

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.08.2019

Pronounced on:05-09-2019

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

Writ Petition No. 492 of 2018

R. Anburaj

. Petitioner

/Versus/

1. The State of Tamil Nadu
represented by The Chief Secretary to Government
Secretariat, Fort St. George
Chennai - 600 009
 2. The Registrar General
High Court
Chennai - 600 104
 3. The Registrar (Vigilance)
High Court
Madras - 600 104
- ... Respondents

Writ Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the order made in G.O. Ms. No.168 dated 01.03.2017, Public (Special-A) Department passed by the first respondent and quash the same and consequently directing the first respondent to reinstate the petitioner with all monetary benefits with retrospective effect.

For Petitioner : Mr. R. Sethuvarayar

For Respondents: Mr. V. Shanmuga Sundar
Special Government Pleader for R1

Mr. V. Ayyadurai, Senior Counsel
for Mr. A. Durai Eswar for RR2 & 3

ORDER

R. SUBBIAH, J

The petitioner, who was functioning as Additional District Judge, Dharmapuri has filed the present writ petition to quash order of compulsory retirement passed by the first respondent in G.O. Ms. No. 168, Public (Special-A) Department dated 01.03.2017 and consequently direct the respondents to reinstate him in service with all monetary benefits with retrospective effect.

2. The brief facts which are necessary for disposal of this writ petition are as elucidated hereunder.

3. The petitioner was appointed as District Judge (Entry Level) as per G.O. Ms. No.16 Public (Special-A) Department dated 05.01.2011. The petitioner was sworn-in on 18.02.2011 and thereafter he had undergone the requisite training through Judicial Academy, Chennai. After such training, the petitioner was posted as District Munsif for six months and as Subordinate Judge for another six months at Salem. Thereafter, he was posted as Additional District Judge, Dharmapuri. While the petitioner was discharging his duties as Additional District Judge, Dharmapuri, the Principal District Judge was on leave from 21.06.2013 to 24.06.2013 and therefore, the petitioner was made in charge of the Court of Principal District Judge from 21.06.2013 to 24.06.2013 to deal with applications seeking bail, as per the order dated 20.06.2013 passed by the Principal District Judge under Section 10 (3) of the Code of Criminal Procedure. While so, on 21.06.2013 at 3.00 pm a representation was made before the petitioner, when he was in-charge of the Court of the Principal District Judge, by one Inbasekaran, Advocate in the open Court to take up the bail application filed by him in CrI.M.P. No. 2497 of 2013 on behalf of Dr. Ganesan, who was arrayed as third accused, in Crime No. 29 of 2013 on the file of Inspector of Police, District Crime Branch, Dharmapuri for the offences punishable under Section 419, 420, 406, 468, 471 and 294 of Indian Penal Code read with Section 19 of Transplantation of Human Organs and Tissues Act, 1994. The complaint, based on which the case in Crime No. 29 of 2013 was registered against Dr. Ganesan, was given by one Kathavarayan on the allegation that 4 persons, including Dr. Ganesan/A-3 have received Rs.3 lakhs from him (Rs.1 lakh by Dr. Ganesan and Rs.2 lakh by other accused Ayyavoo) for performing kidney transplantation for his father, however, after receipt of the amount, they did not perform kidney transplantation, with the result, his father died. It was further complained that when the complainant sought for refund of amount from the accused, Dr. Ganesan/A-3 returned only Rs.50,000/- out of Rs.1 lakh and

refused to pay the balance and threatened him with dire consequences. It is the practice and convention in the District Court, Dharmapuri that when a bail application is filed on a working day, it will be taken up for hearing on the working day immediately succeeding the next working day. However, on the basis of the representation made to the petitioner in the open Court, the petitioner directed the bail petition to be posted on 24.06.2013 i.e., Monday. However, the Court Registry listed the case for hearing on 25.06.2013. On 24.06.2013, inspite of objections raised by the Additional Public Prosecutor that the matter is likely to be transferred for investigation to the CB CID and further another similar application has been filed on behalf of the accused seeking bail in Crl.M.P. No. 2592 of 2013 on the file of Judicial Magistrate, Pennagaram and it was pending, the petitioner granted interim bail in favour of Ganesan/A-3 in Crime No. 29 of 2013 on 24.06.2013, till 11.07.2013.

4. In this context, on 01.07.2013, the above said Kathavarayan of Pennagaram has given a complaint to this Court stating that the bail application filed on behalf of the third accused/Dr. Ganesan in Crl.M.P. No. 2497 of 2013 was originally listed for hearing on 25.06.2013. However, the petitioner has directed the Bench clerk to alter the date of hearing from 25.06.2013 to 24.06.2013 so as to enable him to take up the bail application. Even during the hearing, the Additional Public Prosecutor opposed the bail application by stating that already, on behalf of A-3/Dr. Ganesan a bail application was filed in Crl.M.P. No. 2592 of 2013 and it is pending on the file of Judicial Magistrate, Pennagaram. However, the learned counsel for the accused/Dr. Ganesan represented that Crl.M.P. No. 2592 of 2013 was posted for orders on 24.06.2013 and further emphasised the petitioner to take up Crl.M.P. No. 2497 of 2013 stating that the learned Judicial Magistrate had expressed his view to dismiss Crl.M.P. No. 2592 of 2013. The petitioner therefore called for the records pertaining to Crl.M.P. No. 2592 of 2013 on the file of Judicial Magistrate, Pennagaram and received it at 3.00 pm and found that the said application was dismissed on 24.06.2013 in the morning. However, the fact remains that Crl.M.P. No. 2592 of 2013 filed before the Judicial Magistrate, Pennagaram was pending as on 24.06.2013 when Crl.M.P. No. 2497 of 2013 was taken up for hearing by the petitioner. Thereafter, the petitioner proceeded to hear the bail application in Crl.M.P. No. 2497 of 2013 and granted interim bail on 24.06.2013 till 11.07.2013 with a direction to the CBCID, Chennai to file written objection on or before 05.07.2013 and posted the matter for further hearing on 08.07.2013. However, when the bail application in Crl.M.P. No. 2497 of 2013 was listed for hearing before the regular Principal District Judge, it was dismissed on 18.07.2013.

5. The complaint dated 01.07.2013 was placed before the then Portfolio Judge of this Court, who directed to conduct a discreet enquiry and also called for a report from the Principal District Judge, Dharmapuri. Accordingly, a discreet enquiry was conducted besides a report dated 30.07.2014 was submitted by the Principal District Judge, Dharmapuri, to this Court. On the basis of the said report as also the materials collected through the Vigilance Cell during the discreet enquiry, a memo was issued to the petitioner calling for an explanation from him. The petitioner submitted his explanation dated 02.09.2014 denying the allegations. The explanation of the petitioner and other material records were placed before the Administrative Committee. The committee, by order dated 24.09.2014, resolved to initiate departmental proceedings against the petitioner. On the basis of the order passed by the committee, the second respondent issued a charge memo dated 11.12.2014 to the petitioner under Rule 17 (b) of The Tamil Nadu Civil Servants (Discipline and Appeal Rules). The charges are as follows:-

"Charge No.1:- That you, Thiru. R. Anburaj, while incharge of Principal District and Sessions Judge Court, Dharmapuri, on the morning of 24.06.2013, had enquired the Head Clerk, Thiru. Selvaraju whether there was any bail petition in the name of Dr. Ganesan in the list and on his reply that the said petition was posted for hearing on 25.06.2013, you have insisted that the said petition must be heard on that day 24.06.2013 itself and directed him to change the hearing date from 25.06.2013 to 24.06.2013 and made him to change the date 25.06.2013 as 24.06.2013 in front of you by overwriting.

Thus, the aforesaid act of hearing the bail petition hurriedly on 24.06.2013 by altering the hearing date reveals your personal interest in hearing the said bail petition on the only day available to you and your aforesaid act with dishonest motive is unbecoming of a judicial officer and if proved, renders yourself liable to be proceeded under 20 (1) of Tamil Nadu Government Servants Conduct Rules and Rule 17 (b) of the Tamil Nadu Civil Servants (Discipline and Appeal Rules).

Charge No.2:- That you, Thiru. R. Anburaj, while incharge of Principal District and Sessions Judge Court, Dharmapuri, on 24.06.2013, had insisted the Head Clerk, Thiru. Selvaraju to number the bail petition filed by Dr. Ganesan and made the said bail petition Crl.M.P. No. 2497 of 2013 to be called in the open court though the petition did not find a place in the list of bail applications to be heard

on that day 24.06.2013

Thus, the aforesaid act of hearing the bail petition hurriedly on 24.06.2013 by listing the bail petition, though it was not listed in the said day reveals your personal interest in hearing the said bail petition on the only day available to you and your aforesaid act with dishonest motive is unbecoming of a judicial officer and if proved, renders yourself liable to be proceeded under 20 (1) of Tamil Nadu Government Servants Conduct Rules and Rule 17 (b) of the Tamil Nadu Civil Servants (Discipline and Appeal Rules).

Charge No.3:- That you, Thiru. R. Anburaj, while incharge of Principal District and Sessions Court, Dharmapuri, on 24.06.2013 in CrI.M.P. No. 2497 of 2013, had refused to grant time sought for by the Prosecution to obtain instructions and furnish all details and granted interim bail to the accused Dr. Ganesan despite serious objections and inspite of the fact that a memo was filed that a similar and identical type of case had been transferred to the C.B., C.I.D. and there is a possibility of this case also being similarly transferred.

Thus, your aforesaid act shows your utter disregard to the established procedures and practices in the discharge of official duty, and if proved will amount to a conduct unbecoming of a Judicial Officer thereby rendering yourself liable to be proceeded under 20 (1) of Tamil Nadu Government Servants Conduct Rules and Rule 17 (b) of the Tamil Nadu Civil Servants (Discipline and Appeal Rules).

Charge No.4:- That you, Thiru. R. Anburaj, while incharge of Principal District and Sessions Judge Court, Dharmapuri on 24.06.2013, when you dealt with the bail petition CrI.M.P. No. 2497 of 2013 (3rd accused) you did not find fault with Dr.Ganesan, who applied for bail in District Court, Dharmapuri on 21.06.2013 by fraudulently stating that his bail petition CrI.M.P No. 2592 of 2013 before the District Munsif-cum-Judicial Magistrate Court, Pennagaram was dismissed on 21.06.2013, though you had called for the bundle from the District Munsif-cum-Judicial Magistrate Court, Pennagaram and was aware that it was pending on 21.06.2013 and was dismissed by the District Munsif-cum-Judicial Magistrate Court, Pennagaram only on 24.06.2013, you had granted interim bail to him on 24.06.2013.

Thus, the aforesaid act of granting interim bail is pre-determined and intentional which, if proved, will amount to a conduct unbecoming of a Judicial Officer thereby rendering yourself liable to be proceeded under 20 (1) of Tamil Nadu Government Servants Conduct Rules and Rule 17 (b) of the Tamil Nadu Civil Servants (Discipline and Appeal Rules)."

6. On receipt of the charge memo, the petitioner submitted a representation dated 30.12.2014 seeking to peruse certain documents which were relied on in the annexure to the charge memo. The petitioner was also permitted to peruse the documents sought for on 24.06.2015 in the office of the Registrar (Vigilance) of this Court. After perusing the documents, the petitioner submitted his explanation on 07.07.2015. The explanation submitted by the petitioner along with other records were placed before the Administrative Committee of this Court. The Committee, not being satisfied with the explanation offered by the petitioner, passed an order dated 28.07.2015 appointing a sitting Judge of this Court as Enquiry Officer and Mr. Senthil Kumaran, V Additional Judge, TADA Court as Presenting Officer. In furtherance of the order passed by the Administrative Committee, the Enquiry Officer commenced the enquiry on 18.08.2015. During the course of enquiry, on behalf of the Department, PWs 1 to 7 were examined and Exs. P1 to P11 were marked. Prominent among the witnesses examined are PW5, Tr. M. Selvaraj, Bench Clerk Grade-I of District Court, Dharmapuri, who allegedly altered the date of hearing of CrI.M.P. No. 2497 of 2013 from 25.06.2013 to 24.06.2013. On behalf of the petitioner/delinquent, Thiru. K. Inbasekaran, Advocate, Dharmapuri and Thiru. M. Ramasamy, Additional Public Prosecutor, Sub-Court, Dharmapuri were examined as DWs 1 and 2. The petitioner/delinquent also filed documentary evidence in support of his defence, which were marked as Exs. D1 to D7.

7. The Enquiry Officer, on consideration of the charges levelled against the petitioner, the explanation offered by him and the material evidence placed, held that all the charges levelled against the petitioner are proved and submitted his report dated 20.11.2015. The report of the enquiry officer was furnished to the petitioner and his further explanation was called for. The petitioner also submitted his further explanation on 12.02.2016, which was placed before the Administrative Committee of this Court. The Administrative Committee in the meeting held on 09.03.2016 considered the explanation of the petitioner and resolved to impose the punishment of compulsory retirement to the petitioner. The order dated 09.03.2016 of the Committee was placed before the

Full Court. The Full Court, in the meeting convened on 29.03.2016, resolved to recommend to the Government to pass an order of compulsory retirement against the petitioner. Accordingly, the Government passed the order in G.O. Ms. No.168 dated 01.03.2017, Public (Special-A) Department imposing the punishment of compulsory retirement on the petitioner. It is this order dated 01.03.2017 of the first respondent which is challenged in this writ petition.

8. The learned counsel for the petitioner would vehemently contend that the complaint given by the defacto complainant is improper and it ought not to have been entertained by the respondents. The complaint given by the complainant is not accompanied by a sworn affidavit and verifiable materials to substantiate the allegations made therein. A sworn affidavit and verifiable material should be called for from the complainant and thereafter, it should have been placed before the Administrative Committee of this Court. In this context, the learned counsel for the petitioner relied on the Memorandum issued by the second respondent in R.O.C. No. 26 of 2014-Con.B2 dated 09.10.2014 wherein it was directed that the Subordinate Judiciary need not entertain complaints against Judicial Officer, unless it is accompanied by a duly sworn affidavit and verifiable material to substantiate the allegations made thereon. Similarly, a notification was issued by the Director (Justice), Ministry of Law and Justice, Department of Justice, Government of India dated 31.12.2014 addressed to the Registrar General of all the High Courts requesting to give wide publicity including through Website of the High Courts and Subordinate Courts under the control of the High Court so that litigants having any grievances/complaints relating to the judiciary are aware of the procedure required to be followed in such cases. By placing reliance on the above Memorandum/ notification, the learned counsel for the petitioner would contend that the complaint given by the defacto complainant was erroneously entertained by the respondents as it is contrary to the guidelines issued by the second respondent, mentioned supra. Further, the charge memo was issued in this case on 11.12.2014, after issuance of the Memorandum in R.O.C. No. 26 of 2014-Con.B2 dated 09.10.2014 by the second respondent. Thus, the charge memo dated 11.12.2014 issued by the second respondent is contrary to the guidelines issued in the Memorandum dated 09.10.2014 and this would amply indicate that proper procedure has not been followed to by the respondents. Therefore, according to the learned counsel for the petitioner, the entire disciplinary proceedings initiated against the petitioner is vitiated.

9. The learned counsel for the petitioner would proceed to contend that the enquiry against the petitioner was conducted

only on the basis of the complaint given by the defacto complainant on 01.07.2013, which culminated in passing the impugned order against the petitioner. However, for the reasons best known, the Department did not examine the defacto complainant. Therefore, according to the counsel for the petitioner, the non-examination of the defacto complainant is fatal to the case of the respondents. In this context, the learned counsel for the petitioner relied on the decision of the Honourable Supreme Court in the case of Hardwari Lal vs. State of Uttar Pradesh and others reported in 1999 (8) Supreme Court Cases 582 wherein the Honourable Supreme Court held that the non-examination of the defacto complainant and another witness, as sought for by the appellant, had in fact prejudiced him. Therefore, it was held that the enquiry held by the respondents against the appellant therein was not proper and quashed the order of dismissal passed against the appellant therein. The relevant portion of the Judgment reads as follows:-

"Before us, the sole ground urged is as to the non-observance of the principles of natural justice in not examining the complainant, Shri. Virender Singh and Witness Jagdish Ram. The Tribunal as well as the High Court have brushed aside the grievance made by the appellant that the non-examination of those two persons has prejudiced his case. Examination of these two witnesses would have revealed as to whether the complaint made by Virender Singh was correct or not and to establish that he was the best person to speak to its veracity. So also, Jagdish Ram, who had accompanied the appellant to the hospital for medical examination, would have been an important witness to prove the state or the condition of the appellant. We do not think the Tribunal and the High Court were justified in thinking that non-examination of these two persons could not be material. In these circumstances, we are of the view that the High Court and the Tribunal erred in not attaching importance to the contention of the appellant."

10. The learned counsel for the petitioner also submitted that the petitioner had discharged his judicial functions and granted interim bail to Dr. Ganesan/A-3 in Crime No. 29 of 2013, on merits and in accordance with law. Such discharge of judicial function, according to the counsel for the petitioner, cannot be construed as a misconduct nor it could be the basis for framing the charges. The petitioner is entitled to grant bail on the same day when an application is filed and there is no embargo to do so. In this context, the learned counsel for the petitioner relied on the decision of the Full Bench of the Allahabad High Court in the case of (Amarawati and another (smt)

vs. State of Uttar Pradesh reported in (2005 (1) AWC 416 wherein it was held that a Sessions Judge, in his discretion, can hear and decide the bail application under Section 439 of the Code of Criminal Procedure on the same day of its filing provided notice is given to the Public Prosecutor or he may not chose to do so and it is entirely a matter in the discretion of the Sessions Judge. By citing the above decision of the Full Bench of the Allahabad High Court, the learned counsel for the petitioner would contend that there is no embargo or bar for the petitioner to entertain the application filed by the petitioner in Crl.M.P. No. 2497 of 2013 or granting interim bail thereof.

11. As regards the allegation that the petitioner had instructed PW5 to alter the date of hearing of the Petition in Crl.M.P. No. 2497 of 2013, seeking bail, the learned counsel for the petitioner would contend that PW5, during the course of his evidence before the enquiry officer, has stated that he was on casual leave on 21.06.2013 in the afternoon and he did not correct the date of hearing in the afternoon of 21.06.2003. Further, the petitioner filed a petition to examine Mrs. Uma Rani, the then Chief Administrative Officer of the Court. However, the enquiry officer refused to entertain the same which had caused prejudice to the petitioner. In any event, the petitioner has passed a Judicial Order and there is no charge of moral turpitude or corrupt practice framed against him warranting imposition of punishment of compulsory retirement. The punishment of compulsory retirement from service is attached with a stigma besides being disproportionate to the charges levelled against the petitioner. In this context, the learned counsel for the petitioner placed reliance on the decision of the Division Bench of the Calcutta High Court in the case of Mintu Mallick versus The Honourable High Court at Calcutta and others wherein the punishment imposed against the appellant therein was interfered with by the Division Bench of the Calcutta High Court. By placing reliance on the above said decision, the learned counsel for the petitioner prayed for allowing the writ petition.

12. Per contra, the learned Senior counsel appearing for the respondents 2 and 3 would vehemently contend that the defacto complainant has given the complaint on 01.07.2013 against the petitioner attributing dishonest motive and questioned the integrity while granting bail to Dr. Ganesan/A-3 in Crime No. 29 of 2013. Such complaint was given by the defacto complainant much prior to the Memorandum in R.O.C. No. 26 of 2014-Con.B2 dated 09.10.2014 issued by the second respondent requiring to verify the authenticity of the complaints given against the Judicial Officers. Therefore, the learned Senior counsel for the respondents 2 and 3 would contend that the complaint given by the defacto complainant was rightly

entertained and it will not in any manner vitiate the order of punishment passed against the petitioner. Moreover, in this case, action was initiated on the basis of discreet enquiry conducted against the petitioner. Furthermore, apart from the present complaint dated 01.07.2013 given against the petitioner by the defacto complainant, an anonymous complaint dated 30.07.2014 was received against the petitioner based on which also a discreet enquiry was conducted against the petitioner by the third respondent. The report of the discreet enquiry dated 30.07.2014 was also perused by the petitioner and he was called upon to submit his explanation. The petitioner sent his explanation on 02.09.2014 denying the charges. Not satisfied with the explanation offered by the petitioner, the Administrative committee resolved to initiate departmental proceedings against the petitioner. Accordingly, a charge memo was issued to the petitioner on 11.12.2014 containing four charges. On receipt of the charge memo, the petitioner sent a representation dated 30.12.2014 to peruse certain documents, which were also permitted to be perused by the petitioner on 24.06.2015 in the office of the Registrar (Vigilance) of this Court. Thus, the material records collected during the discreet enquiry conducted against the petitioner were perused by the petitioner on 05.05.2015, pursuant to which, he had submitted his explanation dated 07.07.2015 to the charge memo, and therefore, the procedural formalities adhered to by the respondents preceding the order of compulsory retirement is proper and valid.

13. With respect to non-examination of the defacto complainant namely Kathavarayan, the learned Senior counsel for the respondents 2 and 3 invited the attention of this Court to para No.11 of the report of the enquiry officer wherein, the enquiry officer has categorically stated that the "petitioner was not prepared to examine the defacto complainant as his witness, but he wanted the Presenting Officer to examine him as a Prosecution witness which was not acceded to". By relying on the above findings of the enquiry officer, the learned Senior counsel for the respondents 2 and 3 would contend that opportunity was given to the petitioner to examine the defacto complainant but he failed to utilise the same. In any event, it is for the petitioner to examine the defacto complainant to disprove the charges and he cannot compel or expect the Department to examine the defacto complainant. Moreover, considering the nature of charges levelled against the petitioner, they have to be, by and large, disproved only on the basis of documentary evidence. Further, the basis for initiating departmental proceedings against the petitioner is not the complaint given by the complainant, but the evidence collected during the discreet enquiry conducted against him. In such circumstances, the learned Senior counsel for the respondents 2

and 3 would only contend that non-examination of defacto complainant is not fatal to the case projected against the petitioner in any manner.

14. As regards the submissions of the learned counsel for the petitioner that the petitioner has only discharged his judicial functions and it cannot be construed as a misconduct, the learned Senior counsel for the respondents 2 and 3 would contend that during the course of enquiry, it was proved that the petitioner, in order to favour the third accused in Crime No. 29 of 2013, directed PW5 to alter the date of hearing of Crl.M.P. No. 2497 of 2013, which was to be heard by the regular Principal District Judge on the next day. The enquiry officer in his report has clearly pointed out that there is a glaring alteration of the date of hearing of the Crl.M.P. No. 2497 of 2013 from 25.06.2013 to 24.06.2013. Furthermore, inspite of the objections raised by the Additional Public Prosecutor that the investigation in Crime No. 29 of 2013 is likely to be transferred to CB CID and that a similar petition in Crl.M.P. No. 2592 of 2013 was filed on behalf of the accused Dr. Ganesan before the learned Judicial Magistrate, Pennagaram and it is pending, the petitioner granted interim bail to the accused. The learned Senior counsel for the respondents 2 and 3 also brought to the notice of this Court that the Principal District Judge, Dharmapuri was on leave from 21.06.2013 (Friday) and 24.06.2013 (Monday). If the bail application is listed as per the date of hearing on 25.06.2013, it will be listed before the regular Principal District Judge. The petitioner, with a dishonest intention and motive had taken up the petition in Crl.M.P. No. 2497 of 2013 on 24.06.2013 itself, the last day of his tenure as Principal District Judge (in-charge) and granted bail. In such circumstances, it cannot be said that the petitioner had discharged his judicial functions faithfully and honestly. The motive on the part of the petitioner in favouring the accused in Crime No. 29 of 2013 namely Dr. Ganesan is clearly established by the respondents. Therefore, the learned Senior counsel for the respondents 2 and 3 would contend that the punishment of compulsory retirement imposed on the petitioner, for the proved charge of lack of integrity and corrupt practice, is proportionate to the charges and it does not call for any interference by this Court.

15. With respect to the contention of the learned counsel for the petitioner that his application to examine Ms. Uma Rani, then Chief Administrative Officer of the Court was unreasonably denied by the enquiry officer, the learned Senior counsel for the respondents 2 and 3 replied that the Principal District Judge, Dharmapuri himself was examined as PW7 and he was also cross-examined by the petitioner at length. In any event, there are adequate evidence made available to prove the charges

levelled against the petitioner. It is not the case of the petitioner that there is no evidence at all to prove the charges levelled against him. In such circumstances, this Court, in exercise of the powers conferred under Article 226 of The Constitution of India need not interfere with the decision taken by the respondents to impose the punishment of compulsory retirement against the petitioner. In effect, this Court, under Article 226 of The Constitution of India, can only ensure whether the procedural formalities have been adhered to and interfere only with the process preceding the decision-making and not the decision taken by the respondents. Therefore, the learned Senior counsel for the respondents 2 and 3 prayed for dismissal of the writ petition.

16. We have heard the learned counsel for both sides and perused the materials placed on record. The charges levelled against the petitioner relates to his dishonest motive and lack of integrity in granting bail to an accused on 24.06.2013 inspite of stiff opposition by the Additional Public Prosecutor. The crux of the charges levelled against the petitioner is that when he was in-charge of the Court of Principal District Judge in the place of the regular Principal Judge between 21.06.2013 (Friday) and 24.06.2013 (Monday), on 21.06.2013, on the basis of a representation made by DW1 to take up CrI.M.P. No. 2497 of 2013 filed on behalf of the third accused-Dr. Ganesan in Crime No. 29 of 2013, he had directed the PW5 to alter the date of hearing of the petition from 25.06.2013 to 24.06.2013, so as to enable him to take up the petition purportedly to show undue favouritism to the accused therein. Further, the taking up of the bail petition by the petitioner on 24.06.2013 was opposed by the Additional Public Prosecutor (DW2) to the effect that a similar bail petition has been filed on behalf of the accused in CrI.M.P. No. 2592 of 2013 on the file of Judicial Magistrate, Pennagaram and it is pending, while so, a parallel petition filed in CrI.M.P. No. 2497 of 2013 need not be entertained. DW2 also further opposed the grant of bail on the ground that the investigation in Crime No. 29 of 2013 is likely to be transferred to CB CID. Despite such objections, the petitioner had taken up the Petition in CrI.M.P. No. 2497 of 2013, called for the records from the Judicial Magistrate, Pennagaram in CrI.M.P. No. 2592 of 2013 and found that CrI.M.P. No. 2592 of 2013 was dismissed in the morning and granted interim bail to the accused therein on the same day namely 24.06.2013.

17. Even though very many contentions have been raised on behalf of the petitioner with respect to the correctness or otherwise of the conclusion arrived at by the enquiry officer as also the order passed by the first respondent compulsorily retiring the petitioner from service, as a measure of punishment, we are conscious of the fact that the scope of

Judicial review in exercise of power under Article 226 of The Constitution of India, is limited to test only the correctness or otherwise of adherence of the decision making process and not the decision of the respondents. While exercising jurisdiction under Article 226 of The Constitution of India, we can only ensure as to whether the procedural formalities preceding the order of punishment have been adhered to in the touch stone of principles of natural justice. In other words, the conclusion arrived at by the respondents to compulsorily retire the petitioner from service cannot be interfered with by this Court, unless the conclusion is based on no evidence or irrelevant material. It is in this direction, we proceed to examine the submissions made on behalf of both sides.

18. The main contention advanced on behalf of the petitioner is that the petitioner, in discharge of judicial functions, has granted interim bail on 24.06.2013 to the third accused in Crime No. 29 of 2013 and it cannot be brought within the fold of 'misconduct' warranting imposition of punishment. On the other hand, it is contended on behalf of the respondents that the petitioner, in order to show undue favourism to the third accused in Crime No. 29 of 2013 directed PW5 to alter the date of hearing from 25.06.2013 to 24.06.2013, taken up the bail application on 24.06.2013 and granted interim bail inspite of stiff opposition by DW2, Additional Public Prosecutor.

19. In connection with the aforesaid delinquency alleged against the petitioner, he was subjected to disciplinary proceedings in which witnesses were examined and documents have been marked. The report of the enquiry report was placed before the Administrative Committee of this Court, which recommended for imposition of punishment of compulsory retirement to the petitioner. The recommendations made by the Administrative Committee was placed before the Full Court and it was resolved to approve the decision of the Administrative Committee. Based on the order of the Full Court, the first respondent has passed the order dated 01.03.2017 imposing the punishment of compulsory retirement to the petitioner.

20. It is seen from the records that the report dated 30.07.2014 was sent to the petitioner enclosing the materials collected during the discreet enquiry conducted against him and also the complaint given by the defacto complainant. The petitioner was also called upon to respond to the report dated 30.07.2014. Accordingly, the petitioner submitted his explanation dated 02.09.2014 and the explanation was placed before the Administrative Committee of this Court. The Committee, not satisfied with the explanation offered by the petitioner directed to initiate departmental proceeding against the petitioner. Accordingly, a charge memo dated 11.12.2014 was

issued to the petitioner containing four charges. On receipt of the charge memo, the petitioner sought for certain documents, including the material documents collected during the discreet enquiry conducted against him. On 24.06.2015, the petitioner perused the documents relied against him in the office of the third respondent. Subsequently, the petitioner submitted his explanation on 07.07.2015 and not satisfied with the same, an enquiry officer was appointed. Thus, it is evident that the petitioner was given due opportunity before the enquiry officer to examine the witness and to mark documents. The documents relied against the petitioner in the charge memo was also permitted to be perused by him. Taking note of the above, the Administrative Committee of this Court as also the Full Court has concluded that for the proved delinquency, the petitioner has to be imposed with the punishment of compulsory retirement from service. Thus, at every stage, the procedures required to be adhered to in a departmental proceeding has been followed by the respondents over which we cannot interfere. To be precise, there is no procedural violation in conducting enquiry against the petitioner and therefore, interference of this Court is not warranted. It is well settled that the scope of judicial review in cases of this nature is very limited only to see as to whether there is any procedural violation in passing the order of punishment or the conclusion arrived at by the respondents is based on no evidence. In this context, the learned Senior counsel for the respondents 2 and 3 relied on the decision of the Honourable Supreme Court in the case of (High Court of Judicature at Bombay through its Registrar vs. Udaysingh and others) reported in AIR 1997 Supreme Court 2286 wherein it was held as follows:-

"10.The only question is; whether the Tribunal was right in its conclusion to appreciate the evidence and to reach its own finding that the charge has not been proved. The Tribunal is not a Court of appeal. The power of judicial review of the High Court under Article 226 of The Constitution of India was taken away by the power under Article 323-A and invested the same in the Tribunal by Central Administrative Act. It is settled law that the Tribunal has only power of judicial review of the administrative action of the appellant on complaints relating to service conditions of employees. It is the exclusive domain of the disciplinary authority to consider the evidence on record and to record findings whether the charge has been proved or not. It is equally settled law that technical rules of evidence have no application for the disciplinary proceedings and the authority is to consider the material on record. In

judicial review, it is settled law that the Court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the view of the Court or Tribunal when the conclusion reached by the authority is based on evidence. Tribunal is devoid of power to reappraise the evidence and would (sic) come to its own conclusion on the proof of the charge. The only consideration the Court/Tribunal has in its judicial review is to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence....

13. Under the circumstances, the question arises: whether the view taken by the High Court could be supported by the evidence on record or whether it is based on no evidence at all? From the narration of the above facts, it would be difficult to reach a conclusion that the finding reached by the High Court is based on no evidence at all. The necessary conclusion is that the misconduct alleged against the respondent stands proved. The question then is; what would be the nature of punishment to be imposed in the circumstances? Since the respondent is a judicial officer and the maintenance of discipline in the judicial service is a paramount matter and since the acceptability of the judgment depends upon the credibility of the conduct, honesty, integrity and character of the officer and since the confidence of the litigant public gets affected or shaken by the lack of integrity and character of the judicial officer, we think that the imposition of penalty of dismissal from service is well justified. It does not warrant interference.

21. Thus, it is evident from the above decision of the Honourable Supreme Court that this Court has no power to interfere with the decision taken by the respondents in a departmental enquiry and to substitute its own conclusion. In such cases, judicial review is only meant to ensure that the delinquent receives fair treatment in the departmental enquiry conducted against him and that the conclusion which the authority reached is based on semblance of evidence. In the

present case, as mentioned above, there are evidences made available against the petitioner based on which the respondents have come to a conclusion to impose the punishment of compulsory retirement from service. While so, we cannot interfere with such a conclusion arrived at by the respondents.

22. The learned counsel for the petitioner submitted that even assuming that the charges levelled against the petitioner are proved, the punishment of compulsory retirement from service imposed on him is unwarranted and excessive. We are not inclined to accede to such submission made on behalf of the petitioner. At the outset, we wish to observe that there were material records made available against the petitioner other than the complaint given by the defacto complainant Kathavarayan. To make it clear, the respondents have also received a complaint dated 30.07.2014 against the petitioner relating to the discharge of his judicial functions based on which the third respondent conducted discreet enquiry and collected material evidence, which was also perused by the petitioner on 24.06.2015. Therefore, it is not an isolated complaint received from the defacto complainant Kathavarayan, which led to the initiation of disciplinary proceedings against the petitioner. There was also another complaint said to have been received against the petitioner based on which discreet enquiry has been conducted. Be that as it may, the petitioner, as a Judicial Officer, is required to maintain absolute integrity and honesty in discharge of his functions without giving any room for any complaint, much less complaint touching his integrity and honesty. When the charges levelled and proved against the petitioner goes to the root of the honesty and questionable integrity in discharge of his duties, we are not in a position to appreciate the submission made by the counsel for the petitioner that the punishment imposed on the petitioner is unwarranted and excessive. In this context, we are fortified by a decision of the Honourable Supreme Court in the case of (Union of India and others vs. P. Gunasekaran) reported in (2015) 2 Supreme Court Cases 610 wherein in para No.20, it was held as follows:-

"20. Equally, it was not open to the High Court, in exercise of its jurisdiction under Articles 226/227 of The Constitution of India, to go into the proportionality of punishment so long as the punishment does not shock the conscience of the Court. In the instant case, the disciplinary authority has come to the conclusion that the respondent lacked integrity. No doubt, there are no measurable standards as to what is integrity in service jurisprudence but certainly there are indicators for such assessment. Integrity

according to Oxford Dictionary is 'moral uprightness; honesty'. It takes in its sweep, probity, innocence, trustfulness, openness, sincerity, blamelessness, immaculacy, rectitude, uprightness, virtuousness, righteousness, goodness, cleanness, decency, honour, reputation, nobility, irreprochability, purity, respectability, genuineness, moral excellence etc., In short, it depicts sterling character with firm adherence to a code of moral values."

23. Applying the above observation of the Honourable Supreme Court to the facts of this case, we do not see that the punishment imposed on the petitioner is disproportionate and it does not shock our conscience.

24. For all the reasons mentioned above, we decline to interfere with the order passed by the first respondent, which is impugned in this writ petition. Accordingly, the writ petition is dismissed. No costs.

rsh

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Chief Secretary to Government
State of Tamil Nadu
Secretariat, Fort St. George
Chennai - 600 009

2. The Registrar General
High Court
Chennai - 600 104

3. The Registrar (Vigilance)
High Court
Madras - 600 104

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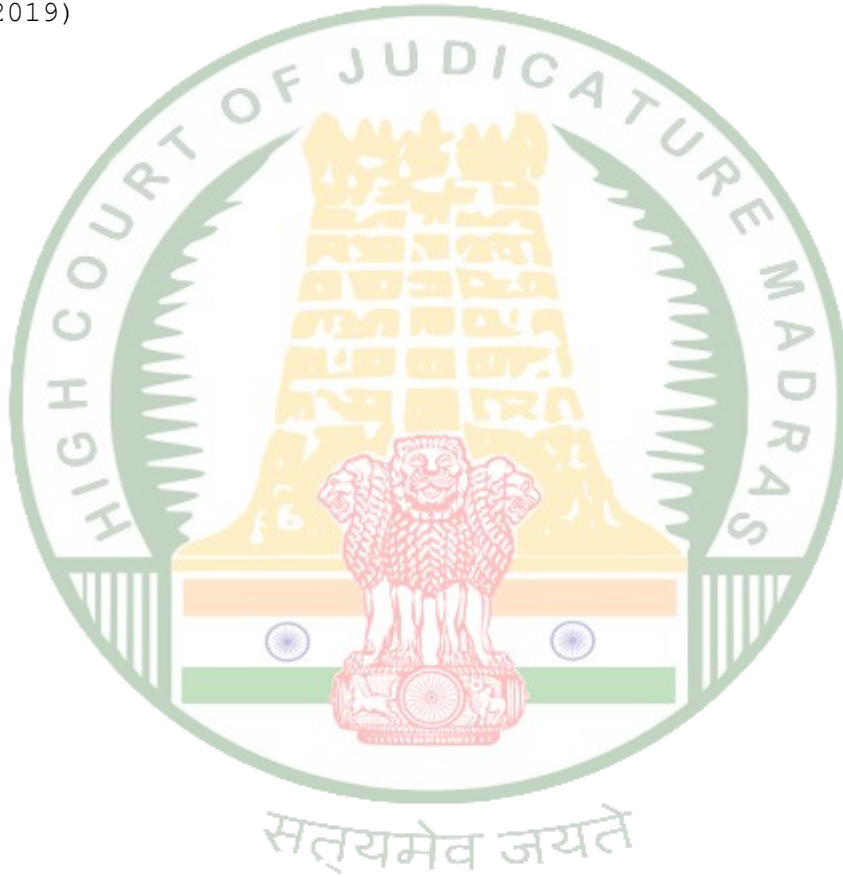
1. The Section Officer,
'B' Section,
High Court, Madras - 104.

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

+1cc to the Govt.Pleader, Advocate, vide SR.No.77729

WP No. 492 of 2018

Kak(17/10/2019)



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