

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
23.11.2020	07.12.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. No.8978 of 2013

M.Ravindran

.. Petitioner

- Vs -

1. The Government of Tamil Nadu,
represented by its Secretary,
Co-operative, Food and Consumer
Protection (CN2) Department,
Fort St. George, Madras 9.
 2. The Regional Joint Registrar of
Co-operative Societies,
District Collector's Office,
Sathuvachari, Vellore District.
 3. The Special Officer,
C-2511 Edakrishnapuram,
Primary Agricultural Co-operative Bank,
Solamur Post Latheri,
Katpadi Taluk, Vellore District.
- ... Respondents

Writ petition filed under Article 226 of the Constitution of India praying
this Court to issue a writ of Certiorari calling for the records on the file of the 1st

Respondent in G.O.(2D) No.123, dated 26.12.2012 in affirming R.O.C.No.20 of 2008/A2, dated 17.09.2008 issued by the 2nd Respondent and that of the 3rd Respondent in proceedings Nil, dated 09.05.2008 and quash the same as illegal, incompetent and without jurisdiction and further restore the service of the Petitioner together with backwages.

For Petitioner : Mr.V.Raghavachari

For Respondents : Mr. L.P.Shanmugasundaram,
Special Government Pleader (Co-op.)

ORDER

Challenging the Government Order in G.O.(2D) No.123, dated 26.12.2012 issued by the 1st Respondent, in affirming R.O.C.No.20 of 2008/A2, dated 17.09.2008 issued by the 2nd Respondent and that of the 3rd Respondent in proceedings Nil, dated 09.05.2008, the Petitioner has come up with the present Writ Petition.

2. According to the Petitioner, he had been working in the Fair Price shop under the control of the 3rd Respondent herein since 1990 and that, he never faced any complaint either from his employer or from the public. While so, in June 2007, charges were framed against the Petitioner that, he had committed serious irregularities in the sale of PDS goods. To the notice issued to him, the

Petitioner submitted his explanation dated 21.11.2007. However, the Petitioner was placed under suspension from 03.01.2008. Insofar as Edakrishnapuram Fair Price shop is concerned, charges were framed on 18.01.2008 and a reply was given by the Petitioner on 30.01.2008.

3. It is the contention of the Petitioner that the enquiry was conducted in a haphazard manner, without even furnishing records to him and that, no document was marked to prove the charges. Based on the Report of the Enquiry Officer, a Show Cause Notice was issued to the Petitioner on 21.04.2008 by the 3rd Respondent. In spite of the Petitioner's reply, the 3rd Respondent, without giving him an opportunity of hearing, terminated him from service. Aggrieved by the order of termination, the Petitioner preferred an Appeal before the Joint Sub Registrar, Vellore and the same stood rejected on 17.09.2008. Challenging the same, the Petitioner filed a Review before the 1st Respondent, which was rejected by the reviewing authority vide G.O.(2D) No.123, dated 26.12.2012, aggrieved by which, the Petitioner has come up with the present Writ Petition.

4. In the counter Affidavit filed by the 2nd Respondent, it is stated that,

when the Petitioner was working as PDS Salesman in Venkatapuram Shop in Gingee, run by the 3rd Respondent/Society, the Inspection Team found that, there were stock deficit in sale of special PDS goods viz., Palm oil in open market, etc. As serious irregularities were noticed on the part of the Petitioner, the 3rd Respondent suspended him from duty on 03.01.2008 and charges were framed against him vide Charge Memo dated 18.01.2008. Thereafter, an Enquiry Officer was appointed by the 3rd Respondent on 07.02.2008, to enquire into the charges framed against the Petitioner and to submit a Report.

5. According to the 2nd Respondent, the Enquiry Officer issued notice dated 06.03.2008 to the Petitioner to appear for an enquiry on 18.03.2008. On the said date, the Petitioner and the Management side representative viz. K.Balaraman, who is the Secretary of the 3rd Respondent/Society, appeared for enquiry and deposed before the Enquiry Officer. When the Enquiry Officer posed a question to the Petitioner as to whether he was given ample opportunity of hearing, he replied positively and he also perused documentary evidences shown in the enquiry. During the enquiry, the Petitioner cross-examined the Management side witness and after affording sufficient opportunity to both sides, the Enquiry

Officer concluded the enquiry and submitted his Report on 14.04.2008, holding all the charges against the Petitioner, as proved. The Report of the Enquiry Officer was communicated to the Petitioner by the 3rd Respondent vide Show Cause Notice dated 21.04.2008. As the explanation submitted by the Petitioner was not convincing, the 3rd Respondent imposed the punishment of dismissal from service vide proceedings dated 19.05.2008.

6. Learned counsel for the Petitioner contended that, it is the duty of the prosecution to prove the charges levelled against the delinquent and in the case on hand, the 3rd Respondent has not examined any person to prove the charges. He further contended that, the 3rd Respondent failed to appreciate that, the Petitioner had supplied goods to the card holders based on the Ration Cards produced and there was no complaint in writing by the members of the public associated with the said shop to the effect that goods were not supplied to them. According to him, when none of the charges levelled against the Petitioner had been established, the punishment of dismissing him from service is highly excessive.

7. On the other hand, learned Special Government Pleader, drew the attention of this Court to the order passed by the 2nd Respondent, wherein, he has observed that, the Petitioner was found guilty of the charges framed against him, as he had himself remitted the stock deficit amount to the Bank and that, he had also sold 100 packets of palm oil meant for distribution to the public, in open market. It is his contention that, if the Petitioner is reinstated in service, it will set a wrong precedent to other PDS Salesmen and hence, prayed for dismissal of the Writ Petition.

8. This Court heard the submissions of the learned counsel for the Petitioner and the learned Special Government Pleader appearing for the Respondents and perused the materials available on record.

9. Though the Petitioner has contended that, the enquiry was concluded without furnishing him any records, the 2nd Respondent, in his counter, has stated that, at the time of enquiry, documentary evidences were shown to the Petitioner for his perusal. On a perusal of the records, it is seen that, on 26.08.2008, when the Petitioner and the representative of the 3rd

Respondent/Society appeared for hearing before the 2nd Respondent, to the question posed by the Authority as to whether he is willing to give deposition, the Petitioner replied that, he is not inclined to give deposition. However, he requested the Authority to consider his statement in the Revision Petition and the counter statement given by the Management. It is also seen that at the time of enquiry, the Petitioner cross-examined the Management side witness and ample opportunity of hearing was given to him. Therefore, raising a plea now that the documents relied on have not been provided to him and ample opportunity was not given to him is nothing but a fragile attempt on the part of the petitioner to hold on to the last straw to save his neck from being imposed with a penalty.

10. The Hon'ble Supreme Court, in ***B.C. Chaturvedi v. 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 reappreciate 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 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 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. v. 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, adverting 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. A perusal of the report of the enquiry officer reveals that not only opportunity to peruse the documents as also to cross examine the witnesses were provided, documentary materials have been placed to establish the delinquency of the petitioner. Further, the self-serving declaration of the petitioner in the form of remitting the amount in the bank stares writ large on the petitioner and gives much needed impetus to the finding recorded by the enquiry officer.

15. Though it is the contention of the petitioner that there have been no complaints about non-supply of essential goods to the general public, however, what is to be pointed out is that it is not that the general public were not provided with the essential commodities through the public distribution system, but it is the illegal sale of the goods meant for public distribution system in the open market. The public, who are not in need of the particular commodity, having not purchased the same, the said commodities are being sold in the open market to the detriment of the exchequer. Further, there is no whisper from the petitioner as to the reason for depositing the amount in the bank by the petitioner relating to the value of the commodities which were sold in the open market by the petitioner. Such being the case, it is not open to the petitioner to contend that the respondents have not established the case against him.

16. Public Distribution System is primarily meant to cater to the needs of poor people. The main allegation against the Petitioner is that, he sold 100 packets of palm oil meant for distribution to the public, in open market, thereby depriving the same to needy people. In spite of sufficient opportunity of hearing,

the Petitioner has not disproved the charges alleged against him, when the onus lies on him to establish that, on the date of inspection, there was no deficit of stock of PDS goods. It is further to be pointed out that insofar as departmental proceedings are concerned, the standard of proof required is not as required at the time of criminal trial as the respondents are not required to prove the case against the petitioner beyond reasonable doubt, but only on the touchstone of preponderance of probabilities.

17. On a holistic consideration of the materials available on record, this Court is of the considered opinion that the findings recorded in the enquiry are just and reasonable and this Court, under the guise of judicial review, cannot conduct a roving expedition as if the matter is in appeal before this Court. The petitioner having not produced any material to substantiate his case, the finding recorded by the enquiry officer, as accepted by the authorities below to fasten the guilt on the petitioner does not require any interference.

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18. Insofar as the punishment awarded to the petitioner is concerned for the delinquency, 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 act of the delinquent. Only when the punishment is disproportionate and shocking the conscience, the Courts interfere with the same, in exercise of powers under Article 226 of the Constitution of India. In **Prem Nath Bali – Vs - High Court of Delhi** reported in **(2015 (16) SCC 415)**, the Hon'ble Supreme Court has 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)

19. In the case on hand, a careful perusal of the entire records right relating to the enquiry as also the order passed by the disciplinary authority, as confirmed by the appellate and revisional authorities, it clearly transpires that the disciplinary authority has applied his mind to the enquiry report and all the other materials while imposing the punishment of compulsory retirement and on appeal and revision, the appellate and the revisional authorities have appreciated the materials independently and concurred with the view of the disciplinary authority. On an overall consideration of the materials, this Court is in consensus with the order passed by the disciplinary authority as confirmed by the appellate authority and affirmed by the reviewing authority and the punishment imposed

on the petitioner is just and reasonable considering the nature of delinquency and no sympathy can flow from this Court for such an act. 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.

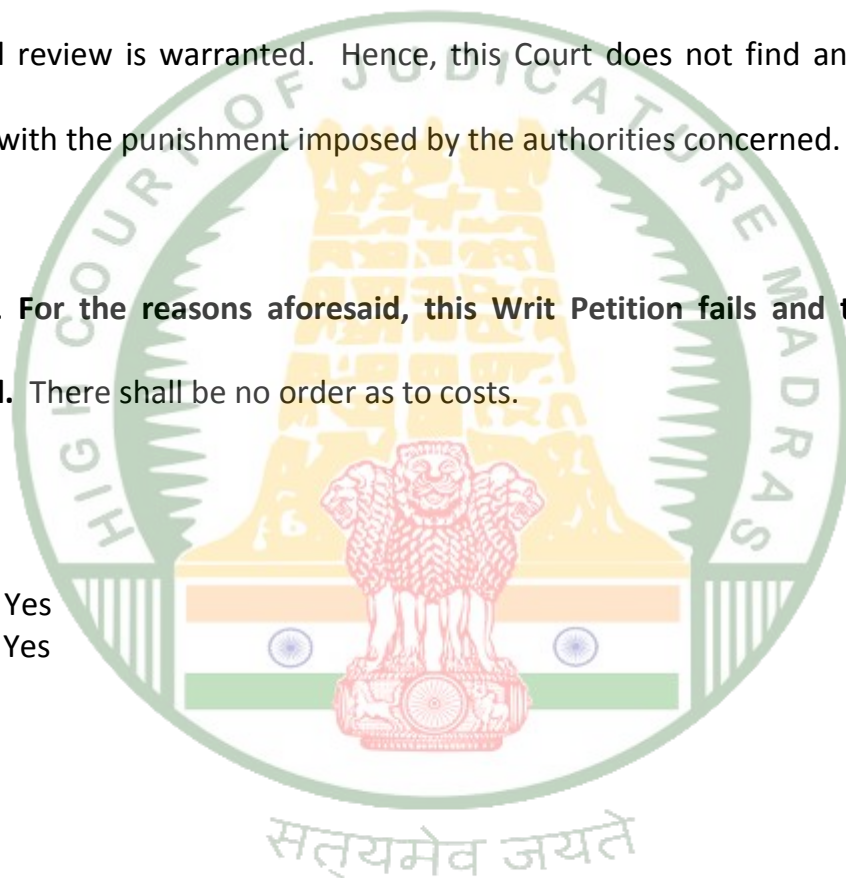
20. It must not be lost sight of that interests of administration demands that, undesirable elements are thrown out and any charge of misdemeanour is enquired into promptly. Disciplinary proceedings are meant not really to punish the guilty, but to keep the administrative machinery unsullied by getting rid of bad elements. Allowing the unscrupulous elements to continue in the system would not only erode the public confidence in the administrative machinery but any interference by this Court would also have a detrimental effect on the faith the public has imposed on the Judiciary. Persons, like the petitioner, who are leeches attaching themselves to the public machinery, time and again, suck the blood of the public, by their intolerant acts and weeding out them from the system is the need of the hour so that the downtrodden and needy do not suffer by their cunning and devious acts. The petitioner, having been found guilty of the

charges, he has been dealt with promptly in accordance with law and this Court, sitting under Article 226 is not inclined to interfere with the same in exercise of its powers of judicial review, which, as stated above, has to be exercised with caution and the present case does not fall under the category where the exercise of judicial review is warranted. Hence, this Court does not find any reason to interfere with the punishment imposed by the authorities concerned.

21. **For the reasons aforesaid, this Writ Petition fails and the same is dismissed.** There shall be no order as to costs.

Index : Yes
Internet : Yes
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07.12.2020



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To:

1. The Secretary,
Government of Tamil Nadu,
Co-operative, Food and Consumer
Protection (CN2) Department,
Fort St. George, Madras 9.
2. The Regional Joint Registrar of
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Vellore District.



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M.DHANDAPANI, J.

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**Pre-delivery order in
W.P. No.8978 of 2013**

**Pronounced on
07.12.2020**

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