

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2020

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.315 of 2020

- 1.The Principal Secretary to Government,  
Home, Prohibition & Excise Department,  
State of Tamil Nadu,  
Fort St. George,  
Chennai - 600 009.
  - 2.The Director General of Police,  
State of Tamil Nadu,  
Chennai - 600 004.
  - 3.The Deputy Commissioner of Police,  
St. Thomas Mount District,  
Chennai - 600 016.
- ... Appellants
- vs.
- P.Ganesh @ Ganesan .. Respondent

Appeal filed under Clause 15 of the Letters Patent against the order dated 08.08.2019 passed by the learned Single Judge in W.P.No.6406 of 2019.

WP.No.6406 of 2019:Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to quash the impugned order of compulsory retirement from service passed by the third respondent herein in his proceedings in PR No.41/ PR.S(2) / 13 dated 12.12.2014 and confirmed by the second respondent in his proceedings in Rc.No.66108/AP.3(2) /2015 dated 9.6.2016 and further confirmed by the first respondent in his Government order in G.O.(D) No.1479 dated 21.12.2016 and direct the respondents to reinstate the petitioner into service with

all consequential monetary service and attendant benefits and back wages

For Appellants : Mr.V.Jayaprakash Narayanan  
State Government Pleader

For Respondent : Dr.G.Krishna Murthy

#### JUDGMENT

(Delivered by The Hon'ble Chief Justice)

The contention of the State is that the learned Single Judge in the wake of the fact that there was no serious challenge to the punishment awarded erroneously went into the issue of the proportionality of the punishment and reduced the punishment of compulsory retirement into one of postponement of increment for a period of one year with cumulative effect. The submission raised is that the learned Single Judge ought not to have himself gauged the nature of charge in order to arrive at the conclusion that a lesser punishment is warranted and if he was of the opinion that the punishment meted out is disproportionate, then the issue ought to have been remitted back to the authority itself for a decision afresh.

2. We have considered the aforesaid submission and there cannot be a quarrel with the said proposition of law. Once the Court comes to the conclusion that doctrine of proportionality can be invoked, that too even if the punishment is shockingly disproportionate, then in that event the writ jurisdiction can be invoked, but not otherwise.

3. We find that the aforesaid element is not the foundation of the decision by the learned Single Judge who otherwise has found that the co-delinquent was awarded a lesser penalty and therefore, it would not be appropriate to impose higher penalty on the respondent/petitioner. On this, learned counsel contends that there was difference in the nature of duties discharged by both the delinquents and therefore, the proportionality of punishment was different in both the cases even though the incident was the same.

4. There is yet another element indicated in the charges that the delinquents had intended to consume liquor beyond the time prescribed for the functioning of the TASMACHOP and there

was no actual consumption at all.

5. It is here that we find that the learned Single Judge has rightly exercised his discretion that when the incident is one and the same, then the question as to whether one was off-duty and the other was on-duty does not arise as both were in service in the same department. The parallel nature of the charge therefore in our opinion was rightly gauged as a parameter to maintain the same standard of sentencing and punishment. On this issue therefore we find ourselves in complete agreement with the learned Single Judge and consequently, decline to interfere with the impugned judgment.

The appeal is dismissed. No costs. Consequently, C.M.P.No.5370 of 2020 is closed.

-s/d-  
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Principal Secretary to Government,  
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2.The Director General of Police,  
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3.The Deputy Commissioner of Police,  
St. Thomas Mount District,  
Chennai - 600 016.

+1 cc to Mr.G.Krishnamoorthy Advocate sr18676

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