

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.07.2019

Pronounced on : 21-08-2019

CORAM

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

Writ Petition No. 17230 of 2018

K.V. Mahendra Boopathi .. Petitioner

Versus

1. The High Court
represented by The Registrar General
High Court
Chennai - 600 104
2. State of Tamil Nadu
represented by Additional Chief Secretary
to Government
Home (Courts-I) Department
Fort St. George
Chennai - 600 009

... 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 of the second respondent relating to G.O. (2D) Ms. No. 195, Home (Courts-1) Department dated 08.06.2018 and quash the same, and consequently direct the respondents to reinstate the petitioner in service as Judicial Magistrate with attendant benefits such as seniority and promotion.

For Petitioner : Mr. N. Manokaran

For Respondents : Mr. M. Santhana Raman for R1

Mr. V. Shanmuga Sundaram
Special Government Pleader for R2

ORDER

R. SUBBIAH, J

The petitioner seeks to quash the order passed by the first respondent in G.O. (2D) Ms. No. 195, Home (Courts-1) Department dated 08.06.2018 and for a consequential direction to the respondents to reinstate him in service as Judicial Magistrate with all attendant benefits such as seniority and promotion.

2. The petitioner was appointed as Civil Judge on 11.03.2009. After necessary training he was posted as Additional District Munsif, Padmanabhapuram. Thereafter, the petitioner had served in various Districts and finally he was posted as Judicial Magistrate, Melur, Madurai District. While so, on 22.03.2016, the petitioner was served with a charge memo by the first respondent under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules containing two charges and he was called upon to submit his explanation within 21 days from the receipt of charge memo. The charges framed against the petitioner reads as follows:-

"Charge No.1: That you, Thiru. K.V. Mahendra Boopathi, Judicial Magistrate, Melur, having known the fact that one S.M.P. Amalan, Advocate for Complainant in Crime No. 169 of 2014, has given a complaint against you to the Hon'ble High Court, you developed enmity with him and that in continuation thereof, on the night of 13.03.2014, you contacted the said S.M.P. Amalan in his mobile phone No. 7418800000 several times as detailed in 'Annexure V' enclosed herewith, from Cell Numbers 9444693393 (obtained in your name) and from 9751582122 (obtained in the name of your friend Thiru. Shanmuga Sundaram, 117/NA, Kamuthi, Ramanathapuram) by using SIM Card of the above numbers in the Cell Phone instrument having IMEI No. 35668305323136 and abused Thiru. S.M.P. Amalan with filthy and un-parliamentary language and also intimidated him in an inebriated mood as found in the statement of imputation. Thereby, you have failed to maintain absolute integrity and devotion to duty and thus you have acted in a manner which is unbecoming of a Judicial Officer, violating Rule 20 of "The Tamil Nadu Government Servants' Conduct Rules, 1973". Thus, you rendered yourself liable to be proceeded with under Rule 17 (b) of The Tamil Nadu Civil Services (Discipline and Appeal) Rules.

Charge No.2:- That you, Thiru. K.V. Mahendra

Boopathi, Judicial Magistrate, Melur, on 22.05.2014, 27.05.2014 and 06.07.2014, contacted one of the accused in Crime No. 169 of 2014 of Melur Police Station viz., Thiru. Saravanan, President, Melur Town Panchayat, on his mobile number 9443033705 which is his contact number as per his official letter pad, from your cell phone instrument having IMEI No. 35668305323136 by using SIM Card having phone No.9442895918 (obtained in the name of your friend Thiru. Vadivel Murugan, No.17, Muthirulandi Street, Kamuthi, Ramanathapuram), as detailed in Annexure - VI enclosed herewith, and had conversation with the said accused which is not expected from a Judicial Officer and against all cannons of ethics. Thereby, you have failed to maintain absolute integrity and devotion to duty, violating Rule 20 of "The Tamil Nadu Government Servants' Conduct Rules, 1973". Thus, you rendered yourself liable to be proceeded with under Rule 17 (b) of The Tamil Nadu Civil Services (Discipline and Appeal) Rules.

3. By another order dated 31.03.2016, the petitioner was placed under suspension pending contemplation of a departmental enquiry. The petitioner submitted his preliminary defence statement on 12.04.2016 to the charges framed against him, in which he sought to furnish certain documents referred to in the charge memo and the statement recorded during a discreet enquiry conducted by the Registrar (Vigilance). Accordingly, the documents sought for by the petitioner were furnished by proceedings dated 06.05.2016 and he was granted 15 days time to submit his additional defence statement. The petitioner also submitted the additional defence statement on 01.06.2016 along with the duly filled in questionnaire form, as required. The additional statement of defence submitted by the petitioner was placed before the Administrative Committee. The committee, not being satisfied by the explanation offered by the petitioner, resolved to proceed with departmental enquiry against the petitioner. For the purpose of conducting such an enquiry, Thiru. M. Jothiraman, the then District Judge, Sivaganga was appointed as enquiry officer and Tmt. J. Radhika, Chief Judicial Magistrate, Sivagangai was appointed as Presenting Officer. During the course of enquiry, on behalf of the Department the complainant Mr. S.M.P. Amalan, Advocate was examined as PW1 and Mr. K. Sivanathan, working as Office Assistant in the Judicial Magistrate Court at Melur was examined as PW2 and Exs. P1 to P9 were marked. On behalf of the delinquent/petitioner, four witnesses were examined and Exs. D1 to D3 were marked. After conclusion of the departmental enquiry, the Enquiry Officer submitted his report dated 21.09.2016 stating that both the

charges levelled against the petitioner are proved. The report of the enquiry officer was sent to the petitioner seeking his further explanation. The petitioner also submitted his further representation on 27.11.2016. The further representation of the petitioner along with the report of the enquiry officer and other material documents were placed before the Administrative Committee. On 07.02.2018, the committee resolved to impose the punishment of dismissal from service and referred the matter to be placed before the Full Court for approval. Accordingly, the matter was placed before the Full Court of this Court on 19.03.2018 and the Full Court has resolved to approve the decision of the Administrative Committee. On the basis of the order passed by the Full Court, the second respondent, considering the defence of the petitioner as also the report of the enquiry officer, has passed the order in G.O. (2D) Ms. No. 195, Home (Courts-1) Department dated 08.06.2018 dismissing the petitioner from service. Challenging the order dated 08.06.2018 of the second respondent dismissing him from service, the petitioner has filed this writ petition.

4. The learned counsel for the petitioner made detailed submissions by referring to the averments made in the affidavit filed in support of the writ petition. The learned counsel for the petitioner submitted that the complainant/PW1 viz., Mr.S.M.P. Amalan was the counsel for Rajendran, DW1, one of the accused in Crime No. 170 of 2014 registered for the offences punishable under Section 307 of Indian Penal Code on the file of Melur Police Station. The said Rajendran was admitted as an in-patient in Government Rajaji Hospital, Madurai. The petitioner went to the hospital on 10.03.2014 at 2.15 pm and remanded DW1 to judicial custody and at that time, the complainant/PW1 obstructed the petitioner from discharging his judicial functions by shouting at him. In connection with the above incident, it is alleged that the petitioner contacted the complainant over phone on 13.03.2014 at 9.15 pm and scolded him by using filthy language under the influence of alcohol. Therefore, the complainant Mr. S.M.P. Amalan has given a complaint to the Registrar (Vigilance), High Court, Madurai after 9 days of the so-called phone conversation the petitioner had made on 13.03.2014. The complainant was asked to appear before the Registrar (Vigilance) on 24.11.2014 for an enquiry. During the course of the enquiry, the complainant himself has deposed that no further action is required to be taken on his complaint. Even when PW1 was examined on 24.08.2016 before the Enquiry Officer, he has neither stated that the petitioner had used 'filthy and unparliamentary language' nor about the 'intimidation in an inebriated mood'.

5. According to the learned counsel for the petitioner, DW1-Rajendran was remanded by the petitioner in discharge of his official duties in connection with the case registered in Crime

No. 170 of 2014. DW1, during the course of his examination has not stated anything about the petitioner. On the other hand, he deposed that it is the complainant, PW1 who had exceeded his limit and interfered with the discharge of duties by the petitioner. Even DW2, Ezhilarasan, Secretary of the Bar Association had deposed that the petitioner had only discharged his duties. He further deposed that the complainant, at no point of time, informed him that the petitioner had scolded him in filthy language in an inebriated condition. According to the counsel for the petitioner, there is no bar or prohibition for the petitioner to contact an advocate over phone and mere exchange of telephone calls will not amount to 'misconduct'. The enquiry officer as well as the second respondent, without considering the above, has hastily concluded that the petitioner is guilty of violation of the procedures contained in Tamil Nadu Government Servants' Conduct Rules 1973.

6. As regards charge No.2, it is alleged that the petitioner contacted Saravanan, one of the accused in Crime No. 169 of 2014 on the file of Melur Police Station, on his mobile number and had conversation with him, which is unbecoming of a Judicial Officer. The learned counsel for the petitioner submits that Mr.Saravanan is the President of Melur Panchayat. The petitioner had conversed with him over phone to remove the thorny bushes from the Court premises on the eve of a meeting arranged to welcome the learned Principal District Judge, Madurai to the Melur Court premises. It is further submitted that the Melur Court premises is encircled with thorny bushes and there was an urgent necessity to remove them so as to keep the Court campus clean. In order to substantiate this, the petitioner had relied on the evidence of PW2, Sivanathan, a Staff of Melur Court, who was examined on the side of the prosecution. PW2 has categorically stated that he did not know as to whether the petitioner had spoken to the complainant/S.M.P. Amalan or Mr. Saravanan, over phone. He however stated that snakes are often spotted in the Court premises and therefore, there was a necessity to remove the thorny bushes over grown within the Court premises. The learned counsel for the petitioner also would contend that DW3 is the Supervisor of Melur Town Panchayat and during the course of his examination, he admits that the Panchayat was taking steps to maintain cleanliness in Court premises by engaging their men to clear the thorny bushes periodically. Similarly, DW4 is the Fire Service Personnel, who in his evidence admitted that on many occasion, he along with his team went to the Court to catch snakes in the Officers' Quarters at Melur. Thus, the charge No.2 has been disproved by the petitioner by relying on the deposition of PW2 and by examining DW2, DW3 and DW4. In fact, DWs 2 to 4 have admitted that it is the local body which has to maintain the hygienic condition in the Court campus. Therefore,

according to the learned counsel for the petitioner, there is no legally acceptable evidence to prove the charge No.2 levelled against the petitioner. Moreover, the petitioner has not granted bail to Saravanan, one of the accused in Crime No. 169 of 2014 but he was granted bail by the learned Principal Sessions Judge, Madurai. However, the enquiry officer has erroneously concluded that the Petitioner ought to have officially communicated to the President of Panchayat instead of making phone calls. For each and every trivial issues, communication cannot be sent to the President of the Panchayat and in order to resolve such issues swiftly, making phone calls is inevitable. Therefore, it is contended by the learned counsel for the petitioner that both the charges were laid based on unacceptable evidence, which cannot be the basis for imposition of punishment of dismissal from service. When the charges are laid on the basis of evidence, which are legally unacceptable, this Court is entitled to set aside the punishment imposed to the petitioner. In this context, the learned counsel for the petitioner relied on the decision of the Honourable Supreme Court in (R.R. Parekh vs. High Court of Gujarat and another) reported in (2016) 14 Supreme Court Cases 1 wherein in para No.20, it was held as follows:-

"20. A disciplinary inquiry, it is well settled, is not governed by the strict rules of evidence which governs a criminal trial. A charge of misconduct in a disciplinary proceeding has to be established on a preponderance of probabilities. The High Court, while exercising its power of judicial review under Article 226 has to determine as to whether the charge of misconduct stands established with reference to some legally acceptable evidence. The High Court would not interfere unless the findings are found to be perverse. Unless it is a case of no evidence, the High Court would not exercise its jurisdiction under Article 226. If there is some legal evidence to hold that a charge of misconduct is proved, the sufficiency of the evidence would not fall for re-appreciation or re-evaluation before the High Court. Applying these tests, it is not possible to fault the decision of the Division Bench of the Gujarat High Court on the charge of misconduct. The charge of misconduct was established in Disciplinary Inquiry No. 15 of 2000."

7. The learned counsel for the petitioner would further contend that as against the impugned order passed by the second respondent, there is no appeal remedy provided and the petitioner has to only take recourse to filing the present writ

petition under Article 226 of The Constitution of India. Therefore, this Court, as an appellate authority, can re-appreciate and re-evaluate the facts of the case on the basis of the materials placed. In this context, the counsel for the petitioner relied on the decision of the Division Bench of this Court in the case of (V. Seetharaman vs. Registrar General, High Court, High Court Buildings, Chennai - 104 and another) reported in (2010) 1 MLJ 977 wherein in para No.64, it was held as follows:-

"64. We are aware that 'Judicial review' is not an appeal from a decision but a Review of the manner in which the decision has been made and it is not directed to the decision, but to the decision making process. The powers of Judicial Review are meant to ensure that an individual receives a fair treatment. However, as already been pointed out by us supra, as against the impugned order of removal from service passed against the petitioner, he has no appellate remedy, so as to assess the factual aspect of the case and the only remedy available for him is to file a writ petition under Article 226 of The Constitution of India, which he did by filing this writ petition. Therefore, to uphold the majesty of justice, we have discussed the evidence on record. Though on the side of the petitioner a plea was taken that no opportunity of hearing was given to him either by the first respondent or the second respondent or even by the Hon'ble Administrative Committee or by the Full Court of this Court, on going through the entire records we are satisfied that the petitioner was given adequate and sufficient opportunities and there was no violation of the principles of natural justice.

8. Thus, the learned counsel for the petitioner would contend that inasmuch as there is no appeal remedy to assail the order dated 08.06.2018 of the second respondent, the writ petition under Article 226 of the Constitution of India is the only remedy for the petitioner and this Court can very well re-appreciate and evaluate the material evidence on record to render substantial justice.

9. The learned counsel for the petitioner would further contend that the charges levelled against the petitioner are flimsy and vague. The charge that the petitioner had conversed with one of the accused in Crime No. 169 of 2014 and therefore he had contravened the Government Servant conduct Rules is

legally not sustainable. If such a charge is levelled against the Judicial officer, no Judicial Officer will be in a position to discharge his duties without fear. In this context, the learned counsel for the petitioner relied on the decision of the Division Bench of this Court in the case of (S. Thirupathy vs. State of Tamil Nadu represented by its Chief Secretary to Government, Chennai and another) reported in (2004) 3 MLJ 434 wherein in para No. 8, it was held as follows:-

8.In a judicial review, normally, appreciation of evidence is not resorted to. But, when the failure on the part of the authority to look into the material facts or evidence, which cut at the roots of the allegation and that too, a serious one like in the instant case, and the disciplinary proceeding being quasi-judicial in nature, not only should there be reasons, but those reasons should have supporting material. If the litigants, who suffer adverse decisions from the Judge, who handed out the judgments are allowed to have their say in this matter, it is very difficult for the judicial officers to sustain. As already stated above, we have to balance the severity of the allegations with that of sustaining the independence of judiciary and only when the evidence is so overwhelming and beyond all reasonable doubts that the judicial officer can be inflicted with punishment. The analysis of the evidence, which has not been done by the enquiry committee and the vital contradictions not having been considered and there being non-existent facts, we find that the charges 3 and 4 levelled against the petitioner are also unsustainable."

10. For the very same proposition, the learned counsel for the petitioner also relied on the decision of the Honourable Supreme Court in the case of (Nirmala J. Jhala vs. State of Gujarat and another) reported in (2013) 4 Supreme Court Cases 301 wherein in para Nos. 22, 52 and 53, it was held thus:-

"22. It is settled legal proposition that judicial review is not akin to adjudication on merits by re-appreciating the evidence as an appellate authority. The only consideration of the Court/Tribunal has in its judicial review, is to consider whether the conclusion is based on evidence on record and supports the findings or whether the conclusion is based on no evidence. The adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the Court in writ proceedings...

52. In view of the above, we reach the

following inescapable conclusions:-

52.1. The High Court failed to appreciate that the appellant had not granted long adjournments to the accused-complainant as the appellant wanted to conclude the trial at the earliest. The case of the accused-complainant which was taking its time, had suddenly gathered pace, thus, he would have naturally felt aggrieved by failing to notice it. The High Court erred in recording a finding that the complainant had no ill will or motive to make any allegation against the appellant.

52.2. The enquiry officer, the High Court on administrative side as well as on judicial side, committed a grave error in placing reliance on the statement of the complainant as well as Shri. C.B. Gajjar, Advocate, recorded in a preliminary enquiry. The preliminary enquiry and its report loses significance/importance, once the regular enquiry is initiated by issuing charge-sheet to the delinquent. Thus, it was all in violation of the principles of natural justice.

52.3. The High Court erred in shifting the onus of proving various negative circumstances as referred to hereinabove, upon the appellant who was the delinquent in the enquiry.

52.4. The onus lies on the department to prove the charge and it failed to examine any of the employees of the Court i.e., Stenographer, Bench Secretary or peon attached to the office of the appellant for proving the entry of Shri. Gajjar, Advocate, in her chamber on 17.08.1993.

52.5. The complainant has been disbelieved by the enquiry officer as well as the High Court on various issues, particularly on the point of his personal hearing, the conversation between the appellant and Shri. C.B. Gajjar, Advocate, on 17.08.1993, when they met in the chamber.

52.6. Similarly, the allegation of the complainant that the appellant had threatened him through his wife, forcing him to withdraw the complaint against her, has been disbelieved.

52.7. The complainant as well as Shri. C.B. Gajjar, Advocate had been talking about the appellant's husband having collecting the amount on behalf of the appellant, for deciding the cases, though at that point of time, she was unmarried.

52.8. There is nothing on record to show that the appellant whose defence has been disbelieved in toto, had ever been given any adverse entry in her ACRs, or punished earlier in any

enquiry. While she has been punished solely on uncorroborated statement of an accused facing trial for misappropriation.

53. In view of the above, we have no option except to allow the appeal. The appeal succeeds in is accordingly allowed. The order of punishment imposed by the High Court in compulsorily retiring the appellant is set aside. However, as the appellant has already reached the age of superannuation long ago, it is not desirable under the facts and circumstances of the case, to grant her any substantive relief, except to exonerate her honourably of all the charges and allow the appeal with costs, which is quantified to the tune of Rs.5 lakhs. The State of Gujarat is directed to pay the said costs to the appellant within a period of 3 months from today."

11. In effect, it is the submission of the counsel for the petitioner that there is no appeal remedy available to the petitioner as against the order, which is impugned in this writ petition, dismissing him from service. Therefore, in exercise of power under Article 226 of The Constitution of India, this Court can interfere with the order of dismissal passed by the second respondent on 08.06.2018 by re-appreciating the evidence and prayed for allowing the writ petition.

12. Countering the submissions of the learned counsel for the petitioner, the learned counsel for the first respondent would contend that the petitioner was dismissed from service after conducting a detailed enquiry in which he participated. The petitioner was given adequate opportunity to defend the enquiry proceedings. The enquiry officer, in his report, has held that the charges levelled against the petitioner are proved. The report of the enquiry officer was placed before the Administrative Committee and the committee recommended that the punishment of dismissal from service could be imposed on the petitioner. Such a recommendation of the Administrative Committee was also accepted by the Full Court of this Court, based on which the second respondent has passed the order dated 08.06.2018, dismissing the petitioner from service. Therefore, according to the counsel for the first respondent, there is no procedural violation in passing the order dated 08.06.2018 and consequentially, the writ petition is not maintainable.

13. As regards the charges, the learned counsel for the first respondent would submit that the petitioner contacted the complainant over phone on 13.03.2014 late in the night was borne out of records. Even the petitioner admitted that he is in the habit of speaking with the complainant and he asked him as to why he acted against him. The petitioner also admitted that he

called Saravanan, President, Melur Town Panchayat, the first accused in Crime No. 169 of 2014, on 22.05.2014, 27.05.2014 and 06.07.2014. During the course of enquiry, PW1/complainant has reiterated his complaint against the petitioner. Thus, the charges against the petitioner are proved which was correctly appreciated by the enquiry officer. When the petitioner was given adequate opportunity to defend the enquiry proceedings, the writ petition is not maintainable under Article 226 of The Constitution of India. This Court, in exercise of power under Article 226 of The Constitution of India cannot review the order of punishment imposed upon the petitioner unless the conclusion arrived at by the respondents are based on no evidence or there is any procedural violation in passing the order of punishment. The submission of the counsel for the petitioner that there is no appeal remedy against the order of punishment and therefore, the writ petition under Article 226 of The Constitution of India is maintainable, cannot be sustained. In deciding cases involving imposition of punishment, preceded by departmental enquiry, this Court cannot act as an appellate authority to re-appreciate the evidence. Thus, the scope of judicial review in cases of this nature is very limited except 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 counsel for the first respondent 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 reappreciate 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.

14. The learned counsel for the respondent also submits that the petitioner in his affidavit filed in support of the writ petition had suppressed the fact that there was a collateral and simultaneous proceedings initiated based on the order dated 24.03.2016 passed by this Court in CrI.OP (MD) No. 14782, 14783 and 14784 of 2015 which pertains to the petitioner taking cognisance only in respect of minor offence in case of serious and illegal exploitation of granite stones in and around Melur, Madurai District, despite this Court issuing direction to take cognisance of all the offences. Of course, the Special Leave Petitions filed against the said order dated 24.03.2016 was disposed of by the Honourable Supreme Court by expunging the

observations made against the petitioner with a specific observation that the order passed by the Honourable Supreme Court will not stand in the way of initiating disciplinary proceedings against the petitioner. In any event, the charges levelled against the petitioner have been held proved and the report of the enquiry officer was placed before the administrative committee. The Administrative Committee, on appreciation of the materials made available, resolved to impose the punishment of dismissal from service, which was also approved by the Full Court of this Court, based on which the second respondent has passed the order of dismissal. When the procedural formalities preceded the order of punishment passed by the second respondent, interference of this Court is not warranted. The learned counsel for the first respondent therefore prayed for dismissal of the writ petition.

15. The learned counsel for second respondent would only contend that departmental enquiry has been conducted against the petitioner in which he was given full opportunity to put forth his defence. Thereafter, the report of the enquiry officer was placed before the Administrative Committee. The Committee, in the meeting held on 07.02.2018, resolved to impose the punishment of dismissal from service and directed the Registry to place the matter before the Full Court. The Full Court, in the meeting held on 19.03.2018, unanimously resolved to approve the minutes of the meeting of the Administrative Committee, based on which the second respondent forwarded the records relating to disciplinary proceedings initiated against the petitioner to the Government, being the appointing authority, to pass appropriate orders to impose the punishment of dismissal from service. The Government also, agreed with the recommendation made by the Administrative Committee as well as the Full Court and accordingly passed the order in G.O. (2D) No. 195, Home (Courts-1) Department dated 08.06.2018 imposing the punishment of dismissal from service. The High Court, as disciplinary authority, had completed all the procedural formalities and forwarded the records to the appointing authority viz., the Government and based on the recommendation made by the Full Court, the Government passed the order of dismissal. The contention of the petitioner that the Government did not independently apply its mind while passing the impugned order of dismissal cannot be sustained inasmuch as the settled legal position is that any decision taken by the High Court in departmental proceedings will bind the Government and the Government cannot take a different view than the one taken by the High Court. In such circumstances, the learned counsel for the second respondent prayed for dismissal of this writ petition.

16. We have heard the counsel on either side and perused the materials on record. In the light of the above submission made by the counsel on either side, the question that falls for

our consideration is as to whether this Court, in exercise of powers conferred under Article 226 of The Constitution of India, can interfere with the order of punishment passed against the petitioner by re-appreciating the material evidence on record.

17. A fitting answer to this point has been given by the Honourable Supreme Court in (High Court of Judicature at Bombay through its Registrar vs. Udaysingh and others) reported in AIR 1997 Supreme Court 2286 mentioned supra, wherein it was held that this Court, under Article 226 of The Constitution of India, has no power to trench on the jurisdiction of the disciplinary authority and to appreciate the evidence. All that is permissible is to ensure that the conclusion arrived at is based on evidence supporting the finding or whether the conclusion is based on no evidence. In the present case, during the course of enquiry, PW1/complainant was examined and the Office Assistant attached to the Judicial Magistrate Court was examined as PW2. On behalf of the petitioner/ delinquent, four witnesses were examined and documents were marked. The oral as well as documentary evidence were analysed by the enquiry officer, who concluded that the two charges levelled against the petitioner are proved. The report of the enquiry officer was forwarded to the petitioner and he also submitted his explanation to the report of the enquiry officer. The report of the enquiry officer as also the explanation offered by the petitioner were placed before the Administrative Committee. The Committee, upon consideration of the materials resolved to impose the punishment of dismissal from service, which was subsequently approved by the Full Court. Thus, from the stage of initiating the disciplinary proceedings, the petitioner was given all adequate opportunity to defend himself. In such circumstances, it cannot be said that the order passed by the second respondent is the one without any evidence. Even otherwise, all the procedural formalities have been adhered to and therefore, the interference of this Court is not warranted against the decision taken by the respondents.

18. The learned counsel for the petitioner would vehemently contend that as against the order of the second respondent dismissing the petitioner from service, there is no appeal remedy available and that the petitioner can take recourse only to file the present writ petition under Article 226 of The Constitution of India. Therefore, according to the counsel for the petitioner, this Court, in exercise of the power conferred under Article 226 of The Constitution of India, can re-appreciate the merits or otherwise of the contentions raised on behalf of the petitioner. It is true that there is no appeal remedy available to the petitioner and the only remedy is to file a writ petition under Article 226 of The Constitution of India. At the same time, in exercise of the powers conferred

under Article 226 of The Constitution of India, this Court can interfere with the order of the disciplinary authority or the appointing authority only if the order was passed based on no evidence or the evidence considered for such conclusion is irrelevant. In the instant case, there is ample evidence made available against the petitioner to prove the charges that he had spoken to the complainant/PW1 and threatened him over phone. There is also evidence to show that the petitioner had spoken to Saravanan, one of the accused in Crime No. 169 of 2014 and thereby he had contravened the provisions of the Tamil Nadu Government Servants Conduct Rules, 1973. Therefore, it cannot be said that the conclusion arrived at by the respondents is based on no evidence or the consideration is based on irrelevant material records. In other words, the exercise of power under Article 226 of The Constitution of India can be invoked to the limited extent to ensure whether the order is passed in accordance with established procedures contemplated under law. When the procedural process preceded the order of dismissal passed against the petitioner, this Court cannot interfere with the same.

19. Yet another submission made by the counsel for the petitioner is that even assuming that the charges levelled against the petitioner relating to calling over phone to one of the accused in a case pending before him and also an advocate by scolding him for preventing the petitioner from discharging his duties, are proved, the punishment by way of dismissal from service imposed is unwarranted and excessive. We are not inclined to accede to such submission made on behalf of the petitioner. The petitioner, as a Judicial Officer, is required to maintain absolute integrity and honesty in the discharge of his functions and when the charges levelled and proved are related to his 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 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."

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

21. In the result, the writ petition fails and it is dismissed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1. The Registrar General
High Court
Chennai - 600 104
2. The Additional Chief Secretary to Government
Government of Tamil Nadu
Home (Courts-I) Department
Fort St. George
Chennai - 600 009

+1cc to Mr.N.Manokaran, Advocate sr.71687

WP No. 17230 of 2018

ssi(co)
nr 28/08/2019