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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 04.10.2019

Orders Pronounced on : 03.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.P.No.16191 of 2019

Mr.S.Seetharaman

.. Petitioner

Vs.

1. The Government of Tamil Nadu,
Rep. by its Additional Chief Secretary to Government,
Home Courts-I Department,
Fort St.George,
Chennai-600 009.

2. The Registrar General,
Madras High Court,
Chennai-104.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records in proceedings G.O.(2D).No.77, dated 08.03.2019 on the file of the first respondent and quash the same as illegal, incompetent, irregular and without jurisdiction.

For petitioner	:	Mr.V.Raghavachari
For respondents	:	Mr.V.Shanmuga Sundar, Spl.G.P. for R-1 Mr.V.Ayyadurai, Senior Counsel for Mr.A.Durai Eswar for R-2

ORDER

R.SUBBIAH, J

The present Writ Petition is filed for issuance of a Writ of Certiorari to call for the records in proceedings G.O.(2D). No.77, dated 08.03.2019 on the file of the first respondent and quash the same as illegal, incompetent, irregular and without jurisdiction.

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2. Brief facts of the case are as follows:

(a) The petitioner herein was appointed as a Judicial Magistrate in the Tamil Nadu State Judicial Service in the year 1998. While he was working as Judicial Magistrate No.II and Judicial Magistrate-III (Full Additional Charge), Madurai, during the period from February 2006 to April 2006, the Registrar (Vigilance) of High Court, Madras, received a complaint on 22.05.2006 from the investigating officers of CCIW (Commercial Crime Investigation Wing) of Dindugul, Madurai and Theni Districts against the writ petitioner alleging that he disposed of cases for illegal gratification by orally pronouncing orders in Open Court, which were not supported by any written judgment and that the judgments were also prepared in the Offices of the Advocates for the accused with the connivance of the Assistant Public Prosecutor. It was also alleged in the said complaint that the judgments were prepared by ante-dating the same and that more than 20 judgments were yet to be prepared even after the transfer of the writ petitioner.

(b) Based on the said complaint, a discreet enquiry was directed to be conducted by the Registrar (Vigilance). Accordingly, the Registrar (Vigilance) obtained statement of the Typist and Assistant attached to the Court of the Judicial Magistrate-III, Madurai and collected other materials and submitted the discreet enquiry report. Based on the discreet enquiry report, the then Honourable Chief Justice of the High Court, Madras had directed to place the writ petitioner under suspension and called for explanation from him. Accordingly, the petitioner was placed under suspension by the proceedings of the High Court, dated 01.06.2006. Thereafter, Official Memorandum, dated 19.08.2006 in R.O.C.No.381/2006/VC in C.No.57/2006/VC was issued on 25.08.2006 calling upon the petitioner to offer his explanation. The petitioner submitted his explanation on 05.09.2006, which was placed before the Administrative Committee of the High Court, which was considered by the Committee on 27.08.2007 resolving to frame charges for dereliction of duty constituting misconduct on the part of the petitioner.

(c) On 05.03.2012, charge memo was issued to the petitioner framing two charges based on the Vigilance Enquiry Report, namely (i) he disposed of 113 cases without preparing judgments, and (ii) during the last two days of his tenure at Madurai, he had pronounced judgments in so many cases in the Open Court without actually preparing detailed judgments and only entries in diary had been made and till 31.05.2006, judgments in 20 disposed cases were yet to be prepared; which would amount to dereliction of duty, abusing the process of law, affecting absolute integrity and devotion of Judicial Magistrate.



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(d) On 10.01.2013, the petitioner submitted his explanation. Not being satisfied with the same, on 27.06.2013, the Administrative Committee resolved to appoint the District Judge, Nagapattinam as the Enquiry Officer and the Sub-Judge, Nagapattinam as the Presenting Officer to conduct the departmental enquiry initiated against the writ petitioner.

(e) On completion of enquiry, the Enquiry Officer submitted a report, dated 15.06.2017 holding that both the charges stood proved. On 27.04.2018, the Delinquent Officer submitted his further representation on the enquiry report in Tamil and translated English version on 05.07.2018. In the meantime, the writ petitioner attained the age of superannuation of 58 years in May 2018. The Administrative Committee resolved on 27.04.2018 not to permit the petitioner to retire and to continue the suspension, pending conclusion of the disciplinary proceedings. Accordingly, Official Memorandum, dated 17.05.2018 in R.O.C.No.3/2018-Con.B2 was issued to the petitioner not permitting him to retire from service on attaining the age of 58 years and he was retained in service pending conclusion of the disciplinary proceedings. The entire records pertaining to the disciplinary proceedings were routed through proper channel, which culminated in passing of Resolution by the Full Court on 04.12.2018 to dismiss the petitioner from service, which was followed by passing of a Government Order in G.O.(2D).No.77, Home (Courts-1) Department, dated 08.03.2019, which is challenged in the present Writ Petition.

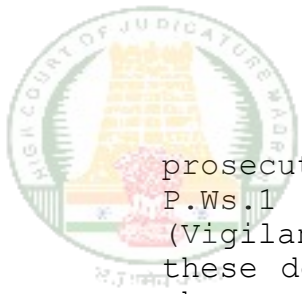
3. The second respondent has filed counter affidavit detailing the facts and circumstances under which the impugned order had been passed.

4. The learned counsel for the petitioner submitted that when the petitioner was serving as Judicial Magistrate-I, Nagapattinam, he was suspended from service by proceedings, dated 01.06.2006, in which, no specific reason had been assigned for suspension, except stating the words like "serious misconduct" and "dereliction of duty". Subsequent to the suspension order, another proceedings of the High Court, dated 19.08.2006, were issued to the petitioner, along with a complaint said to have been sent by CCIW investigating officers, Madurai, Theni and Dindugal Districts. In the said proceedings, the petitioner was directed by the High Court to submit his explanation for the said complaint within 15 days, and this letter remains unproved. No witness was examined to substantiate the contents made in the said complaint. On the other hand, the petitioner had disproved it by securing a letter from the concerned Department that no such complaint was sent by them. On a careful perusal of the said complaint, it would show that the



said letter was signed without even disclosing the name of the person who signed it. Moreover, the alleged complaint of CCIW investigating officers was sent to the High Court after three weeks of the transfer of the petitioner from Madurai to Nagapattinam. In the said complaint, it was mentioned that when the petitioner was holding additional charge as Judicial Magistrate No.3, Madurai, during February-April 2006, he had disposed of 60 cases without preparing the fair judgments and freed the accused. It is further alleged that this was done with the assistance of Mr.Tamil Selvam, the then Assistant Public Prosecutor. Further, the gravamen of the charge is that the judgment in 30 cases were prepared in the offices of the Advocates. According to the complainant, the above lapses were brought to the notice of the then Principal District Judge, Madurai and the then Chief Judicial Magistrate, Madurai and they remained silent spectators. Though the copy of the complaint alone was sent to the petitioner with the order of Registrar (Vigilance), dated 19.08.2006 and explanation was called for, no document in support of the complaint was given. Therefore, the petitioner was unable to offer his explanation accurately.

5. The learned counsel for the petitioner further submitted that though in the said complaint, it has been alleged that the petitioner has prepared over 30 judgments elsewhere, the complainant has not come forward to establish the same atleast by naming the place or the particulars of the cases, which was not done. It is the further submission of the learned counsel for the petitioner that the Registrar (Vigilance) made a surprise inspection in Judicial Magistrate-3's Court, Madurai and seized the relevant records in 113 criminal cases, recorded oral statement from the members of the staff of that Court and in spite of the same, the Registrar (Vigilance), without whispering and supplying the copies of the abovesaid 113 cases, had caused to mark an anonymous complaint alone to the petitioner and invited an explanation. Further, though the explanation was submitted by the petitioner on 05.09.2006, the charges were framed only on 05.03.2012, i.e. after a period of 5-1/2 years. The petitioner gave written statement to the charges on 10.01.2013. The Enquiry Officer was appointed only on 14.03.2014, i.e. after 14 months. The enquiry commenced only on 07.09.2015. P.Ws.1 and 2 were examined, and they did not support the case of the prosecution. In this regard, the learned counsel for the petitioner submitted that it is pertinent to note that the petitioner was under suspension and out of office and there is no necessity for P.Ws.1 and 2 to depose in his favour and against the prosecution case. They are in service and all the more, they should have stuck by the statement secured from them earlier by the Vigilance Department. The evidence on the side of



prosecution was closed on 07.09.2015 and the signatures of P.Ws.1 and 2 in their earlier statements before the Registrar (Vigilance) were marked as Exs.P-1 and P-2 respectively. But these documents are ineffective and of no use to bring home the charges.

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6. The learned counsel for the petitioner also submitted that the alleged complaint by CCIW I.Os. was of bribe, whereas the charges framed relate to pronouncement of full judgments in disposed of cases. The complaint against the petitioner is not one of judgments not being prepared, but of prepared judgments authored elsewhere and not by the Judge. There is a sea of difference between the two. Strangely, contrary to the complaint, an enquiry report was filed by the Enquiry Officer and ironically, it was also accepted without verifying the veracity of the said complaint. If the complaint of CCIW I.Os. is the starting point for the enquiry, the charges were not framed upon the contents in the complaint. CCIW Inspectors including the person who is said to have signed the complaint, have not been examined by the prosecution. Though the Principal District Judge, Madurai and the Chief Judicial Magistrate, Madurai, are said to have been served with the complaint, the Vigilance Department did not make any enquiry with them. It is the duty of the Vigilance to verify the facts from the superior Judicial Officers before commencing the enquiry. In fact, the petitioner had explained the circumstances under which the orders were pronounced, their mode of preparation and the nature of litigation and it does not require any elaborate disclosure of reasoning. But the Enquiry Officer, without appreciating the explanation of the petitioner, had offered his opinion. Further, the complaint only states that Assistant Public Prosecutor of Judicial Magistrate-III Court, namely Mr.Thamilselvam helped the Magistrate and even the said Assistant Public Prosecutor was not enquired. Only the signatures of two Ministerial Staff were obtained in a typed statement by the Registrar (Vigilance). Both of them on being examined, disowned the statement. Further, in the Annexure-II of the charges, only the numbers in the 113 cases were furnished, and no copies of the documents were supplied. Therefore, the entire procedure followed during the course of the enquiry, is bad and against the fundamental canons of natural justice. While submitting the written statements for the charges on 10.01.2013 in Column No.5 of the questionnaire Form, all the copies of case records and the report of the Enquiry Officer and the Registrar-Vigilance should be furnished. But they have not been furnished till the enquiry was completed. The petitioner was called upon to peruse the documents running to more than 1500 pages in the presence of Court Officer. These documents could not be perused within three or four hours, nor



could be pulled out from the memory. Therefore, when the enquiry was conducted after several years, it was not possible for the petitioner to recollect and depose fully. After the enquiry was completed on 07.09.2015 and after the enquiry report was prepared, the certified copies of documents were supplied. Normally, the documents are served and enquiry is conducted, but in this case, the enquiry report was filed and only thereafter, the documents were furnished. The reverse procedure is unheard of and legally not sanctioned.

7. The learned counsel for the petitioner further contended that in the enquiry report, in paragraph 4, the explanation given by the petitioner on 05.09.2006 is mentioned and in paragraph 5, it is stated that the petitioner has committed wrong and prayed for apology. This is factually incorrect. If really the petitioner has apologised, the need to hold an enquiry does not arise. Out of courtesy and obedience, the language was employed and that by itself would not prove that the petitioner has committed error. Further, in the particulars of documents in Annexures-I and II of the charges framed, not even a single information was furnished. All the original documents found in the Annexure of the charge(s) were kept under the care and custody of the Registrar (Vigilance). Only the complaint was marked, upon which, the petitioner was directed to submit his explanation. At that time, the petitioner was working as Judicial Magistrate No.1, Nagapattinam. Therefore, a common explanation was submitted cursorily. When a Government servant is issued with a Memo for certain complaint against him by asking for explanation from him, the mistake said to have been committed by the servant, should be specific and in detail, mentioning the related documents, if any, as per the disciplinary procedures. Here, in this case, it is not so. Not providing any documents and calling for explanation, is itself, a gross violation to the established procedural practice.

8. The learned counsel for the petitioner further submitted that the evidence of two witnesses examined on the side of prosecution, is not supported by materials. The Enquiry Officer concluded that P.Ws.1 and 2's evidence is sufficient to prove the guilt, whereas, P.Ws.1 and 2 have disowned their statement purported to have been made before the Registrar (Vigilance). Therefore, the enquiry report suffers from perversity.

9. The learned counsel for the petitioner relied on a decision of the Supreme Court reported in 2019 (4) SCC 660 (S.Sreesanth Vs. BCCI), wherein the Apex Court observed that the Constitutional Courts, in exercise of jurisdiction of Judicial Review, will interfere when conclusions of the disciplinary



committee are perverse or based on no evidence. For the same proposition, he also relied on a judgment of the Supreme Court, reported in 2011 (4) SCC 584 (State Bank of Bikaner and Jaipur Vs. Nemi Chand Nalwaya). Further, in the decision of the Supreme Court in the case of Noor Aga Vs. State of Punjab, reported in 2008 (16) SCC 417, while relying on the other Supreme Court decisions, it was held that the departmental proceedings being a quasi-judicial one, the principles of natural justice are required to be complied with. The Courts, exercising power of Judicial Review, are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer, relevant piece of evidence had been taken into consideration and irrelevant facts have been excluded therefrom. In the instant case, a perusal of the enquiry report would show that the finding of the Enquiry Officer is based on no evidence, and therefore, this Court can very well interfere with the impugned order by exercising its power under Article 226 of the Constitution of India. Thus, the learned counsel for the petitioner prayed to allow the Writ Petition.

10. Countering the above submissions, learned Senior Counsel appearing for second respondent-Registrar General of High Court, Madras, submitted that Writ Petitioner is guilty of suppression of material facts in omitting to state about the earlier disciplinary proceedings initiated against him for corruption charges, even though it ended in quashing of removal from service in W.P.No.7941 of 2009, by order dated 18.12.2009. The subject proceedings are initiated based on the statement of P.Ws.1 and 2 and the explanation of the Delinquent Officer, dated 05.09.2006 admitting the lapses. The nature of charge that pronouncing orders in Open Court without preparing the judgment, is serious, touching upon integrity, honesty and maintenance of independence of Judiciary, thereby rendering the writ petitioner unbecoming of a Judicial Officer. With regard to the submission of learned counsel for petitioner that complaint of I.O's of CCIW, dated 18.05.2006 is not a genuine one, it is submitted by learned Senior Counsel appearing for second respondent-High Court that the above submission is a misconceived one, having regard to the fact that charges were framed based on discreet enquiry report of Vigilance Officer and the admission of guilt in his explanation, dated 05.09.2006. Further, a perusal of charge memo, dated 05.03.2012 with enclosures, makes it clear that charges were not framed based on complaint, dated 18.05.2006, but on the basis of Vigilance Report, seizure of case bundles, statement of P.Ws.1 and 2, etc. Moreover, disciplinary proceedings have been initiated as per Resolution of Administrative Committee and on direction of the then Honourable Chief Justice by considering all relevant records.



11. With regard to the submission made by the learned counsel for the petitioner that there was delay in initiating disciplinary proceedings, it is submitted by the learned Senior Counsel appearing for the second respondent-High Court that the Official Memorandum was issued as per the direction of the then Honourable Chief Justice and explanation was called for, which was offered by the writ petitioner on 05.09.2006. On 27.08.2007, the Administrative Committee resolved to initiate disciplinary proceedings. While so, during 2007-2008, another enquiry against petitioner for corruption charge(s), was pending and therefore, the subject proceedings were kept in abeyance as per the order of the then Honourable Chief Justice. Earlier, writ petitioner was reinstated into service as per the order of this Court, dated 18.12.2009 made in W.P.No.7941 of 2009. Thereafter, on 05.03.2012, charge memo was issued in the present disciplinary proceedings. Thus, there is no delay in initiating the present disciplinary proceedings. The writ petitioner had submitted his explanation on 10.01.2013 after ten months and protracted the enquiry under the guise of collecting information under the Right to Information Act, perusal of records such as Court diary, case details, etc. Therefore, delay cannot be attributed against the respondents.

12. With regard to the contention of learned counsel for petitioner that standard of proof as required in judicial proceedings as per the provisions of Indian Evidence Act, had not been followed, it is submitted by learned Senior Counsel appearing for second respondent-High Court that strict adherence of Indian Evidence Act is not applicable to disciplinary proceedings. Further, Enquiry Officer recorded the finding of guilty of charges on the basis of admission made by Delinquent Officer and of Exs.P-3 and P-4 series, namely seized case bundles where no judgments were available in six cases, which were disposed of and that the case bundles were incomplete judgment and unsigned judgments were found. The learned Senior Counsel appearing for the second respondent further submitted that Enquiry Officer had assessed and evaluated evidence on record in accordance with law and that the said statements of P.Ws.1 and 2 alone were not the basis of the conclusion of the Enquiry Officer. The action had been taken against the Delinquent Officer based upon the discreet enquiry conducted by the Registrar (Vigilance) and in pursuant to the Resolution of the Administrative Committee and the directions of the then Honourable Chief Justice.



13. In regard to the contention of the learned counsel for the petitioner that non-consideration of the representation of the Delinquent Officer with citing of case law, would render the impugned order invalid, it is the submission of the learned Senior Counsel appearing for the second respondent that this contention deserves no merit for consideration, in view of the fact that the entire records of the matter at issue had been placed before the Administrative Committee and action was taken based on the Resolution of the Administrative Committee, which culminated into passing of Resolution by the Full Court, confirming the findings of the Enquiry Officer. In the absence of any allegation in regard to the said procedure, the said contention of the Delinquent Officer cannot be sustained, much less it deserves no merit.

14. With regard to the scope of Judicial Review under Article 226 of the Constitution in relation to the disciplinary proceedings, the learned Senior Counsel appearing for the second respondent-High Court relied on a decision of this Court reported in 2019 (2) Writ L.R. 388 (R.Anburaj Vs. State of Tamil Nadu and two others), wherein this Court observed that the scope of Judicial Review is very limited in these kinds of cases. In a catena of decisions of the Apex Court as well as this Court, it has been time and again held that the scope of Judicial Review is so restrictive, that too in relation to misconduct of Judicial Officers, which is governed by Article 235 of the Constitution of India and that the service of Judicial Officers requires honesty and integrity to safeguard the independency of the Judiciary as contemplated in the Governance. In the instant case, the charges are held proved, based on the admission of the Delinquent Officer and also based on the documentary evidence, namely Exs.P-3 and P-4, besides the evidence elucidated in the cross-examination of P.Ws.1 and 2, who turned as hostile witnesses. The impugned order came to be passed after due observation of the procedures, which resulted in the Full Court Resolution, dated 04.12.2018, recommending to award punishment of dismissal from service and accordingly, the impugned order in G.O.(2D).No.77, Home (Courts-I) Department, dated 08.03.2019 came to be passed, which cannot be assailed for any one of the contentions raised by the petitioners in exercise of the power under Article 226 of the Constitution India, as per the law laid down in the following cases:

- (i) 2018 (7) MLJ 138 (K.Ganesn Vs. Government of Tamil Nadu);
- (ii) 2013 (4) SCC 301 (Nirmala J.Jhala Vs. State of Gujarat and another), and
- (ii) 2016 (14) SCC 1 (R.R.Parekh Vs. High Court of Gujarat and another).



Thus, for all the reasons stated above, the learned Senior Counsel appearing for the second respondent-High Court prayed for dismissal of the Writ Petition.

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15. This Court also heard the submissions made by the learned Special Government Pleader appearing for the first respondent.

16. Keeping in mind the above submissions made by the learned counsel on either side, we have carefully perused the records.

17. The sum and substance of the contentions urged by the learned counsel for the petitioner is as follows:

(i) The enquiry was conducted against the petitioner based on the complaint sent by CCIW investigating officers of Dindugl, Madurai and Theni Districts, but no such complaint was sent by CCIW I.Os.

(ii) P.Ws.1 and 2 did not support the case of the prosecution and they have disowned their version given to the Vigilance Department. Further, Exs.P-1 and P-2 being the marking of signatures of P.Ws.1 and 2 in their respective statements, would not amount to admission of the very statements in law.

(iii) There was a delay in initiating the disciplinary proceedings. The delay in initiating the disciplinary proceedings, is wholly unjustified, illegal and violative of Article 14 of the Constitution of India.

(iv) In the enquiry report, it is stated as if the petitioner had admitted his guilt and prayed for apology, but this is factually incorrect.

(v) The charges framed are not specific and detail.

(vi) Without providing any documents and yet calling for explanation, is gross violation to established procedural practice and it per-se, violates Article 16 of the Constitution of India.

(vii) The standard of proof as required in Judicial proceedings as per the provisions of the Indian Evidence Act, had not been followed.

18. On a perusal of the records, we find that pursuant to the complaint received by the Registrar (Vigilance) from CCIW, discreet enquiry was conducted, wherein the statements of Typist R.Vasanthi of Judicial Magistrate Court-III, Madurai (P.W.1) and N.Rajaram, Assistant of Judicial Magistrate Court-III, Madurai (P.W.2) have been obtained, which are to the effect that the writ petitioner was full in-charge of Judicial Magistrate Court-III, Madurai and the writ petitioner directed the Typist to type



the judgment based on model judgments after pronouncing the judgments orally in the Open Court and that 16 judgments so far prepared and typed by her, were not signed by the writ petitioner and that the judgments were to be prepared by her for six cases. The Assistant also gave statement that there would be no written judgment found in the case bundle at the time of pronouncing the judgment in the Open Court including 25 trial conducted cases, where witnesses were cross-examined. Hence, considering the discreet enquiry report, the then Honourable Chief Justice directed to place the writ petitioner under suspension and to call for explanation from him. He was placed under suspension on 01.06.2006. Explanation was called for from him on 19.08.2006, which was offered by him on 05.09.2006. According to the learned Senior Counsel appearing for the second respondent-High Court, in the said explanation, the petitioner had admitted his lapses on the score that he was posted as Judicial Magistrate for the first time at Madurai, as such, due to his inexperience in criminal side work, the said irregularities occurred and he tendered apology. In this regard, it is appropriate to extract the relevant portion of his explanation as follows:

"7. I further humbly submit that I was recruited as Junior Division Civil Judge in the year 1998 and all along I was working only as District Munsif. Only at Madurai, I was posted as Judicial Magistrate, my experience as Judicial Magistrate in my service was only for a little period. Due to inexperience, I have committed the above said lapses of delivering judgment without preparing the full text for which, I once again tender my apology."

19. Moreover, the Administrative Committee of the High Court also considered the materials of the case, including the explanation of the petitioner, and thereafter, it was resolved to initiate disciplinary proceedings against him, resulting to which, he was dismissed from service in the present case. Earlier, in another disciplinary proceedings, he was dismissed from service on 04.07.2008. Challenging the said punishment of dismissal, he filed W.P.No.7941 of 2009, which was allowed on 18.12.2009 with a direction to reinstate him into service. Previously, the then Honourable Chief Justice ordered to keep all the other matters relating to the writ petitioner in abeyance to await for the result in W.P.No.7941 of 2009, which was allowed, as observed above. The Administrative Committee of



the High Court resolved to peruse the subject disciplinary enquiry on his reinstatement into service and directed the earlier suspension order to continue. Subsequently, the present enquiry was conducted and the above narration of events show as to why there was delay in commencing the enquiry in the subject disciplinary proceedings. Therefore, as submitted by the learned Senior Counsel appearing for the second respondent-High Court, the respondents cannot be blamed for the delay in initiating the disciplinary proceedings.

20. Though P.Ws.1 and 2 have turned hostile at the time of recording the evidence in the present disciplinary proceedings, the Enquiry Officer recorded the finding of guilty of the charges on the basis of the admission of the Delinquent Officer in Exs.P-3 and P-4, namely the seized case bundles, where no judgment was available which were disposed of and the case bundles were with incomplete judgments and unsigned judgments were found. Thus, the Enquiry Officer had evaluated and assessed the evidence available on record as per law and that the statement of the witnesses alone was not the basis of the conclusion of the Enquiry Officer. It is incorrect to state that the action was initiated against the petitioner solely based on the complaint said to have been sent by the CCIW. It is settled principle of law that preponderance of probabilities applies to disciplinary proceedings, which is neither purely criminal, nor civil proceedings. Thus, we do not find any infirmity in the findings of the Enquiry Officer. Therefore, we are not inclined to accept the various submissions made by the learned counsel for the petitioner referred to in paragraph 17 above.

21. This Court takes note of the fact that the scope of Judicial Review in exercise of power conferred under Article 226 of the Constitution of India, is limited to test only the correctness or otherwise of adherence of the decision making process and not the decision of the respondents. While exercising jurisdiction under Article 226 of the Constitution of India, we can only ensure as to whether the procedural formalities preceding the order of dismissal from service have been adhered to in the touch-stone of the principles of natural justice. In other words, the conclusion arrived at by the respondents to dismiss the petitioner from service, cannot be interfered with by this Court, unless such conclusion is based on no evidence or irrelevant material. In this regard, it is worthwhile to refer the following decision of the Supreme Court reported in AIR 1997 SC 2286 (High Court of Judicature at Bombay through its Registrar Vs. Udaysingh and others) regarding the scope of the Judicial Review:



and character of the judicial officer, we think that the imposition of penalty of dismissal from service is well justified. It does not warrant interference."

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22. In this regard, more so, with regard to the Judicial Review, it is also fruitful to refer a decision of this Court reported in 2018 (7) MLJ 138 (K.Ganesan Vs. Government of Tamil Nadu), as relied on by the learned Senior Counsel appearing for the second respondent-High Court, wherein, a Division Bench of this Court held as under:

"Purview of Judicial Review:

41. Ordinarily, a 'Judicial Review' is competent when the punishment imposed was an irrational one and in defiance of logic. For the proved charges, the imposition of penalty must be commensurate with the gravity of misconduct. Although a choice and quantum of punishment are within the domain and jurisdiction of concerned authorities, yet, it must suit the offence.

42. In the decision of the Hon'ble Supreme Court in Union of India and others Vs. P.Chandra Mouli and others, (2003) 10 SCC 196, it is held that 'the power of punishment was within employer's discretion and the Court would not ordinarily interfere where there was no infirmity with the procedure'.

43. Furthermore, if there is some evidence within the Court or Tribunal in exercise of Judicial Review cannot sit as a Court of Appeal and interfere with the punishment by reassessing the evidence on its own as per decision in High Court of Judicature at Bombay Vs. Udaysingh reported in MANU/SC/0575/1997 : AIR 1997 SC 2286 : 1997 (5) SCC 129. No wonder, the 'proportionality' is a facet of principle of reasonableness.

44. The ambit of 'Judicial Review' is limited and the well settled legal principle is that the 'Judicial Review' is not directed against the decision. But it is directed against a 'Decision Making Process'.



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45. Furthermore, in the decision of the Hon'ble Supreme Court in B.C.Chaturvedi Vs. Union of India, MANU/SC/0118/1996 : AIR 1996 SC 484 : 1995 (6) SCC 749, it is held that 'a Judicial Review is not an Appeal from a decision but a review of the manner in which the decision is made. The Power of Judicial Review is exercised to ensure that a person receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correctly, in the eye of the Court'.

46. In the decision of the Hon'ble Supreme Court in Karnataka Bank Limited Vs. A.L.Mohan Rao, 2006 SCC (L & S) 59 : 2006 (1) SCC 63 : 2006 (I) LLJ 987 [Three Judges Bench], it is observed and held as under:

'Deal with the ambit of sympathy as a factor of 'Judicial Review'. In this case, a Bank Employee was charged with gross misconduct of colluding with a Branch Manager in regard to the grant of a fictitious loan. He admitted his guilt and he was dismissed from service. Before the Labour Court, the employee was successful. However, the Hon'ble High Court allowed the writ petition based on sympathy and ordered for his reinstatement. The Hon'ble Supreme Court held that the gross misconduct of this type does merit dismissal. Further, the Hon'ble Supreme Court opined that as long as the inquiry was 'Fair', 'Proper' and 'Misconduct' proved, then, 'it is not for the Courts to interfere with the decision of Disciplinary Authority in cases of gross misconduct of this type, on any mistaken notion of sympathy. In such matters, it is for the Disciplinary Authority to decide what is the fit punishment.'



23. Thus, it is evident from the above decisions that this Court has no power to interfere with the decision taken by the respondents in a departmental enquiry and to substitute its own conclusion. In such cases, the Judicial Review is only meant to ensure that the delinquent receives fair treatment in the departmental enquiry conducted against him and that the conclusion which the authority reached is based on semblance of evidence. In the present case, there are evidences made available against the petitioner based on which the respondents have come to a conclusion to impose the punishment of dismissal from service. While so, we cannot interfere with such a conclusion arrived at by the respondents.

24. Further, the dictum laid down in the above decisions would go to show that the Judicial Review is not directed against the decision, but it is directed against a "decision making process".

25. In this case, it is not as if there is no material evidence made available against the petitioner to impose the punishment of dismissal from service. The petitioner, as a Judicial Officer, is required to maintain absolute integrity and honesty in discharge of his functions without giving any room for any complaint, much less complaint touching his integrity and honesty. When the charges levelled and proved against the petitioner, go to the root of his honesty and integrity in discharge of his duties, we can only approve the decision taken by the respondents to dismiss him from service. In this context, our conclusion is supported by the decision of the Supreme Court reported in 2015 (2) SCC 610 (Union of India and others Vs. P.Gunakaran), wherein it was observed by the Apex Court as follows:

"20. Equally, it was not open to the High Court, in exercise of its jurisdiction under Articles 226/227 of The Constitution of India, to go into the proportionality of punishment so long as the punishment does not shock the conscience of the Court. In the instant case, the disciplinary authority has come to the conclusion that the respondent lacked integrity. No doubt, there are no measurable standards as to what is integrity in service jurisprudence but certainly there are indicators for such assessment. Integrity according to Oxford Dictionary is 'moral uprightness; honesty'. It takes in its sweep, probity, innocence, trustfulness, openness, sincerity, blamelessness, immaculacy,



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rectitude, uprightness, virtuousness, righteousness, goodness, cleanness, decency, honour, reputation, nobility, irreproachability, purity, respectability, genuineness, moral excellence etc. In short, it depicts sterling character with firm adherence to a code of moral values."

26. Applying the above decision(s) of the Supreme Court to the facts of the case on hand, we do not see that the punishment imposed on the petitioner, namely dismissal from service, is not also disproportionate to the charge(s) so framed and it also does not shock the conscience of this Court warranting our interference.

27. The next question that falls for consideration is that this Court, in exercise of power under Article 226 of the Constitution of India, can interfere with the impugned order by re-appreciating the entire evidence, which has also been answered by the Supreme Court in the above decisions and discussion rendered supra.

28. Further, the Supreme Court in the decision reported in AIR 1997 SC 2286 (cited supra), held that this Court, under Article 226 of the Constitution of India, has no power to trench on the jurisdiction of the disciplinary authority and to appreciate the evidence. All that is permissible is to ensure that the conclusion arrived at is based on evidence supporting the finding or whether the conclusion is based on no evidence.

29. In the present case on hand, the oral and documentary evidence had been analysed by the Enquiry Officer while rendering his findings in the enquiry report and concluded that the two charges levelled against the petitioner had been proved and the report of the Enquiry Officer was given to the petitioner-delinquent. Thus, the Enquiry Officer recorded a clear-cut finding that the writ petitioner had in fact admitted his lapse in his own explanation, dated 05.09.2006, submitted to the charge memo issued to him. The copy of the enquiry report was also served on the writ petitioner. He also submitted his further representation to the enquiry report on 27.04.2018 in Tamil and translated English version on 05.07.2018. While so, he attained the age of superannuation of 58 years in May 2018, but the Administrative Committee of the High Court, on 27.04.2018, by its Resolution, did not permit him to retire by continuing the suspension pending conclusion of the on-going disciplinary proceedings, relating to which, an Official Memorandum dated



17.05.2018 was issued by the High Court. Thereafter, the entire records pertaining to the disciplinary proceedings were routed through proper channel, which culminated in passing the Resolution by the Full Court on 04.12.2018 awarding dismissal of service of the petitioner, pursuant to which, the impugned G.O. dated 08.03.2019 was passed. As discussed supra, we find that there is no infirmity in the decision making process against the petitioner. Resultantly, the question of interfering with the impugned G.O. does not arise.

30. For all the reasons stated above, the Writ Petition is dismissed. No costs.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

CS

To

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

+1 cc to M/s.V.Raghavachari Advocate sr279
+1 cc to the Government Pleader High Court Madras
sr 994

Order in
W.P.No.16191 of 2019

aa22/01/2020