run the business and some time due to heavy loss, the said lady was made liable to repay a huge loan amounting to Rs.4,11,000/-, which was obtained to start the above said business; thus you have committed the acts of misuse of power, a conduct unbecoming of a Judicial Officer and failed to maintain absolute integrity and thereby rendered yourself liable to be proceeded with under Tamil Nadu Civil Services [Discipline and Appeal] Rules 1973 for the violation of Rule 20[1] of the Tamil Nadu Government Servants' Conduct Rules.

Charge No.2

That you, Thiru S.Krishnan, while functioning as Judicial Officer, Coimbatore Corporation, Coimbatore stayed at private lodges and permitted Thiru R.Srinivasan, the brother of the complainant to stay along with his family members at your official quarters at Coimbatore promising him to secure a job and thereby you committed misuse of power, a conduct unbecoming of a Judicial Officer and failed to maintain absolute integrity and rendered yourself liable to be proceeded with under Tamil Nadu Civil Services [Discipline and Appeal] Rules 1973 for the violation of Rule 20[1] of the Tamil Nadu Government Servants' Conduct Rules.

Charge No.3

That you, Thiru S.Krishnan, while functioning as Judicial Officer, Coimbatore Corporation, Coimbatore stayed at private lodges and received bribes for doing favours to the litigant public and thereby you committed an act of corrupt practice, a conduct unbecoming of a Judicial Officer and failed to maintain absolute integrity and rendered yourself liable to be proceeded with under Tamil Nadu Civil Services [Discipline and Appeal] Rules 1979 for the violation of Rule 20[1] of the Tamil Nadu Government Servants' Conduct Rules.

Charge No.4

That you, Thiru S.Krishnan, while functioning as Judicial Officer, Coimbatore Corporation, Coimbatore requested one Thiru S.Eswaran, Coimbatore, to arrange for a loan for the studies (MBBS) of your son, and he in turn arranged a huge loan in the name of his wife and that you issued two post dated cheques dated 15.04.2002 and 14.06.2002 for Rs.7,50,000/- each, but the cheques were returned due to insufficient funds and that the complainant (Thiru S.Eswaran) has filed C.C.Nos.378/2002 and 180/2002 on the file of Judicial Magistrate Court, Coimbatore and the same were pending thus you have committed the acts of misuse of power, a conduct unbecoming of a Judicial Officer and failed to maintain absolute integrity and thereby rendered yourself liable to be proceeded with under Tamil Nadu Civil Services [Discipline and Appeal] Rules 1973 for the violation of Rule 20[1] of the Tamil Nadu Government Servants' Conduct Rules."

20.The petitioner states that for the above four charges five prosecution witnesses were examined and documents Exs.P.1 to P.10 were marked on the side of the prosecution. The Principal District Judge, Krishnagiri was appointed as the Enquiry Officer and the Principal Subordinate Judge, Krishnagiri was appointed as Presenting Officer by this Court. The petitioner states that from 01.11.2008 to 21.04.2009, the Enquiry Officer conducted enquiry in respect of the above said four charges. He has also stated in his affidavit that he prayed for adjournment on 11.03.2009, 18.03.2009, 31.03.2009, 15.04.2009 and 21.04.2009 before the Enquiry Officer. The Enquiry Officer after conducting enquiry submitted his report dated 19.05.2009 holding the petitioner guilty of charges in respect of Charge Nos.1 and 4 and in respect of Charge Nos.2 and 3 are not proved. The first respondent acting on the resolution

of the second respondent by its impugned G.O.[D]No.869, Home [Courts-I] Department, dated 23.10.2013 imposed the punishment of reduction in pension by 25% for a period of five years in respect of the above said charges. The petitioner has challenged G.O.[D]No.869, Home [Courts-I] Department, dated 23.10.2013 in W.P.No.33495 of 2014 on almost the same grounds as raised for challenging G.O.(D)No.392 dated 29.05.2014 which is the subject matter of W.P.No.33494 of 2014. To avoid repetition, the grounds raised by the petitioner in W.P.Nos.33494 and 33495 of 2014 are almost identical and therefore, we are not inclined to repeat it once again.

21.It is to be pointed out that in all eleven charges framed against the petitioner, seven charges are the subject matter of W.P.No.33494 of 2014 and four charges are the subject matter of W.P.No.33495 of 2014.

22.In the four charges framed against the petitioner, in R.O.C.No.40/2002/VC and 471/2003/VC dated 25.06.2007 and the G.O.(D)No.869, dated 23.10.2013 which is the subject matter of W.P.No.33495 of 2014, the Enquiry Officer, by his report dated 19.05.2009 held that the petitioner is guilty of charges in respect of Charge Nos.1 and 4 and in respect of charges No.2 and 3, the Enquiry Officer has held that the charges have not been proved. Charge No.1 relates to availing loan without permission by the petitioner in the name of Ms.R.Chellam, a retired Teacher for the purchase of Xerox Machine and the said lady was made to re-pay the huge loan amount of Rs.4,11,000/-. Charge No.4 relates to borrowing of money by the petitioner from Mr.S.Eswaran for his son's education and issuing two post dated cheques for a sum of Rs.7,50,000/- each which were returned due to insufficient funds which was the subject matter of criminal proceedings in C.C.Nos.378 of 2002 and 180 of 2003 on the file of the Judicial Magistrate Court, Coimbatore.

23.Therefore, out of the total eleven charges, nine of them have been proved against the petitioner. The punishment imposed on the petitioner in respect of two charges held to be proved by the Enquiry Officer is the subject matter of W.P.No.33495 of 2014. The first respondent vide G.O.(D).No.869, Home (Courts-I) Department, dated 23.10.2013, imposed the penalty of reduction in pension by 25% for a period of five years in respect of the above said two charges which were proved against the petitioner.

24.The second respondent has filed separate counter affidavits in each of the writ petitions in W.P.Nos.33494 and 33495 of 2014. The second respondent filed a common counter affidavit in W.P.Nos.7191 to 7193 of 2013. The first respondent

has also filed common counter affidavit in W.P.Nos.7191 and 7192 of 2013. In the counter affidavit in W.P.No.7191 of 2013, the rebuttals made by the second respondent to the averments made by the petitioner in his affidavit are briefly stated as follows:

a)The petitioner borrowed money and for repayment of the loan, he issued cheques which were dishonored. Hence, a criminal complaint has been filed under Section 138 of the Negotiable Instrument Act in C.C.Nos.699 of 2002, 672 of 2002 and 850 of 2003 by the complainant against the petitioner and non bailable warrant was also issued against the petitioner in those criminal complaints filed against the petitioner.

b)The second respondent suspended the petitioner from service only after considering the grave charges of misconduct committed by the petitioner and on the same day of suspension by Notification No.194/2003, dated 02.12.2003, the petitioner was also reverted to the substantive post of Civil Judge (Senior Division) (now known as Senior Civil Judge) from the post of District Judge.

c)The action was not taken against the petitioner on the basis of newspaper report but was taken only after considering the remarks of the then Principal District Judge, Coimbatore. The allegations made by the petitioner that entire proceedings were initiated on the basis of newspaper reports are incorrect and false. In fact, in his letter dated 10.07.2007 which was received by the Registrar (Vigilance) on 25.06.2007, the petitioner himself has admitted that all the records pertaining to the charges framed against him were furnished to him. It is false to now allege that the copies of the documents were not furnished by the second respondent to the petitioner. Sufficient opportunities were given and the respondents followed the due procedure established under law and there is no violation of principles of natural justice as alleged by the petitioner. No disciplinary proceedings as stated by the petitioner were dropped and it is false to state that the petitioner was never informed that further action in the disciplinary proceedings in ROC No.84/2003-Con.B2 and in the disciplinary proceedings in ROC No.6115/2003-B6, 6710/2003-B6 and 8673/2003-B6 were dropped. The respondents never gave impression to the petitioner that the above referred disciplinary proceedings were dropped against him.

d)The Enquiry Officer after conducting enquiry has submitted his findings dated 01.08.2011 in ROC Nos.6115/2003-B6, 6710/2003-B6 and 8673/2003-B6 holding that all the five charges are proved. The Administrative Committee of this Court considered the matter and as resolved by the Committee, a show cause notice was issued to the petitioner requiring him to show

cause as to why a punishment of reduction in pension by 25% for a period of three years should not be imposed on him for the charges held proved against him in the above referred disciplinary proceedings in ROC Nos.6115/2003-B6, 6710/2003-B6 and 8673/2003-B6 vide official memorandum in ROC Nos.6115/2003-B6, 6710/2003-B6 and 8673/2003-B6 dated 23.12.2011. The petitioner also submitted his written statement of defence to the said two show causes notices.

e) On 18.09.2012, a Demi-Official letter was sent to the Principal Secretary to the Government, Chennai for obtaining the orders of the Government imposing the penalty of reduction in pension by 25% for a period of five years on the petitioner who was formerly working as Additional District Judge (Fast Track Court), Dharmapuri (on ad-hoc basis), subsequently reverted to the cadre of Civil Judge (Senior Division).

f) It is not correct to state that the petitioner was prevented from cross-examining Tmt.Chellam-P.W.1. In fact, the enquiry report of the Enquiry Officer will clearly reveal that the petitioner did not choose to cross examine P.W.1. Despite the Enquiry Officer giving sufficient opportunities, the petitioner has not utilized the opportunities to cross examine the witness during the disciplinary proceedings. The Enquiry Officer has scrupulously adhered to the principles of natural justice in his enquiry proceedings. The disciplinary proceedings are not vitiated for noncompliance of the principles of natural justice as alleged by the petitioner.

g) The punishment imposed on the petitioner is in accordance with law and established practice and there is no violation of Fundamental Rules as alleged by the petitioner.

25. The additional counter affidavit was also filed by the second respondent in W.P.No.7191 of 2013 to explain the laches on the part of the petitioner to file the writ petition. The writ petition was filed only on 24.01.2013 after a lapse of four years from the date of his superannuation. Furthermore, the suspension order passed against the petitioner was on 02.12.2003 and the writ petition has been filed after more than nine years. In view of the reasons given in the counter affidavit, the second respondent sought for dismissal of W.P.No.7191 of 2013.

26. The second respondent filed separate counter affidavits in W.P.Nos.33494 and 33495 of 2014. The second respondent rebutted the allegations of the petitioner in his separate counter affidavits and his rebuttal for both the writ petitions are summarized in the following paragraphs:

a) Apart from denying all the allegations made against the respondents, the second respondent submitted that based on a report received from the Principal District Judge, Coimbatore on 28.11.2003, the High Court placed the petitioner under suspension in ROC No.84/2003-Con.B2 dated 02.12.2003.

b) The High Court also took cognizance of the lapses on the part of the petitioner who availed frequent leave without following procedures and instructions between May and August 2003 resulting in dislocation of normalcy in the day-to-day working of the Court.

c) Invoking Rules 17(e) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, the petitioner was placed under suspension pending enquiry of grave charges against him.

d) On suspension, the petitioner who was Additional District Judge (Fast Track Court) only on ad-hoc basis was reverted to the substantive post to the Civil Judge (Sr. Division) on 02.12.2003 vide High Court's notification No.194/2003 dated 02.12.2003.

e) While the petitioner was under suspension facing departmental enquiry, the High Court considered the further continuance of the said officer beyond the age of 58 years and upto 60 years and resolved not to continue the services of the petitioner beyond the age of superannuation at 58 years and permitted him to retire from service on attaining the age of superannuation at 58 years on 03.05.2009 subject to the outcome of the disciplinary proceedings pending against him.

f) In view of the above, suspension of the petitioner was revoked and he was reinstated into service and posted as Sub-Judge, Ariyalur vide High Court's notification No.86/2009 dated 27.05.2009. Then vide High Court's proceedings in Roc No.3/2009-Con.B2 dated 28.05.2009 necessary orders were issued for the retirement of the officer at the age of 58 years subject to the outcome of the disciplinary proceedings pending against him.

g) After placing the petitioner under suspension explanation were called for on all the complaints made against him. The explanation submitted by the petitioner was placed before the Hon'ble The Chief Justice who in turn placed the explanation before the Administrative Committee. As his explanations were found not satisfactory, charges were ordered to be placed against him. Draft charges were framed by the Registry and the same were placed before the Hon'ble Judges concerned authorized by the Administrative Committee for approval. Only on approval, two charges were framed and

communicated to the petitioner vide High Court's charge memorandum in Roc No.84/2003-Con.B2 dated 10.10.2007 and five charges were framed and communicated to the petitioner vide High Court's charge memorandum in Roc No.6115/2003/B6, 6710/2003/B6 and 8673/2003/B6 dated 10.10.2007. Hence, the time taken were only due to administrative reasons.

h) Grounds i to viii raised in the writ petition are without basis much less or unsustainable legally as that procedure contemplated in the rules have been strictly adhered to. The time taken for finalizing the disciplinary proceedings is due to various administrative reasons /procedures like appointment of enquiry officer, conducting enquiry proceedings, adjournment sought for by both sides, completion of disciplinary enquiry, convening of meetings of the Administrative Committee and Full Court to appreciate the facts and circumstances, records, etc and finalize the matter deciding quantum of punishment.

i) The incidents happened in 2002 - 2003, disciplinary proceedings commenced immediately by calling for explanation charges were framed and issued and enquiry officer was also appointed before his retirement, i.e., on 31.05.2009. In fact, he was permitted to retire subject to the outcome of the disciplinary proceedings already initiated against him. Therefore, the contention of the petitioner is not correct and not maintainable.

j) Under the rules and regulations as well as by practice, copy of minutes or decisions or deliberations of the Administrative Committee and Full Court are never communicated to the delinquent officers. It is part of an internal administration which cannot be furnished even under RTI Act. The judiciary is insulated from furnishing such proceedings as they are strictly confidential. The Registry would communicate to the concerned only relevant orders based on the minutes passed by the Administrative Committee.

k) The disciplinary proceedings were initiated against the petitioner following the due procedure in accordance with the rules in force. Therefore, there is neither any violation nor any procedural lapses or violation of the decisions of the Apex Court while passing the impugned order and therefore, no indulgence or any interference to the order challenged is called for.

l) In the charge proceedings issued against the petitioner in C.No.2/2002/VC (in Roc No.40/2002/VC471/2003/VC) dated 25.06.2007, four charges were framed against the petitioner and the petitioner was directed to file a written

statement of defence. On receipt of the charge proceedings, the petitioner had sent a letter dated 10.07.2007, requesting grant of two months to submit his written statement of defence. Since the petitioner did not submit his written statement of defence, the Principal District Judge, Krishnagiri was appointed as Enquiry Officer, the Principal Sub-Judge was appointed as a Presenting Officer.

m) In the departmental enquiry, PW1 to PW5 were examined as departmental witnesses and Ex-P1 to P10 were marked as documents and the Enquiry Officer submitted his enquiry report holding that charges No.1 and 4 were proved and the Administrative Committee had accepted the report of the Enquiry Officer and resolved to issue a second show cause notice to the petitioner proposing to impose a punishment of withholding 25% of pensionary benefits for a period of five years. Accordingly, a show cause notice dated 30.05.2011 was issued to the petitioner, directing him to submit his further representation on the proposed punishment and the further representation submitted by the petitioner was placed before the Administrative committee and the Committee resolved that the explanation offered by the petitioner was not acceptable and the charges levelled against the petitioner are grave in nature and resolved to impose a proposed penalty of 25% pensionary cut for a period of five years and finally the Government issued final orders in G.O(D)869, Home (Courts-I) Department 23.10.2003.

n) The respondents further submit that the enquiry was posted on 11.03.2009 for filing a list of defence witnesses to be examined by the petitioner and the matter was adjourned to 18.03.2009, since he did not file such lists. In spite of adjournments on 31.03.2009, 15.04.2009 and 21.04.2009 requiring him to file either the list or put forth his arguments, but every time he appeared and did not argue and had been going on requesting for adjournments for one reason or another. Furthermore, the petitioner had not chosen to either let in defence witnesses or to advance his arguments and therefore, the other process and procedure as contemplated in the rules were pressed into operation after affording all opportunities. There is no violation or infraction of any rules much less any of the well settled principles of law.

o) In so far as grounds raised by the petitioner in I to XIV are concerned, they are without any basis and none of the grounds have either any legal backing or factual dispute, the enquiry came to be conducted by following the procedure established under law.

p) As regards the grounds I, III and IV raised by the petitioner are concerned, the findings given by the Enquiry

Officer has been accepted by the Administrative Committee. The Administrative Committee was pleased to accept the report of the Enquiry Officer. The Administrative Committee found no change of circumstances to differ from the findings given by the Enquiry Officer and passed a resolution to impose punishment of withholding of 25% of pensionary benefits for a period of five years as punishment to the grave charges proved against the petitioner.

q) In so far as grounds, II and V are concerned, it is stated that the petitioner who participated in the enquiry process of examination of witnesses had not chosen to avail the opportunities extended to him and deliberately neglected such opportunities at the time of enquiry, is not entitled to raise the objections on the ground of delay and the delay has occurred only due to the attitude of the petitioner, hence unsustainable.

r) In so far as grounds, VI and XIV are concerned, during the enquiry proceedings conducted against the petitioner, the enquiry officer has scrupulously followed all the procedures and formalities contemplated in the rules and submitted the report before the disciplinary authority who having considered the report issued a second show cause notice to the petitioner with a view to facilitate the writ petitioner to offer his explanation to the disciplinary authority. The enquiry proceedings were conducted by following principles of the natural justice. Therefore, the disciplinary authority offered an additional space to the petitioner to highlight mitigating circumstances to take a different view to the findings given by the enquiry officer. There is no delay on the part of the department in concluding the department proceedings, if at all any delay, the same is only on account of the petitioner.

s) In so far as grounds VII, VIII and XI are concerned, a perusal of the report of the Enquiry Officer will show that the sufficient opportunity will extend to the petitioner. Though sufficient opportunity was granted to the petitioner by the Enquiry Officer to Cross-examine, the petitioner did not avail the opportunity extended by the Enquiry Officer. The judgment referred in para 7 of the grounds of the writ petition is not applicable to the present case on hand.

t) In so far as grounds, X, XI, XII and IV are concerned, the Enquiry Officer in para 14 of his enquiry report had stated that the petitioner carried on trading activities in the name of PW1, as his benami and the evidence of PW1 which was recorded in the presence of the petitioner remains unrebutted.

u)The principles applicable to civil and criminal cases cannot be applied to departmental enquiry.

v)Therefore in a departmental enquiry, a complaint, certainly not frivolous but substantiated by circumstantial evidence would suffice and nothing is established by the petitioner so as to call for interference or indulgence by this Court.

27.We have heard Dr.A.E.Chelliah, learned Senior Counsel appearing for the petitioner, Mr.Haja Mohideen Gisti, learned counsel appearing for the respondents 2 and 3 and Mr.P.S.Shivashanmugasundaram, learned Special Government Pleader appearing for the first respondent.

28.Learned Senior Counsel appearing for the petitioner submits that there is an inordinate delay in finalizing the disciplinary proceedings against the petitioner which is in total violation of the principles of natural justice. Learned counsel appearing for the petitioner further submitted that the petitioner was suspended from service on 02.12.2003 but the charges were framed in R.O.C.No.84/2-3/CON-B2, dated 10.10.2007 and charges in R.O.C.No.6115/2003-B6-6761/03 and 8673/2003-B6 on 10.10.2007 and charges in ROC.No.8855 in ROC.No.40/2002/VC and 471/2003/VC were framed on 25.06.2007. According to the learned Senior Counsel for the petitioner, 11 charges were framed against the petitioner only in the year 2007 after a gap of more than four years from the date of suspension of the petitioner from service (ie) on 02.12.2003. He would further submit that the charges levelled against the petitioner are minor in nature and the punishment imposed against the petitioner namely, reduction of 25% in his pension for a period of three years and five years respectively is a major punishment and it is not proportionate to the charges framed against him. Learned Senior Counsel for the petitioner would further submit that due notice of reversion to the lower post, namely from District Judge to Subordinate Judge was not served on the petitioner by the respondents but on the other hand, only suspension order was served and not order of reversion. He has further submitted that suspension and reversion cannot be continued for a long period of time without any enquiry. The second respondent having framed the charges against the petitioner only in the year 2007, after a gap of more than four years from the date of his suspension, the punishment imposed against the petitioner in the impugned order ought not to have been passed by the respondents. Learned Senior Counsel for the petitioner would further submit that final orders were passed by the second respondent against the petitioner only on 29.05.2014 whereas the suspension order was passed on 02.12.2003 after an inordinate delay of 11 years in finalizing the disciplinary proceedings. Further, according to

the learned counsel, the decision of the Administrative Committee and subsequent copy of the minutes of the Full Court dated 08.12.2013 were never communicated to the petitioner. The petitioner was completely kept in dark about the entire matter and only through the impugned Government Orders, he came to know about the punishment imposed against him. Learned Senior Counsel for the petitioner drew our attention to the 11 charges framed against the petitioner which is subject matter of the writ petitions. According to him, the charges are not so grave for the respondents to pass the impugned Government Orders against the petitioner.

29.As regards the dishonoring of cheques issued by the petitioner, learned Senior Counsel appearing for the petitioner submits that the petitioner has given valid explanation for the dishonoring of cheques. According to the learned Senior Counsel for the petitioner, the petitioner had availed loan to secure his son's medical education which was a necessity and only towards repayment of the said loan, the petitioner had issued the subject cheques which were dishonoured. According to the learned Senior Counsel, the explanation submitted by the petitioner for the institution of criminal proceedings against the petitioner under Section 138 of the Negotiable Instruments Act, 1881 in respect of the dishonoring of cheques is a genuine reason for which the respondents ought not to have imposed punishment under the impugned Government Orders.

30.According to the learned Senior Counsel, the charges framed against the petitioner based on a complaint given by Ms.R.Chellam, a retired teacher against the petitioner that the petitioner availed loan in the name of Ms.R.Chellam for the purchase of Xerox Operator in the name of Venus Xerox and the petitioner committed default in repayment of the liability and ultimately, Mr.R.Chellam was held liable to repay a huge loan amounting to Rs.4,11,000/- is a false charge. He would further contend that the evidence on record will not establish and prove the said charge. Therefore, according to the learned Senior Counsel for the petitioner, the first respondent ought not to have passed the final orders under the impugned Government Order No.392, dated 29.05.2014 which is the subject matter of W.P.No.33494 of 2014 and Government Order No.869, dated 23.10.2013 which is the subject matter of W.P.No.33495 of 2014.

31.Learned Senior Counsel appearing for the petitioner relied upon the decision of this Court reported in 1997 Writ L.R.120 (N.M.Somasundaram Vs.The Director General of Police etc.,) and drew our attention to paragraph No.9 of the said judgment which reads as follows:-

"9.A similar Rule as contained in Rule 56(c) came up for consideration before the Supreme Court in the decision in State of Punjab v. Khemi Ram, . It has been held by the Supreme Court, thus :-

"This contention was raised on the strength of Rule 3.26(d) of the Punjab Civil Service Rules, as it then stood. That Rule provided that a Government servant under suspension on a charge of misconduct shall not be permitted to retire on his reaching the date of compulsory retirement but should be retained in service until the enquiry into the charge was completed and a final order was passed thereon. The argument was that as the respondent was not served with the said order of suspension on or before August 4, 1958, and as he had retired on that day and was, therefore, no longer in service, the said enquiry and the said order of dismissal were in breach of Rule 3.26(d) and were illegal

... ..

The question for determination thus is whether the said order of suspension admittedly made before the date of the respondent's retirement as required by the said Rule 3.26(d) did not take effect by reason only that it was received by the respondent after the said date of retirement and whether he must, therefore, be held to have retired on August 4, 1958, rendering the enquiry and the ultimate order of dismissal invalid.

There can be no doubt that if disciplinary action is sought to be taken against a Government servant it must be done before he retires as provided by the said Rule. If a disciplinary enquiry cannot be concluded before the date of such retirement, the course open to the Government is to pass an order of suspension and refuse to permit the concerned public servant to retire and retain him in service till such enquiry is completed and a final order is passed therein.

Therefore, it is clear that in the absence of any order passed before October 31, 1984, the Competent Authority loses the Jurisdiction to continue the disciplinary proceedings."

32.Learned Senior Counsel appearing for the petitioner relied upon the decision of this Court reported in 2005 (3) CTC 4 (The State of Tamil Nadu Vs.R.Karupiah) and drew our attention to paragraph No.29 of the said judgment of this Court which reads as follows:-

29.From the above note it is also clear that to proceed against a Government servant, who is under suspension on a charge of misconduct, after his retirement, the fulfilling of the requirements under Rule 56(1)(c) of the Fundamental Rules is a mandatory one, otherwise, the competent authority cannot have any jurisdiction on the retired Government servant to proceed against him and the non-compliance of the said rule is vitiated all the proceedings initiated against the first respondent and therefore, the same are not sustainable under law and are liable to be set aside.

33.Learned Senior Counsel appearing for the petitioner relied upon the decision of this Court reported in 2006 (4) MLJ 504 (P.Muthusamy Vs.Tamil Nadu Cements Corporation Ltd.,) and submitted that in the absence of specific enabling provision in the TANCEM Service Rules, the order reserving the right to continue disciplinary proceeding, after superannuation, is illegal and without jurisdiction.

34.Learned Senior Counsel appearing for the petitioner relied upon the decision of this Court reported in (2006) 4 MLJ 1335 (S.V.Mahalingam Vs.Collector, Pasumpon Muthuramalinga Thevar District) and submitted that as per Ruling (2)(1) of Fundamental Rules, 29, punishment of reduction to lower post permanently, cannot be imposed. As per said Ruling, punishment of reduction to a lower post should be only for a specified period. He would rely upon an unreported decision of the learned single Judge of this Court in W.P.No.15384 of 2006, dated 26.07.2007 for the purpose of supporting his submission that the order of reversion can be passed only for a specified period and not forever. He would draw our attention to some of the judgments rendered by the petitioner as a Judicial Officer which have been confirmed by this Court and submitted that the petitioner had an unblemished record of service as a Judicial Officer.

35.Per contra, Mr.Haja Mohideen Gisti, learned counsel appearing for the respondents 2 and 3 would submit that the impugned Government Orders passed against the petitioner are valid and legal and are in accordance with law. He would further contend that the Enquiry Officer as well as the second respondent gave sufficient opportunity to the petitioner to defend 11 charges framed against him. The charges levelled against the petitioner are grave in nature and the punishment imposed under the impugned Government Orders are in accordance with law. The charges levelled against the petitioner are serious in nature and the conduct of the petitioner is unbecoming of a Judicial Officer.

36. According to the learned counsel, admittedly, the petitioner has availed leave without the permission of the second respondent not once but on several occasions as seen from the charges framed against him. Furthermore, the leave availed by the petitioner without permission and without handing over charge to a substitute in his absence will also clearly establish that the petitioner has misconducted himself as a Judicial Officer. He would further contend that the petitioner despite being given several opportunities to cross examine the witnesses in the enquiry proceedings failed to cross examine any of them or let in oral evidence on his side to prove his innocence. He drew our attention to the impugned Government Orders and according to him, the findings of the Enquiry Officer and the recommendations of the second respondent to the first respondent requesting them to pass the impugned Government Orders and submitted that they are in accordance with law and the respondents have followed all the due procedures required for the imposition of penalty against the delinquent officer. The proved charges framed against the petitioner is unbecoming of a Judicial Officer. Furthermore, learned counsel submitted that the submission of the learned Senior Counsel for the petitioner that the notice of reversion dated 02.12.2003, was not served on the petitioner is incorrect. As seen from the correspondences subsequent to the service of notice on the suspension order as well as the reversion order on 02.12.2003, the petitioner has acknowledged in his correspondences with the second respondent that he has received the notice of suspension as well as the reversion. Finally, learned counsel for the respondents 2 and 3 submitted that the impugned Government Orders which are the subject matter of challenge in the writ petitions have been passed in accordance with law and there is no infirmity on the same.

37. To substantiate his submission that the power to initiate disciplinary proceedings against the Judicial Officers and place them under suspension and impose punishment lies with the High court but when it comes to the question of dismissal, removal, reduction in rank or termination of services of the Judicial Officer, on any count whatsoever, the High Court becomes only the recommending authority and cannot itself pass such an order. He would further submit that in the case on hand, the second respondent has rightly followed the procedure as laid down by this Court in Y.Raja Vs. The Joint Registrar of Co-operative Societies, Madurai Region reported in 2011 (1) CTC 18. Even though no punishment could be imposed under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and only pension can be withheld under Rule 9(1)(a). According to the learned counsel for the respondents 2 and 3, the respondents have followed the principles laid down in the judgment of the Division Bench of this Court, the punishment imposed on the

petitioner only reduction in pension for a specified period under the respective Government Orders and therefore, according to him, there is no violation of any law.

38.Learned Special Government Pleader appearing for the first respondent supports the stand of the learned counsel for the second and third respondent. He would further submit that they are bound by the recommendations sent by the second respondent for passing impugned Government Orders.

39.We have gone through the entire pleadings, enquiry report and the evidence of both the prosecution witnesses and the petitioner who is the delinquent officer and have considered the submissions made on either side.

40.After considering the same, we observe the following:-

The charges framed against the petitioner are eleven in number. Out of which, nine charges have been proved as per the enquiry report. It is not a case of giving benefit of doubt to the petitioner. As found from the charges, the petitioner has misconducted himself on a regular basis. The petitioner has not disputed the availing of loan without permission and issuance of cheques towards repayment of the loan which were later dishonoured and are subject matter of criminal proceedings under Section 138 of the Negotiable Instruments Act, 1881. Furthermore, the non bailable warrant issued against the petitioner in the criminal complaint filed against the petitioner is also not disputed. The dishonoured cheque amounts are also huge and unless and until the petitioner was able to establish that he had means to discharge the loan availed by him and to establish that money earned out of lawful income that is either out of his salary or otherwise, his misconduct is unbecoming of a Judicial Officer. In the case on hand, no such evidence has been placed on record to establish that the petitioner had means to discharge huge loan availed by him. Furthermore, the dishonoured cheques have been issued on various dates which will clearly establish that the petitioner has the regular habit of borrowing money without permission in violation of the Tamil Nadu Government Servants Conduct Rules, 1973. Rule 20 of the Rules stipulates as follows:-

"20.Integrity and devotion to duty: (1) Every member of the service shall at all times maintain absolute integrity and devotion to duty and shall do nothing which is unbecoming of a member of the service

(2)Every member of the service shall take all possible steps to ensure integrity and devotion to duty

by all Government servants for the time being under his control and authority.

(3) (i) No Government servant shall in the performance of his official duties or in the exercise of powers conferred on him, act otherwise than in his best judgment except when he is acting under the direction of his official superior

(ii) The direction of the official superior shall ordinarily be in writing, oral directions to subordinates shall be avoided. Where the issue of oral direction becomes unavoidable the official superior shall confirm it in writing immediately thereafter.

(iii) A Government servant who has received oral directions from his official superior shall seek confirmation of the same in writing as early as possible, whereupon it shall be the duty of the official superior to confirm the direction in writing

(iv) No Government servant shall in the performance of his official duties or in the exercise of powers conferred on him evade the responsibility devolving legitimately on him and seek instruction from, or approval, of a superior authority when such instruction or approval is not necessary in the scheme of distribution of powers and responsibilities".

41. Rule 6 of the Tamil Nadu Government Servants Conduct Rules, 1973 stipulates as follows:-

(1) No Government servant shall speculate in any stock, share or other investment. Explanation -The habitual purchase or sale or both of shares, securities or other investments shall be deemed to be speculation within the meaning of this sub-rule.

(2) No Government servant shall make, or permit any member of his family or any person acting on his behalf to make, any investment which is likely to embarrass or influence him in the discharge of his official duties.

(3) If any question arises as to whether any transaction is of the nature referred to in sub-rule (1) or sub-rule (2), the decision of the Government thereon shall be final.

(4) (a) No Government servant shall, save in the ordinary course of business with a bank or a firm or a Public Limited Company of standing, duly authorised to conduct banking business either himself or through any member of his family or any other person acting on his behalf -

(i)lend or borrow money, as principal or agent, to or from any person within the local limits of his authority or with whom he is likely to have official dealings, or otherwise place himself under any pecuniary obligation to such person, or

(ii)lend money to any person at interest or in a manner whereby return in money or in kind is charged or paid:

Provided that a Government servant may, give to or accept from, a relative or a personal friend, a purely temporary loan of a small amount not exceeding * "his total monthly emoluments" free of interest, or operate a credit account with a bona fide tradesman or make an advance of pay to his private employee:

"Provided further that Government servants belonging to Groups B, C and D may, with the previous sanction of the prescribed authority as provided under sub-rule (5) of rule 7, accept from a relative or a personal friend, a purely temporary loan of an amount not exceeding Rs.3,00,000/- (Rupees Three lakhs only), free of interest, exclusively for the purchase of flat or ready built house or plot for the construction of a house. Provided also that nothing in this sub-rule shall apply in respect of any transaction entered into by a Government servant with the previous sanction of the Government. Added vide G.O.Ms.No.39, P&AR (A) Department, dated: 09.03.2010. (aa) No Government servant shall, either himself or through any member of his family or any other person acting on his behalf, except with the previous sanction of the Government, lend or borrow money to or from any private individual any amount exceeding * "his total monthly emoluments".

"Provided that Government servants belonging to Groups B, C and D may, with the previous sanction of the prescribed authority as provided under sub-rule (5) of rule 7, borrow money not exceeding Rs.3,00,000/- (Rupees Three lakhs only), free of interest, from any private individual exclusively for the purchase of flat or ready built house or plot or for the construction of a house".

(b) When a Government servant is appointed or transferred to a post of such nature as would involve him in the breach of any of the provisions of sub-rule (2) or sub-rule (4), he shall forthwith report the circumstances to the Government and shall thereafter act in accordance with such order, as may be made by the Government belonging to group C and D, Government servant shall make the report referred to in this sub-clause to the Head of the Department concerned.

(5) No member of the Tamil Nadu Judicial Ministerial Service shall, without the written permission of the District Judge -

(i) take a transfer in his name of any auctionable claim, or decree, or (ii) concern himself in any litigation in which he has no direct personal interest.

(6) Government servants of every class, except those whose duty is to supervise or audit cooperative societies, may become members of and make deposits in non-agricultural co-operative Societies including the Tamil Nadu State Co-operative Bank Limited, other Central Co-operative Banks and Urban Co-operative Banks.

(7) (a) Government servants whose duty it is to supervise or audit Co-operative societies may become members of, and make deposits in co-operative societies registered separately for their benefits: (b) Government servants whose duty is to supervise or audit Co-operative Societies may place deposits in the Tamil Nadu State Co-operative Bank Limited or in any Central Co-operative Bank or in any Urban Co-operative Bank and avail security and surety loans from those institutions, provided that they are not engaged directly in audit or supervision of such banks.

(8) Government servants of every class may place deposits in, and purchase debentures of the Tamil Nadu Co-operative State Central Land development Bank Limited, but shall not hold any office therein or take any part in the management thereof.

(9) A Government servant may with the previous sanction of the Head of the Department, become a member of a Land Development Bank or an Agricultural Service Co-operative Society (including Farmers Service Co-operative Society, Agricultural Bank and Rural Bank) or a Primary Cooperative Marketing Society provided that he already owns land in the area within the jurisdiction of

such bank or society, as the case may be, and wants to avail of the services rendered by such Bank or society but shall not hold any office therein or take any part in the management thereof; Provided that no such sanction shall be accorded to a Government servant, if he is engaged directly in audit, administration or supervision of such bank or society, as the case may be:

(10) If a Government servant whose duty is to supervise or audit Co-operative Societies is appointed or transferred to work in any area within the jurisdiction of a Land Development Bank or an Agricultural Service Co-operative Society (including Farmers Service Co-operative Society Agricultural Bank and Rural Bank) or a Primary Co-operative Marketing Society in which he is a member, he shall at once bring the fact to the notice of his immediate superior who, if he has authority to do so, may repost the Government servant to an area outside the jurisdiction of the Bank or the society concerned, or if he has no authority to do so, submit the case for the orders of the officer having such authority.

(11) Government servants of every class including those employed in the Co-operative department may become members of Co-operative House-Building Societies or House Mortgage Societies, Co-operative Housing Societies;

Explanation - Co-operative house building societies aforesaid shall include all types of Cooperative societies whose object is the construction of houses for their members or the grant of loans for such construction by their members.

(12) Notwithstanding anything contained in clause (a) of sub-rule (7) a Government servant employed in the Co-operative Department may become a member of a Co-operative Stores Society so that he may obtain provisions and other articles from such society but he shall not be eligible to hold any office therein or serve on any committee appointed for the management of the affairs of such society.

(13) Notwithstanding anything contained in this rule, a Government servant may borrow money from a Co-operative society of which he is a member, provided that where the borrowing is on personal security, the surety shall be of status equal to, or higher than, that of the borrower.

(14)The prohibition against lending and borrowing of money applies to all loans, credits, advances, supply of articles or accommodation at unduly low rates, or for insufficient consideration and to sales of property for inordinately low prices.

(15)The fact that a Government servant lending money is acting as an executor, administrator or as a trustee without profit or advantage to himself shall not exempt him from the operation of this rule.

(16)A Government servant who belongs to a joint Hindu family carrying on the business of money-lending as an ancestral profession is exempted from the prohibition, provided he take, no active part in the business and is not employed in a district in which the business of the joint Hindu family is carried on.

(17)A Government servant engaged in teaching is prohibited from having pecuniary relations with any pupil or ex-pupil or parent or guardian of any pupil or ex-pupil or with the staff or establishments of the school or college in which he is employed.

42.As seen from the above Rules, the petitioner has clearly violated the rules by not getting prior permission for availing the loan and his conduct is unbecoming of a judicial officer.

43.As regards the charges proved against the petitioner in respect of the leave availed by him without the prior permission of his superiors, there is no clear explanation given by the petitioner. It is a categorical stand of the second respondent that the application for leave was received belatedly and that too, only after the petitioner had already gone on leave. This practice amounts to a clear case of misconduct and was not done on one occasion but on several occasions as seen from the finding of the Enquiry Officer. To prove his innocence, the petitioner did not cross examine the prosecution witnesses in the enquiry proceedings despite several opportunities given to him by the Enquiry Officer. In a meticulous manner, the Enquiry Officer has given his findings based on the available documents and oral evidence let in by the prosecution.

44.We do not find any merit in the submission of the learned Senior Counsel and the judgments relied upon by him do not support his contentions. We find from the records that the grounds for challenge raised in W.P.Nos.7191 and 7192 of 2013, 33494 and 33495 of 2014 do not deserve any merit. We, therefore,

find no infirmity or irregularity in the impugned Government Orders and hence, the writ petitions are liable to be dismissed.

45. In the result, the writ petitions are dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

sms

To

1. The Secretary to the Government,
Home Department,
Government of Tamil Nadu,
Fort St.George, Chennai-9
2. The Registrar General,
High Court, Madras - 104
3. The Registrar (Vigilance)
High Court, Madras - 104
4. The Accountant General,
Chennai Circle, Teynampet,
Chennai 600 018.

Copy To

The Section Officer,
Legal Cell, High Court,
Madras - 104.

+6ccs to M/s.C.Saifullah, Advocate, S.R.No.75575 to 75577
+1cc to Mr.V.Vijay Shankar, Advocate, S.R.No.76177
+1cc to Mr.Haja Mohideen Gisti, Advocate, S.R.No.76041

W.P.Nos.7191 and 7192 of 2013
and
W.P.Nos.33494 and 33495 of 2014

CS/03/11/17