

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
10.12.2020	16.12.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.19646 OF 2013

S.Rajamanickam

.. Petitioner

- Vs -

1. The Managing Director
Tamil Nadu Civil Supplies Corporation
No.12, Thambusamy Road
Kilpauk, Chennai - 10.
 2. The General Manager (Administration)
Tamil Nadu Civil Supplies Corporation
No.12, Thambusamy Road
Kilpauk, Chennai - 10.
 3. The Regional Manager
Tamil Nadu Civil Supplies Corporation
Regional Office
Co-operative Spinning Mills Compound
Ammapettai, Salem - 14.
- .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari to call for the records relating to the 2nd respondent vide proceedings No.Roc.AD5/13780/2011 dated 8.11.11 which was confirmed with slight modification by the 1st respondent dated 17.6.13 vide proceedings No.ATI/26214/12 and quash the same.

For Petitioner : Mr. S.Vijayakumar

For Respondent : Mr. L.P.Shanmugasundaram,
Standing Counsel for TNCSC

ORDER

It is the case of the petitioner that he joined the 1st respondent Corporation as Packer on 23.1.76 and after obtaining a series of promotion was working as Junior Assistant. Whiles, the petitioner was visited with a charge memo on 22.7.10, issued

by the 3rd respondent, alleging that the petitioner had used abusive language against the 3rd respondent in the presence of his co-employees. After seeking for various documents and the statement of witnesses, and their details thereof, who were alleged to have witnessed the incident, the petitioner having not received the materials sought for, submitted a detailed reply. However, not satisfied with the reply submitted by the petitioner, enquiry was ordered and the enquiry officer proceeded with the enquiry. The enquiry officer, holding that the petitioner did not offer his co-operation in the enquiry and did not partake in the enquiry in the absence of details sought for by him, held the charges framed against the petitioner as proved. Pursuant to the same, show cause notice was issued to the petitioner on 14.5.11 by the 2nd respondent seeking further explanation on the enquiry report to which a detailed reply was sent by the petitioner on 31.5.11. Being not satisfied with the explanation offered, the 2nd respondent imposed the punishment of stoppage of increment for three years with cumulative effect on the petitioner. Aggrieved by the said punishment, the petitioner preferred appeal to the 1st respondent on 11.1.12. Since the appeal was not disposed of, the petitioner, for early disposal of the appeal, filed W.P. No.11016/13 and this Court, vide order dated 18.4.13, directed the 1st respondent to pass orders on the appeal within a period of six weeks and in compliance of the said order, the 1st respondent, modified the punishment imposed on the petitioner to one of stoppage of increment for a period of three years, however, without cumulative effect. Aggrieved by the said order, the present petition has been preferred.

2. Learned counsel appearing for the petitioner vociferously contended that without providing the basic documents on which reliance has been placed upon and the statement of the witnesses, who had witnessed the occurrence, fastening the delinquency on the petitioner is per se impermissible. It is the vehement contention of the learned counsel for the petitioner that though the petitioner, through his various correspondences, had sought for the above documents, however, without giving copies of the said documents, the petitioner was not only made to submit his explanation initially, but even forced to partake in the enquiry process. The non-participation of the petitioner in the enquiry process in the absence of providing the necessary documents cannot be put against the petitioner, for to defend himself, the documents, on which reliance has been placed by the respondents, is of much importance. There is total and utter violation of principles of natural justice in the conduct of the enquiry proceedings, as is evident from the report filed by the enquiry officer. It is the further stand of the petitioner that though the 3rd respondent is the disciplinary authority, however, curiously, the show cause notice as also the punishment has been imposed by the appellate authority/2nd respondent, which is in violation of the ratio laid down by the Hon'ble Apex Court and this

Court in a catena of judgments. Therefore, it is the contention of the learned counsel for the petitioner that the above lacunae not only in the order of punishment, but also in the enquiry process, vitiates the entire disciplinary proceedings and, therefore, the same deserves to be set aside.

3. In support of his contentions, learned counsel placed reliance upon the following decisions :-

- i) Surath Chandra Chakrabarty - Vs - State of WB (1970 (3) SCC 548);
- ii) Sivagiri Primary Agricultural Co-op. Bank - Vs - K.Murugesan & Anr. (W.P. No.15768/1996)
- iii) V.P.Chellappa - Vs - The Superintending Engineer, TNEB (W.P. No.15608/01)
- iv) Anil Gilurker - Vs - Bilaspur Raipur Kshetria Gramin Bank (C.A. Nos.7864-7865/2011)
- v) Shri Anant R.Kulkarni - Vs - Y.P. Education Society & Ors. (C.A. No.3935/13)
- vi) Mohd. Yunus Khan - Vs - State of UP (CA 8349/10)
- vii) V.Ganapathi & Ors. - Vs - The Managing Director, TASMAC & Ors. (W.P. Nos.17364/13)
- viii) Bilaspur Rajpur Kshetriya Gramin Bank & Anr. - Vs - Madanlal Tandon (C.A. No.4467/15)
- ix) D.Suresh Kumar - Vs - The Senior Regional Manager, TASMAC, Salem & Anr. (W.P. No.38937/15)
- x) P.G.Mayadesavan - Vs - M.D., TASMAC, Egmore & Ors. (W.P. No.24036/17)

4. Though the above decisions have been relied on by the learned counsel for the petitioner, however, a perusal of the above decisions reveals that based on certain codified rules/regulations, which are said to have been violated, on analysis of the said rules/regulations, certain directions have been passed in the said decisions. However, it is to be pointed out that the decisions were based on analysis of the facts as portrayed in the individual case, wherein, violations were pointed out and which has been analysed by the Court. Therefore, only the broader principles, as enunciated in the various decisions can be looked into and the ultimate conclusion arrived at in the said decision cannot be the basis for evaluating the case on hand. This Court gave its consideration to the ratio laid down in the aforesaid decisions and, taking cue from the very many decisions cited by the learned counsel for the petitioner, this Court will deal with the issue as raised in the present case vis-a-vis the ratio laid down in the decisions supra.

5. Per contra, learned Special Government Pleader appearing for the respondents submitted that the petitioner did not partake in the enquiry, but through very many technical objections, tried to thwart the whole disciplinary proceedings, to which the respondents did not

yield. It is the further submission of the learned Special Government Pleader that the petitioner ought to have participated in the enquiry process and sought for the documents, but without participating in the enquiry proceedings, and merely sending umpteen communications to the enquiry officer to direct the respondents to provide copies of the documents to the petitioner is nothing but a veiled attempt on the part of the petitioner to drag on the proceedings. Learned Special Government Pleader, to buttress his arguments, drew the attention of this Court to the reply submitted by the petitioner to the show cause notice, which clearly indicates the tenor in which the reply has been worded and submitted that even during the progress of the disciplinary proceedings, such was the attitude and temerity of the petitioner to address his superiors and leniency, if any, shown thereof, would be detrimental to the whole administrative setup, as otherwise the employees would cross all bounds in their acts against the superiors, which is evident from the act of the petitioner.

6. It is the further submission of the learned Special Government Pleader that the enquiry report was tabled by the disciplinary authority to the appellate authority only on the ground that the disciplinary authority/3rd respondent was a party to the incident and, therefore, to avoid any bias being attributed, the whole issue was placed before the appellate authority. It is the further submission of the learned Special Government Pleader that though the petitioner has raised the issue of imposition of punishment by the appellate authority before the 1st respondent in his appeal, however, the petitioner has not taken any earnest attempt to canvass the said point, but has merely harped on the technical objections raised by him. Therefore, it is submitted that the above act of the petitioner clearly shows that the matter was placed before the 2nd respondent by the 3rd respondent/disciplinary authority, only for the purpose of avoiding the issue of bias.

7. It is the further submission of the learned Special Government Pleader that though the petitioner was initially inflicted with a punishment of stoppage of increment for a period of three years with cumulative effect, which is by way of a reasoned and speaking order, however, in the fitness of things and on an overall appreciation of the materials available on record, the 1st respondent, in the appeal filed by the petitioner, has modified the punishment to one of stoppage of increment for a period of three years without cumulative effect, which clearly shows that the 1st respondent has applied his mind to the materials placed before him and has arrived at a finding. It is therefore the submission of the learned Special Government Pleader that this Court, sitting in judicial review, shall not reappraise the whole evidence, but only see that the enquiry proceedings has been conducted in accordance with law and that the punishment imposed is not disproportionate to the delinquency and is

not shocking the conscience of this Court. Therefore, he prayed for dismissal of the present petition.

8. This Court bestowed its undivided attention to the contentions advanced by the learned counsel on either side and also perused the materials available on record and also gave its anxious consideration to the various decisions relied on by the learned counsel for the petitioner.

9. Before embarking upon discussing the merits of the case placed before this Court, it is to be pointed out that the decisions relied on by the learned counsel for the petitioner relates to the provisions u/r 3 (b) and 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. However, the present case pertains to Co-operative Societies and is predicated upon the provisions of the Tamil Nadu Co-operative Societies Act, which by itself is a separate piece of legislation, which takes within its fold all the requirements of law for dealing with all incidental matters connected with the service conditions of the employees of the co-operative societies. Therefore, this Court will now proceed to analyse the issues on the basis of the provisions of the Tamil Nadu Co-operative Societies Act, and advert to the proposition of law laid down by this Court, as placed before this Court by the learned counsel for the petitioner only insofar as ratio laid down on the question of law relating to the issue.

10. The Hon'ble Supreme Court, in B.C. Chaturvedi - Vs - Union of India, (1995 (6) SCC 749), while dealing with issue relating to the power of the Court relating to judicial review of the order passed by the disciplinary authority, held 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 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 reappraise 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 coextensive power to reappraise 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 718 : AIR 1964 SC 364 : (1964) 1 LLJ 38] this Court held at p. 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."

(Emphasis Supplied)

11. The above view has been reiterated by the Hon'ble Supreme Court in *Principal Secy. Govt. of A.P. - Vs - M. Adinarayana*, (2004 (12) SCC 579), wherein, it has been held as under :-

"23. We have read this charge in the light of allegations in support thereof. In the instant case, it is not disputed that the respondent has neither supplied any prior information on the Government nor did he send any prior intimation to the Government. By not doing this, he has contravened the provisions of Rule 9. The Tribunal has also categorically held that the respondent has not applied for prior information before he purchased the items from the competent authority nor he intimated to the competent authority forthwith soon after the purchase of the several items. Therefore, in our view, the charged

officer has violated Rule 9 of the Conduct Rules and thus is guilty of misconduct within Rule 2-H (sic) of the Andhra Pradesh Disciplinary Amendment Act, 1993. In view of the abovesaid finding we hold that respondent is guilty of both the charges framed against him within Rule 2 (b) of the Conduct Rules of 1961 framed under the Amendment Act, 1993.

* * * * *

26. In our opinion, judicial review cannot extend to the examination of the correctness of the charges as it is not an appeal but only a review of the manner in which the decision was made. We have, therefore, no hesitation in setting aside the order of the Andhra Pradesh Administrative Tribunal and the judgment of the Division Bench of the High Court for reasons stated (supra). The order passed by the Government removing the respondent from service is in order and, therefore, the appeal filed by the appellant State stands allowed. Further, there will be no order as to costs."

12. In a recent decision in Director General of Police, RPF & Ors. - Vs - Rajendra Kumar Dubey (C.A. No.3820/2020 dated 25.11.20), the Hon'ble Supreme Court, advertent to the various decisions of the Apex Court relating to the interference by the High Court in exercise of its writ jurisdiction with respect to disciplinary proceedings, including the decision in Chaturvedi's case (supra), held as under :-

"12.1 It is well settled that the High Court must not act as an appellate authority, and re-appreciate the evidence led before the enquiry officer.

We will advert to some of the decisions of this Court with respect to interference by the High Courts with findings in a departmental enquiry against a public servant.

In State of Andhra Pradesh v S.Sree Rama Rao, a three judge bench of this Court held that the High Court under Article 226 of the Constitution is not a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant. It is not the function of the High Court under its writ jurisdiction to review the evidence, and arrive at an independent finding on the evidence. The High Court may, however interfere where the departmental authority which has held the proceedings against the delinquent officer are inconsistent with the principles of natural justice, where the findings are based on no evidence, which may reasonably support the conclusion that the delinquent officer is guilty of the charge, or in violation of the

statutory rules prescribing the mode of enquiry, or the authorities were actuated by some extraneous considerations and failed to reach a fair decision, or allowed 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. If however the enquiry is properly held, the departmental authority is the sole judge of facts, and if there is some legal evidence on which the 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 writ petition.

These principles were further reiterated in the State of Andhra Pradesh v Chitra Venkata Rao. The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The court exercises the power not as an appellate court. The findings of fact reached by an inferior court or tribunal on the appreciation of evidence, are not re-opened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ court, but not an error of fact, however grave it may be. A writ can be issued if it is shown that in recording the finding of fact, the tribunal has erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence. A finding of fact recorded by the tribunal cannot be challenged on the ground that the 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.

In subsequent decisions of this Court, including Union of India v. G. Ganayutham, Director General RPF v. Ch. Sai Babu, Chennai Metropolitan Water Supply and Sewerage Board v T.T. Murali, Union of India v. Manab Kumar Guha, these principles have been consistently followed.

In a recent judgment delivered by this Court in the State of Rajasthan & Ors. v. Heem Singh this Court has summed up the law in following words :

"33. In exercising judicial review in disciplinary matters, there are two ends of the spectrum. The first embodies a rule of restraint. The second defines when interference is permissible. The rule of restraint constricts the

ambit of judicial review. This is for a valid reason. The determination of whether a misconduct has been committed lies primarily within the domain of the disciplinary authority. The judge does not assume the mantle of the disciplinary authority. Nor does the judge wear the hat of an employer. Deference to a finding of fact by the disciplinary authority is a recognition of the idea that it is the employer who is responsible for the efficient conduct of their service. Disciplinary enquiries have to abide by the rules of natural justice. But they are not governed by strict rules of evidence which apply to judicial proceedings. The standard of proof is hence not the strict standard which governs a criminal trial, of proof beyond reasonable doubt, but a civil standard governed by a preponderance of probabilities. Within the rule of preponderance, there are varying approaches based on context and subject. The first end of the spectrum is founded on deference and autonomy - deference to the position of the disciplinary authority as a fact finding authority and autonomy of the employer in maintaining discipline and efficiency of the service. At the other end of the spectrum is the principle that the court has the jurisdiction to interfere when the findings in the enquiry are based on no evidence or when they suffer from perversity. A failure to consider vital evidence is an incident of what the law regards as a perverse determination of fact. Proportionality is an entrenched feature of our jurisprudence. Service jurisprudence has recognized it for long years in allowing for the authority of the court to interfere when the finding or the penalty are disproportionate to the weight of the evidence or misconduct. Judicial craft lies in maintaining a steady sail between the banks of these two shores which have been termed as the two ends of the spectrum. Judges do not rest with a mere recitation of the hands-off mantra when they exercise judicial review. To determine whether the finding in a disciplinary enquiry is based on some evidence an initial or threshold level of scrutiny is undertaken. That is to satisfy the conscience of the court that there is some evidence to support the charge of misconduct and to guard against perversity. But this does not allow the court to re-appreciate evidentiary findings in a disciplinary enquiry or to substitute a view which

appears to the judge to be more appropriate. To do so would offend the first principle which has been outlined above. The ultimate guide is the exercise of robust common sense without which the judges' craft is in vain."

In *Union of India v. P. Gunasekaran*, this Court held that the High Court in exercise of its power under Articles 226 and 227 of the Constitution of India shall not venture into re-appreciation of the evidence. The High Court would determine whether : (a) the enquiry is held by the 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 which are 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.

In paragraph 13 of the judgment, the Court held that :

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

- (i) re-appreciate the evidence;
- (ii) interfere with the conclusions in the enquiry, in the 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."

(Emphasis Supplied)

13. From the ratio laid down above, it is implicitly clear that the Courts, in exercise of its power of judicial review, cannot extend the examination to the correctness of the act of the disciplinary authority, but only limit itself to the manner in which

the decision has been arrived at by the authorities and whether the same is in accordance with law. This Court is to test only the correctness of the decision arrived at by the authorities on the basis of the evidence before it and not proceed with the case as if it is an appeal against the impugned order.

14. Before entering into the main plank of contention raised by the petitioner, though not vociferously canvassed by the petitioner, however, allegation has been levelled that order of punishment has been passed by the 2nd respondent, who is the appellate authority and not by the 3rd respondent, who is the disciplinary authority and the said act vitiates the order of punishment. It is to be pointed out that even in the appeal before the 1st respondent, the above plea has been raised, though not insistently canvassed.

15. It is to be pointed out that though the above is a legal plea, however, in the earlier round of litigation in W.P. No.11016/13, the petitioner has not raised the said issue, but has merely sought a direction to the respondents, more especially, the 1st respondent, to dispose of the appeal filed by him. In compliance of the said order, the 1st respondent has passed the impugned order, modifying the punishment imposed on the petitioner. When the petitioner has not expressed any grievance at the initial point of time when he moved this Court for a direction, it is not open to the petitioner to blow hot and cold, on the one hand accepting the verdict of the reviewing authority and filing writ petition against the said order and on the other hand, submitting that the order passed by the 2nd respondent is bad, inasmuch as the same has not been passed by the disciplinary authority/3rd respondent, but by the appellate authority/2nd respondent. The above act of the petitioner in not pursuing his grievance, but only limiting his relief to passing orders in the appeal in the earlier round of litigation before this Court, it is to be presumed that the petitioner has accepted the order passed by the 2nd respondent and only had prevailed upon this Court for a direction to the 1st respondent to dispose of the appeal. In such a scenario, the petitioner is estopped from canvassing the said issue at this point of time. Further, as rightly pointed out by the learned Special Government Pleader, the allegation itself is on the basis of the incident in which the petitioner has misbehaved with the 3rd respondent and, therefore, order, if any, passed by the 3rd respondent, would definitely be termed to be prejudicial to the petitioner, and rightly so, the 3rd respondent has not passed any order, but has placed all the materials along with the enquiry report before his superior, viz., the 2nd respondent, who invoking the powers of the disciplinary authority, has passed the order.

16. In this regard, the decision of the Hon'ble Supreme Court in Mohd. Yunus Khan - Vs - State of Uttar Pradesh & Ors. (2010 (10) SCC 539), which has been relied on behalf of the petitioner, leans more

in favour of the respondents than the petitioner. In the said decision, the Supreme Court had gone on to hold that the disciplinary proceedings initiated by the authority in which he is a witness and accepting the said enquiry report and imposing punishment is wholly impermissible and the relevant portion of the said order is quoted hereunder for useful reference :-

"27. In Arjun Chaubey - Vs - Union of India & Ors. (AIR 1984 SC 1356), a Constitution Bench of this Court dealt with an identical case wherein an employee serving in the Northern Railway had been dismissed by the Deputy Chief Commercial Superintendent on a charge of misconduct which concerned himself, after considering by himself, the explanation given by the employee against the charge and after thinking that the employee was not fit to be retained in service. It was also considered whether in such a case, the court should deny the relief to the employee, even if the court comes to the conclusion that order of punishment stood vitiated on the ground that the employee had been guilty of habitual acts of indiscipline/ misconduct. This Court held that the order of dismissal passed against the employee stood vitiated as it was in utter disregard of the principles of natural justice. The main thrust of the charges against the employee related to his conduct qua the disciplinary authority itself, therefore, it was not open to the disciplinary authority to sit in judgment over the explanation furnished by the employee and decide against the delinquent. No person could be a judge in his own cause and no witness could certify that his own testimony was true. Any one who had a personal stake in an enquiry must have kept himself aloof from the enquiry. The court further held that in such a case it could not be considered that the employee did not deserve any relief from the court since he was habitually guilty of acts subversive of discipline. The illegality from which the order of dismissal passed by the Authority concerned suffered was of a character so grave and fundamental that the alleged habitual misbehaviour of the delinquent employee could not cure or condone it.

28. Thus, the legal position emerges that if a person appears as a witness in disciplinary proceedings, he cannot be an inquiry officer nor can he pass the order of punishment as a disciplinary authority. This rule has been held to be sacred. An apprehension of bias operates as a disqualification for a person to act as adjudicator. No person can be a Judge in his own cause and no witness can certify

that his own testimony is true. Any one who has personal interest in the disciplinary proceedings must keep himself away from such proceedings. The violation of the principles of natural justice renders the order null and void."

(Emphasis Supplied)

17. The above decision of the Hon'ble Supreme Court directly addresses the issue that falls before this Court in the present case and in the above backdrop, this Court is of the considered view that the order passed by the 2nd respondent does not suffer the vice of illegality. To be more precise, had any order been passed by the 3rd respondent, it would definitely be prone to judicial scrutiny by applying the ratio above. The 3rd respondent having refrained to pass any orders, but placed the issue before the 2nd respondent, viz., his superior, the act of the 3rd respondent is just and reasonable and removes any bias that would stand attributable to him, had any order been passed by the 3rd respondent. Therefore, the order passed by the 2nd respondent imposing punishment on the petitioner cannot be termed to be illegal.

18. The main bone of contention raised on behalf of the petitioner is that the documents, which were relied on by the respondents, which were relied on by the enquiry officer, to return a verdict of proven charge against the petitioner, have not been provided to the petitioner and, therefore, the same is not only in violation of principles of natural justice, by denying the petitioner to defend himself in a proper manner, but vitiates the whole proceedings and, therefore, the impugned orders deserve to be interfered with.

19. To appreciate the contention put forth by the petitioner, it is but necessary to advert to the various materials, which are available in the typed set of papers to arrive at a conclusion as to the allegation of violation of principles of natural justice alleged by the petitioner.

20. A perusal of the materials available on record reveals that the charge memo has been issued to the petitioner in Tamil. In the said charge memo, it is seen that the first charge relates to the petitioner using abusive language against the 3rd respondent in front of the employees, who were in attendance on the particular day. Considering decorum, the said abusive language and the exact words have not been shown in the charge, but the same has been highlighted in the charge. It is to be pointed out that the charge memo does not single out any person or a group of persons for having witnessed the incident. It merely proceeds that the abusive language was used by the petitioner in front of all the employees, who had attended office on the particular day.

21. Secondly, to the charge memo, the petitioner has submitted a letter, which reveals that while the petitioner has sought for particulars, of which one of the particulars relate to providing the order of suspension in Tamil. Insofar as the other particulars sought for is concerned, the petitioner has sought for the documents on the basis of which the charge for major penalty has been framed. Further, the petitioner has gone on to state that till the said documents are provided as sought for by him, the petitioner would not be in a position to file his explanation and has went on to add that time prescribed in the said communication would in no way restrain the petitioner.

22. The further documents available on record reveal that the petitioner attended in enquiry, but did not participate in the proceedings citing that unless the documents sought for by him is provided, he will not partake in the enquiry and even submitted through written communication that none of the orders passed by the respondents would restrain him. However, it is evidenced from the counter that the petitioner was provided with the evidences as also the details of the witnesses. However, it has been the requirement of the petitioner all along that he requires all the details in the manner in which he has sought for. It is to be pointed out that non-furnishing of certain details in the manner sought for by the petitioner cannot be put within the ambit of violation of principles of natural justice as giving such a wide leverage to the delinquent would only render each and every disciplinary proceeding otiose.

23. A bare reading of the various communications addressed by the petitioner categorically reveals the height of arrogance exhibited by the petitioner in all the letters written to his superiors and his non-inclination to participate in the enquiry process for reasons stated therein. Due to the insistent act of the petitioner, as narrated above, the enquiry officer had proceeded to record a proven proceedings against the petitioner.

24. To the show cause notice issued by the 2nd respondent, on the tabling of the enquiry report, the explanation offered by the petitioner, goes a step further, bordering on mere insubordination and showing scant respect and courtesy to his superior officers. The communication addressed by the petitioner to the 2nd respondents shows that the petitioner is trying to split the hairs in the way the show cause notice issued by the 2nd respondent is worded. The petitioner has not attacked the enquiry report but has attacked the communication of the 2nd respondent, viz., the show cause notice, in and by which the 2nd respondent has merely communicated the proceedings of the enquiry officer. The way in which the letter addressed by the petitioner is couched leaves a lot to be said about the act and attitude of the petitioner towards his superiors. The show cause notice is only an intimation of the report of the enquiry

proceedings and calling upon the petitioner to submit his explanation to the enquiry report, which is annexed with the said show cause notice. The way in which the show cause notice is couched would in no way act as a deterrent to the petitioner in submitting his explanation, which explanation is only to the findings recorded in the enquiry report. The above act of the petitioner to divert from the findings in the enquiry report, but attempt to give a colour to the show cause notice, not only portrays the devious mind of the petitioner, but also the guile of the petitioner in subverting the issue from the enquiry report.

25. The petitioner, in his appeal to the punishment imposed, goes steps further, while addressing the 1st respondent by tabulating the various communications and giving detailed explanations to his various acts, in an attempt to show him in the right light before the 1st respondent. Deviating from the main issue, the petitioner has raised allegations against the whole administrative setup of the 3rd respondent attributing malice to the acts performed by the staff members and officers. The petitioner, in essence, has stated that only to save the skins of the individuals, who had acted with malice against him, to clothe their wrong doings, have fastened the charge against the petitioner. The petitioner has not adverted to anything relating to the present charge framed against him.

26. The whole gamut of the events, as could be visualised from the materials available in the typed set reveals that while the petitioner has pointed fingers on many persons in the administrative hierarchy of the 3rd respondent, as persons, who had committed malpractice and that it is only the petitioner, as the guardian angel, is trying to protect the establishment. However, on his own accord, the petitioner has admitted that in relation to another proceeding against him, he was visited with punishment against which writ petition has been filed and which is pending before this Court. Therefore, it is clear that all is not well with the petitioner.

27. Further, it is to be pointed out that though the petitioner has raised very many technical objections and called for multifarious documents from the respondents, there is not even a whisper from the petitioner that the act alleged against the petitioner by the respondent was not committed by him. Had the petitioner been such a person, who is not only white outside, but equally inside, could have placed witnesses, who were present in the office on the crucial day when the act alleged against the petitioner had taken place, to speak about the happenings on the said day as evidence in defence to his side of the case to counter the case of the respondents. Without participating in the enquiry and merely harping on technicalities, without offering any demur as to the utterances made by him, as alleged, the petitioner is estopped from coming before this Court and saying that there is total violation of principles of natural justice and that the disciplinary proceedings has not been conducted in

accordance with law and, therefore, requires interference at the hands of this Court.

28. Though the petitioner has been methodical in picking holes in the case of the respondents against him, has not washed his own linen, by trying to place materials/evidence of witnesses in defence, which would have aided in his cause in addressing this Court on the above issue. Merely, on air, it is not open to the petitioner to claim that the non-providing of the materials has vitiated the entire disciplinary proceedings as the same has not been conducted in consonance with the principles of natural justice.

29. Further, it is to be pointed out that in the articles of charge, the list of witnesses or the documents relied on, have not been shown, but only the charge proceeds on the footing that abusive language was used by the petitioner against the 3rd respondent in the presence of the employees present on that day. The petitioner has also not pleaded that he is not aware of the persons, who were in attendance on that day. The petitioner, being a member of the staff of the said office would be knowing very well about the persons, who were in attendance in the office on the crucial day. Such being the case, the harping of the petitioner to provide the list of witnesses and documents relied on by the respondents is nothing but an attempt on the part of the petitioner to hold a lifeline by invoking the infraction of violation of principles of natural justice.

30. Very many decisions have been relied on by the learned counsel for the petitioner to drive home the point that adherence to principles of natural justice is the hallmark of a proper conduct of enquiry and any flaw thereof renders the enquiry bad in law and vitiates the enquiry proceedings. In this regard, it is to be pointed out that the decisions relied on by the learned counsel for the petitioner all relates to Sections 3 (a) and 17 (b) of the Discipline and Appeal Rules. However, the above provisions of law would not stand attracted to the case of the petitioner, as the petitioner is the employee of a co-operative society and is guided by the provisions under the Tamil Nadu Co-operative Societies Act and any action that is taken would be only by invocation of the provisions under the said Act.

31. Section 73 of the Co-operative Societies Act relates to appointment of paid officers and servants of registered society and their conditions of service and insofar as the qualifications for appointments and conditions of their service and disciplinary control over them have been relegated to the Rules and guided by the said Rules, more especially Rule 149. Rule 149 delineates the conditions of service, which is quoted hereunder :-

"149. Conditions of Service of paid officers and servants of societies. - (1) Every Society shall, taking into account its nature of business, volume of

transaction and financial position, adopt [with the prior approval of the government], a Special Bylaw covering the service conditions of its employees. The special Bylaw shall, inter alia, prescribe the following :

(i) Cadre strength and classification of various categories of posts and the qualifications required thereof for each such post.

(ii) The method of recruitment for each such post.

(iii) The scale of pay and allowances for each such post.

(iv) Conditions of probation for each such post.

(v) Duties and responsibilities for each such post.

(vi) Leave of various kinds admissible and the conditions thereto for each such post.

(vii) The penalties that may be imposed upon, the procedure for taking disciplinary action and inflicting various kinds of punishments on an employee holding each such post and the Authority Competent to entertain and dispose of appeals made against an order of punishment imposed by the Competent Authority on a disciplinary proceedings.

.....”

32. From the above, it is evident that sub-clause (vii) of clause (1) of Rule 149 makes it abundantly clear that the procedure for taking disciplinary action and inflicting various kinds of punishments is to be codified in the Special Bylaw of the society. However, a perusal of the materials available on record as also the affidavit of the petitioner does not anywhere reveal as to the infraction or violation of a specific Bylaw, which has, in fact, caused much prejudice to the petitioner. Without placing reliance on any particular Bylaw, which is alleged to have been violated, relying on Sections 3 (a) and 17 (b) of the Discipline and Appeal Rules, which is not applicable to the petitioner, would in no way further the case of the petitioner. When the petitioner has exhaustively explained the very many malpractices, which he alleges had happened in the society, of which he is oblivious of, however, has not spoken even a single word as to the Bylaw, which has been violated and which has caused prejudice to him.

33. As already codified by the Hon'ble Apex Court in Gunasekaran's case (supra), the High Court in exercise of its power under Articles 226 and 227 of the Constitution of India shall not venture into re-appreciation of the evidence. The power of the High

Court is only to determine whether (a) the enquiry is held by the 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 which are 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. As already stated above, none of the ingredients pointed out by the Hon'ble Apex Court could be said to have been violated in the case on hand. Though violation is alleged, but no materials to prove the same has been placed before this Court. In such a scenario, this Court, sitting under Article 226 of the Constitution of India, has a very limited scope of reviewing the order impugned herein and this Court cannot place itself into the mantle of the disciplinary authority to determine whether a misconduct has been committed or not. The materials on record clearly reveal the total lack of commitment of the petitioner in participating in the disciplinary proceedings, but only putting shackles in the wheel of the disciplinary proceedings from proceeding further. Therefore, after grant of sufficient opportunity, the enquiry officer has submitted his report based on which action has been taken by the respondents. Therefore, it can be safely concluded that the respondents have acted within the four corners of law and the alleged violations, pointed out by the petitioner, being bereft of any conclusive proof, cannot be the basis to term the disciplinary proceedings as vitiated.

34. A holistic consideration of all the technical pleas raised by the petitioner during the various stages of the proceedings, ultimately culminating in the order of modification of the order of punishment by the 1st respondent reveals that the authorities below, on an independent application of mind to the materials placed before them, have arrived at a finding that the delinquency alleged against the petitioner stood proved and that the petitioner has not placed any materials to the contra to substantiate his case and in the absence of the same, the punishment was imposed on the petitioner.

35. At the risk of repetition, it is to be stressed that the Court in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive 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. It has been the consistent view of the Courts that the nature of evidence required in a disciplinary proceedings is not in the same level as required in a criminal trial, as in the disciplinary proceedings, the finding is arrived at on the basis of preponderance of probabilities. In such a scenario, it is not the function of the High Court under its writ jurisdiction to review the evidence, and arrive at an independent finding on the evidence. If the enquiry is properly held within the four boundaries of legal necessities, then the departmental authority is the sole judge of facts, and if there is some legal evidence on which the 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 writ petition. An error of law which is apparent on the face of the record can be corrected by a writ court, but not an error of fact, however grave it may be. High Court in exercise of its power under Articles 226 and 227 of the Constitution of India shall not venture into re-appreciation of the evidence and further the Supreme Court has also codified the circumstances under which re-appreciation of evidence is permissible. Therefore, this Court, sitting under Article 226 of the Constitution is not inclined to interfere with the findings of the disciplinary enquiry.

36. Once this Court has accepted the findings recorded by the authorities for imposing punishment on the delinquent, the next limb of consideration is the quantum of punishment imposed on the petitioner and its just and reasonableness for which this Court would like to advert to the ratio laid down with regard to interference of the Courts in the matter of punishment under Article 226 of the Constitution.

37. It has been the consistent view of the Courts that it is always within the domain of the appointing authority to decide on the punishment to be imposed on the delinquent, which should be proportionate to the delinquency. Only when the punishment is disproportionate and shocking the conscience, should the courts interfere in the same in exercise of powers under Art. 226 of the Constitution. In Prem Nath Bali - Vs - High Court of Delhi (2015 (16) SCC 415), the Hon'ble Supreme Court held as under :-

"20. It is a settled principle of law that once the charges levelled against the delinquent employee are proved then it is for the appointing authority to decide as to what punishment should be imposed on the delinquent employee as per the Rules. The appointing authority, keeping in view the nature and gravity of the charges, findings of the inquiry officer, entire service record of the delinquent employee and all relevant factors relating to the delinquent, exercised

its discretion and then imposed the punishment as provided in the Rules.

21. Once such discretion is exercised by the appointing authority in inflicting the punishment (whether minor or major) then the courts are slow to interfere in the quantum of punishment and only in rare and appropriate case substitutes the punishment. Such power is exercised when the court finds that the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the court or when it is found to be in contravention of the Rules. The Court may, in such cases, remit the case to the appointing authority for imposing any other punishment as against what was originally awarded to the delinquent employee by the appointing authority as per the Rules or may substitute the punishment by itself instead of remitting to the appointing authority."

(Emphasis Supplied)

38. In the case on hand, a careful perusal of the entire records right from the conduct of the enquiry, to the passing of the order of punishment and the modification of the punishment in appeal, it clearly evidences that there has been proper and independent application of mind on the part of the concerned authorities, who dealt with the case of the petitioner. It is further to be pointed out that the offence committed by the petitioner is of such a nature, that it engulfs total insubordination on the part of the petitioner to his superiors, more so in the presence of the employees of the organisation. If the said delinquent act is allowed to go without infliction of any punishment, then it would send a wrong signal to the whole of the working community that they can act at their will with their superiors, which will only lead to total anarchy in the administration of an establishment. Acceding to the directions of the superiors within the four boundaries of law is the hallmark of the functioning of an effective administrative machinery and any deviation thereof requires to be curtailed with iron hands, lest the whole administrative machinery would fall in doldrums. In the case on hand, the gravity of the offence committed by the petitioner though is grave, however, taking into consideration the overall materials available on record, the 1st respondent has, in fact, modified the punishment imposed on the petitioner from one of stoppage of increment for a period of three years with cumulative effect to one of stoppage of increment for a period of three years without cumulative effect. This itself shows that the 1st respondent has applied to the materials placed before him before modifying the punishment inflicted on the petitioner. As already stated, this Court, sitting in judicial review, is not required to go through the

entire materials as if the matter is in appeal before this Court, but only to arrive at a subjective finding as to whether the enquiry has been conducted in a fair and proper manner and whereupon, the punishment has been imposed on independent application of mind. This Court is in consensus with the modified order passed by the 1st respondent and is of the view that the same does not warrant any interference at the hands of this Court. The punishment imposed on the petitioner is also just and reasonable considering the nature of delinquency and no sympathy can flow from this Court for the act of the petitioner. Therefore, the punishment imposed on the petitioner is in no way shocking the conscience of this Court or disproportionate to the delinquency and, therefore, this Court is not inclined to interfere with the same.

39. For the reasons aforesaid, this writ petition is devoid of merits and, accordingly, the same is dismissed. However, there shall be no order as to costs.

-sd-

Assistant Registrar

//True copy//

Sub Assistant Registrar

To

1. The Managing Director
Tamil Nadu Civil Supplies Corporation
No.12, Thambusamy Road
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2. The General Manager (Administration)
Tamil Nadu Civil Supplies Corporation
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3. The Regional Manager
Tamil Nadu Civil Supplies Corporation
Regional Office
Co-operative Spinning Mills Compound
Ammapettai, Salem - 14.

C.C.to MR.S.VIJAYA KUMAR, Advocate SR.NO.41262
C.C. to MR.L.P.SHANMUGA SUNDARAM, SR.NO. 41776

PRE-DELIVERY ORDER IN
W.P. NO. 19646 OF 2013

SRA (CO)

RRI 21/01/2021