



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **17.12.2019**

CORAM:

**THE HONOURABLE MR.JUSTICE A.P.SAHI, CHIEF JUSTICE  
AND**

**THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD**

**W.A. [MD]No.631 of 2012**

WEB COPY

P.Selvan

: Appellant

Vs.

1.The Additional Director General of Police,  
(Law and Order)  
Chennai - 600 004.

2.The Deputy Inspector General of Police,  
Tirunelveli Range,  
Tirunelveli.

3.The Superintendent of Police,  
Thoothukudi District.

: Respondents

**PRAYER:** Writ Appeal filed under Clause 15 of Letters Patent, against the order dated 07.10.2009 passed in W.P(MD)No.8913 of 2005.

Prayer in WP(MD)No.8913 of 2005

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court a WRIT OF CERTIORARIFIED MANDAMUS calling for the respondent in RC.No.072921/AP.II(1)/2005, DATED 03.06.2005 confirming the order passed by the 2<sup>nd</sup> respondent in proceeding C.No.C1/AP.05/2005 dated 003 2005 confirming the order passed by the 3<sup>rd</sup> respondent in PR.No.93/04u/r 3(b) dated 24.11.2004 and quash the same and consequently direct the respondents herein to re-instate the petitioner in service and pay benefits of back wages.

For Appellant

: Mr.B.Prasanna Vinoth

For Respondents

: Mr.V.R.Shanmuganathan

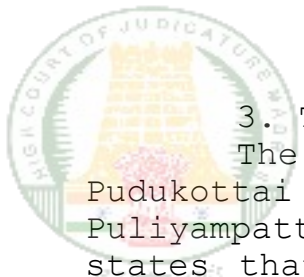
Special Government Pleader

**JUDGMENT**

[Judgment of the Court was delivered by **SUBRAMONIUM PRASAD, J)**

The instant writ appeal assails the order dated 07.10.2009 passed in W.P.(MD) No.8913 of 2005.

2. The appellant is the writ petitioner. In the writ petition, the appellant assails the order dated 24.11.2004 passed by the respondent police Tuticorin District, imposing a punishment of removal from service, which has been confirmed by the appellate authority being the Additional Director General of Police, (Law and Order), Chennai.



3. The facts in brief as under:

The appellant was working as a Constable Grade I in Pudukottai Highway Patrol. On 08.04.2004, he was transferred to Puliampatti Police Station and he was relieved. The appellant states that before joining the new place, he wanted to visit his family. He developed chest pain and therefore, would not join the Puliampatti Police Station within the specified time. The appellant states that pursuant to the chest pain, the appellant was admitted in hospital.

3.1. Since the appellant did not report in time, disciplinary proceedings was initiated and a charge memo was issued on 23.08.2004. The charge reads as under:

"Gross neglect of duty in having absented for duty from 16.04.2004 FN without obtaining any leave or prior permission from his superior officers and absented continuously for more than 21 days and thereby deserted the force as per PSO-95 Volume I (New Edition)"

3.2. It is pertinent to mention that the appellant was directed to appear before the Superintendent of Police within 60 days from the date of absence with valid reasons for his absence. He was served the desertion order on 08.07.2004. The petitioner did not appear before the Superintendent of Police within the said 60 days. This was charge No.2. The second charge against the petitioner, therefore, was failure to appear before the Superintendent of Police within 60 days of the desertion order as directed, which amounts to gross negligence of duty.

3.3. Enquiry was conducted by appointing an Enquiry Officer. The Enquiry Officer, after going through all the materials, came to the conclusion that explanation given by the appellant was not acceptable for the reason that he has not produced any medical certificate to substantiate his illness. The Enquiry Officer also observed that apart from not producing any medical certificate, he has not produced any evidence to support his case. Therefore, the Enquiry Officer, by report dated 08.11.2004 held that the charges are proved.

3.4. The Disciplinary Authority, on the basis of the enquiry report, by an order, dated 24.11.2004, passed an order of removal from service. The appellant, thereafter, filed an appeal. The appeal was rejected by an order dated 10.03.2005. The appellant, thereafter, filed a review petition, which was one of a mercy petition. The review petition was also rejected by an order, dated 03.06.2005.

3.5. The order of removal is a subject matter of challenge in the writ petition. The learned single Judge, after going through the records, finding that there is no infirmity either with the order of removal, dismissed the writ petition.



This order is under challenge in the instant writ appeal.

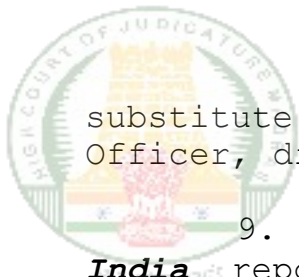
4. Heard learned counsel for both sides.

5. Learned counsel for the appellant states that the order for removal of service for remaining absent for 21 days is grossly disproportionate to the misconduct alleged. Learned counsel placed reliance on a Division Bench judgment of this Court in **S. Shanmugarajan v. State of Tamil Nadu** reported in **2013 (3) MLJ 28**, where, this Court found that absence of 21 days or permission would not attract the extreme penalty of dismissal from service. The Division Bench was of the view that for punishing a person for unauthorised absence/willful absence must be proved and if the person has absented due to compelling circumstances, his absence cannot be held to be willful.

6. Learned counsel for the appellant also placed reliance on **Shri Bhagwan Lal Arya v. Commissioner of Police, Delhi and others** reported in **2004(4) SCC 560**, wherein, the Hon'ble Supreme Court held that in cases where an employee is not a habitual absentee and when an employee has to proceed on leave under compulsion because of his grave health condition, the punishment of removal from service/dismissal from service is excessive and disproportionate. The Hon'ble Supreme Court held that punishment of dismissal/removal from service can be awarded only for acts of grave nature or as cumulative effect of continued misconduct proving incorrigibility or complete unfitness for police service. One incident of absence and that too because of bad health and valid and justified grounds/reasons cannot become the basis for awarding an extreme punishment.

7. We have gone through the records of the case. There is no shred of evidence to establish the medical illness of the appellant. The appellant could not produce any evidence to show that he had informed the department that he was not keeping well or that he would be sending the medical certificate. The appellant has not produced any medical records to substantiate his illness. The appellant in his explanation has stated that he has treated in a Government Hospital, but he has not produced any materials to substantiate the same. He has not even produced any witness to substantiate that he was not well. In view of these facts, the judgment relied on by the learned counsel for the appellant cannot be applied to the facts of the instant case.

8. There is no material on record to show that the enquiry has been conducted in violation of principles of natural justice and the decision making process cannot be faulted with. Once the decision making process cannot be faulted with, then, the High Court, while exercising its jurisdiction under Article 226 of the Constitution of India, cannot sit as an appellate authority and



substitute its conclusion to the one arrived at by the Enquiry Officer, disciplinary authority and appellate authority.

9. The Hon'ble Supreme Court in **B.C.Chaturvedi v. Union of India** reported in **1995 (6) SCC 749**, has observed as under:

"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re- appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented. The appellate authority has co- extensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In *Union of India v. H.C. Goel* [(1964) 4 SCR 781], this Court held at page 728 that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent



error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.

14. In *Union of India & Ors. v. S.L. Abbas* [(1993) 4 SCC 357], when the order of transfer was interfered by the Tribunal, this Court held that the Tribunal was not an appellate authority which could substitute its own judgment to that bona fide order of transfer. The Tribunal could not, in such circumstances, interfere with orders of transfer of a Government servant. In *Administrator of Dadra & Nagar Haveli v. H.P. Vora* [(1993) Supp. 1 SCC 551], it was held that the Administrative Tribunal was not an appellate authority and it could not substitute the role of authorities to clear the efficiency bar of a public servant. Recently, in *State bank of India & Ors. v. Samarendra Kishore Endow & Anr.* [J] (1994) 1 SC 217], a Bench of this Court to which two of us (B.P. Jeevan Reddy & B.L. Hansaria, JJ.) were members, considered the order of the Tribunal, which quashed the charges as based on no evidence, went in detail into the question as to whether the Tribunal had power to appreciate the evidence while exercising power of judicial review and held that a Tribunal could not appreciate the evidence and substitute its own conclusion to that of the disciplinary authority. It would, therefore, be clear that the Tribunal cannot embark upon appreciation of evidence to substitute its own findings of fact to that of a disciplinary/appellate authority."

10. In ***S.Sreesanth v. Board of Control for Cricket in India and others*** reported in **2019 (4) SCC 660**, the Hon'ble Supreme Court observed as under:

"36. This Court has time and again considered the scope of judicial review in reference to departmental inquiry conducted against the public servant. This Court in *State of Andhra Pradesh vs. Chitra Venkata Rao*, (1975) 2 SCC 557, had laid down the para meters of judicial review. In paragraph 21 following has been laid down:

"21. The scope of Article 226 in dealing with departmental inquiries has come up before this Court. Two propositions were laid down by this Court in *State of A.P. v. S. Sree Rama Rao*. First, there is no warrant for the view that in considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court must be applied. If that rule be not applied by a domestic tribunal of inquiry the High Court in a petition under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a court of appeal



under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226."

37. This Court further held that jurisdiction of the High Court under Article 226 is a supervisory jurisdiction and the High Court does not exercise a jurisdiction of an appellate court. The findings of the fact reached by a tribunal as result of the appreciation of the evidence cannot be questioned in the writ proceedings. In paragraph 23 of the judgment following has been laid down:

"23. The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The Court exercises it not as an appellate court. The findings of fact reached by an inferior court or tribunal as a result of the appreciation of evidence are not reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact,



however grave it may appear to be. In regard to a finding of fact recorded by a tribunal, a writ can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal. See Syed Yakoob v. K.S. Radhakrishnan."

38. This Court again in Union of India and others vs. P. Gunasekaran, (2015) 2 SCC 610, reiterated the same principles regarding judicial review of disciplinary proceedings. In paragraphs 12 and 13 following has been laid down:

"12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;
- (b) the enquiry is held according to the procedure prescribed in that behalf;
- (c) there is violation of the principles of natural justice in conducting the proceedings;
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;



(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence.

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

(i) reappraise the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

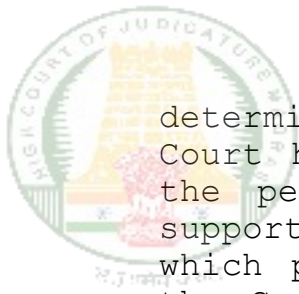
(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience."

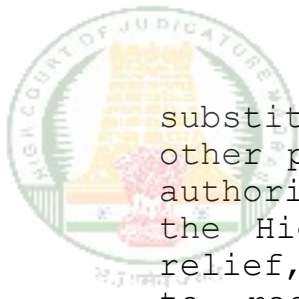
11. In B.C.Chaturvedi (supra), the Hon'ble Supreme Court has further held that once the disciplinary authority has come to the conclusion that the employee is guilty and was imposed a punishment, then, the Courts and Tribunals would be slow in imposing a punishment by the disciplinary authority. In Paragraph Nos.17 and 18, the Hon'ble Supreme has held as under:

"17. The next question is whether the Tribunal was justified in interfering with the punishment imposed by the disciplinary authority. A Constitution Bench of this Court in State of Orissa Ors. v. Bidyabhushan Mohapatra [AIR 1963 SC 779] held that having regard to the gravity of the established misconduct, the punishing authority had the power and jurisdiction to impose punishment. The penalty was not open to review by the High Court under Article 226. If the High Court reached a finding that there was some evidence to reach the conclusion, it became unassessable. The order of the Governor who had jurisdiction and unrestricted power to



determine the appropriate punishment was final. The High Court had no jurisdiction to direct the Governor to review the penalty. It was further held that if the order was supported on any finding as to substantial misconduct for which punishment "can lawfully be imposed", it was not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The court had no jurisdiction, if the findings prima facie made out a case of misconduct, to direct the Governor to reconsider the order of penalty. This view was reiterated in *Union of India v. Sardar Bahadur* [(1972) 2 SCR 218]. It is true that in *Bhagat Ram v. State of Himachal Pradesh & Ors.* [AIR 1983 SC 454], a Bench of two Judges of this Court, while holding that the High Court did not function as a court of appeal, concluded that when the finding was utterly perverse, the High Court could always interfere with the same. In that case, the finding was that the appellant was to supervise felling of the trees which were not hammer marked. The Government had recovered from the contractor the loss caused to it by illicit felling of trees. Under those circumstances, this Court held that the finding of guilt was perverse and unsupported by evidence. The ratio, therefore, is not an authority to conclude that in every case the Court/Tribunal is empowered to interfere with the punishment imposed by the disciplinary authority. In *Rangaswami v. State of Tamil Nadu* [AIR 1989 SC 1137], a Bench of three Judges of this Court, while considering the power to interfere with the order of punishment, held that this Court, while exercising the jurisdiction under Article 136 of the Constitutions, is empowered to alter or interfere with the penalty; and the Tribunal had no power to substitute its own discretion for that of the authority. It would be seen that this Court did not appear to have intended to lay down that in no case, the High Court/Tribunal has the power to alter the penalty imposed by the disciplinary or the appellate authority. The controversy was again canvassed in *State Bank of India's case* (supra), where the court elaborately reviewed the case law on the scope of judicial review and powers of the Tribunal in disciplinary matters and nature of punishment. On the facts in that case, since the appellate authority had not adverted to the relevant facts, it was remitted to the appellate authority to impose appropriate punishment.

18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally



substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

12. In view of the dictum of the Hon'ble Supreme Court, we are unable to persuade ourselves to upset the punishment imposed by the disciplinary authority, upheld by the appellate authority, revisional authority and also the learned single Judge.

13. Police force is a disciplined force. Acts of indiscipline cannot be tolerated. In view of the fact that the appellant has not been able to give any evidence regarding his medical illness, the explanation of the appellant cannot be accepted. The appellant has not produced any evidence before the disciplinary authority, appellate authority, revisional authority, before the learned single Judge and even before this Court. The appellant has also did not care to appear before the Superintendent of Police, after he was declared as a deserter. In view of the facts of this case, this Court is unable to persuade itself to accept and come to the conclusion that the punishment is highly disproportionate to the misconduct. The indiscipline in police force cannot be tolerated.

14. In view of the above, the writ appeal fails and the same is, accordingly, dismissed. However, there is no order as to costs.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

Sub Assistant Registrar(CS)

RR

To

1.The Additional Director General of Police,  
(Law and Order)Chennai - 600 004.

2.The Deputy Inspector General of Police,  
Tirunelveli Range,Tirunelveli.

3.The Superintendent of Police,  
Thoothukudi District.

+1 CC to M/s.B.PRASANNAVINOTH, Advocate ( SR-105701[F]

**JUDGMENT MADE IN**

**W.A. [MD]No.631 of 2012**

**17.12.2019**

**SMA/03/01/2020/10P/5C**

<https://hcservices.ecourts.gov.in/hcservices/>