

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :06.11.2020

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.11438 of 2014

K.Madhavan

.. Petitioner

vs.

1.The Secretary to Government,
Home Department,
Fort St. George, Chennai-09.

2.The Director General of Police,
Mylapore, Chennai 04.

3.The Inspector General of Police,
Armed Police,
Kilpauk, Chennai 10.

4.The Deputy Inspector General of Police,
Armed Police,
Trichy-12.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records in pursuant tot he impugned order issued by the 4th respondent in C.No.A2/7122/05, PR No.10/2005 u/r 3(b) dated 4.1.2006 and the 1st impugned Appellate order passed by the 3rd respondent in Rc.No.C2/26787/2009 dated 4.2.2010, 2nd impugned Appellate Order passed by the 2nd respondent in R.C.No.026314/AP.3(1)/2010 dated 16.07.2010 and the 3rd impugned Appellate order passed by the 1st respondent in G.O.(2D) NO.386 Home (Pol.IX) Department dated 1.8.2013 and quash these orders and consequently direct the respondents to reinstate the petitioner is service with full backwages and other consequential service benefits.

For Petitioner : Mr.R.Prem Narayan

For Respondents : Mr.A.N.Thambidurai, Spl.G.P.

O R D E R

This writ petition has been filed against the impugned order of punishment of dismissal from service imposed on the petitioner by the 4th respondent and to set aside the same with

consequential direction to the respondents to reinstate the petitioner in service with full backwages and other consequential service benefits.

2. It is the case of the petitioner that he was appointed as Grade II Police Constable and after training was posted to the Tamil Nadu Special Police XI Battalion, Rajapalayam and he reported for duty, on 13.05.1998 and thereafter he was promoted as Havildar with effect from 18.3.2003. While in service, he was placed under suspension from 18.05.2005 on the orders of the Deputy Inspector General of Police, Armed Police, Chennai, dated 4.5.2005. The petitioner was issued with a charge memo under Rule 3(b) of the Tamil Nadu Police Subordinate Services (D&A) Rules, 1955 and charges were framed based on the preliminary enquiry report of the Deputy Commandant, Tamil Nadu Special Police XI Battalion, Rajapalayam, alleging reprehensible conduct on the part of the petitioner, being a member of disciplined service with malicious intention and an act, which is unbecoming of a person employed in a disciplined force. The petitioner denied the allegations made against him pursuant to which enquiry was conducted and the enquiry officer held the charges proved. After providing a copy of the report and obtaining the further explanation, the petitioner was imposed with the punishment of dismissal from service by the 4th respondent vide proceedings dated 4.1.2006. Aggrieved against the same the petitioner preferred appeal before the 3rd respondent herein, which was rejected by the 3rd respondent vide his proceedings dated 23.03.2006. Following the rejection, the petitioner has filed a writ petition before the Madurai Bench of this Court in WP.NO.3316 of 2006, challenging the above punishment and the Madurai Bench of this Court in its order dated 19.11.2009 quashed the order of punishment and directed the respondent to consider all the grounds raised by the petitioner in the appeal petition and thereafter directed to pass a detailed speaking order within 2 months. Pursuant to the said direction, the 3rd respondent passed an order rejecting the appeal vide his proceedings dated 4.2.2010 against which the petitioner filed mercy petition before the 2nd respondent and the 2nd respondent, modified the punishment to one of compulsory retirement vide his proceedings dated 16.07.2010 against which the petitioner preferred petition to the 1st respondent on 23.08.2010, which was rejected vide G.O.(2D) No.386, Home Department, dated 1.08.2013. Aggrieved by the said order, the present writ petition has been filed by the petitioner.

2. Learned counsel appearing for the petitioner, while reiterating the contentions raised in the grounds filed in support of the affidavit, submitted that the petitioner was appointed only on 13.05.1998 and dismissed from service on 4.1.2006 and, therefore the modification of punishment to one of

compulsory retirement is meaningless as he will not be entitled for any retrial benefits despite the reduction of punishment. He further submitted that in the preliminary enquiry report it has been clearly stated that no such incident as alleged has taken place and there is no evidence that the petitioner misbehaved with the daughter of complainant, in addition to that the complaint was given after an inordinate delay of 3 months, which was not explained and creates a doubt on the genuineness of the complaint. It is the further submission of the learned counsel for the petitioner that the 2nd charge is also equally groundless and unsustainable and, the charges alleged against the petitioner based on which punishment has been imposed is arbitrary and unreasonable and that the materials has not been considered in proper perspective by the respondents and, therefore, the said punishment deserves to be interfered.

3. Per contra, learned Government Advocate appearing for the respondents filed a detailed counter, denying the averments and submitted that charge under Rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline & Appeal) Rules, 1955 was framed against the petitioner only on the basis of the statement given by the affected victim girl aged about 14 years. It is further submitted by the learned Government Advocate that the enquiry proceedings were comprehensive as the enquiry officer inquired 13 prosecution witnesses and filed 27 exhibits on behalf of prosecution. It is the further submission of the learned Government Advocate that the evidence which is required in a departmental proceeding is not as is required in a criminal trial and the departmental proceedings proceeds only on the basis of preponderance of probabilities and the petitioner having not rebutted the evidence by any material, the disciplinary authority has inflicted the punishment, which has been even modified by the reviewing authority, which itself shows application of mind on the part of the respondents. It is the further submission of the learned Government Advocate that merely on the ground that the petitioner has not put in the requisite service to earn the necessary retiral benefits would not be a ground to interfere with the punishment awarded. Further, it is also stressed that the scope of judicial review in matters pertaining to departmental proceedings is very limited and, therefore, this Court may not interfere with the order impugned in exercise of its powers under Article 226 of the Constitution.

4. This Court heard the learned counsel appearing on either side and also perused the materials available on record.

5. Before proceeding to analyze the facts of the present case to find out whether the punishment awarded to the

petitioner is just and reasonable, it is just and necessary to adumbrate the ratio laid down with regard to matters in which punishment has been imposed, which is impugned under Article 226 of the Constitution.

6. 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 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 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)

7. 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."

8. 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)

9. 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.

10.A perusal of the records reveal that oral and documentary evidence have been placed before the enquiry officer to prove the delinquency committed. However, on the side of the defence, neither any oral evidence nor any documentary evidence has been adduced. It is to be pointed out that the standard of proof required in a departmental proceedings is not in the same league as the standard of proof required to establish a charge in a criminal case. 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 Departmental Proceedings standard governed by a preponderance of probabilities. While the standard of proof in a criminal trial would be on the basis of the provisions of the Evidence Act and other statutes, however, in the departmental proceedings, it is only on the touchstone of preponderance of probabilities, the evidence is evaluated and, therefore, it is impermissible to equate the way in which the evidence ought to be evaluated.

11.The Hon'ble Supreme Court, in Rajendra Kumar Dubey's case (supra), following the ratio laid down in Gunasekaran's case has held that the High Court, sitting under Article 226 of the Constitution, while determining its scope of interference in a departmental proceedings is only bound 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.

12. In the case on hand, the application of mind by the concerned authorities stands reflected in the modification order passed by the reviewing authority. Had the authority not appreciated the materials placed before him, he would have mechanically approved the dismissal order passed by the disciplinary and appellate authorities. But, applying his mind to the materials, the reviewing authority has modified the order into one of compulsory retirement. Though it is contended on behalf of the petitioner that the modification in the punishment would be meaningless as it does confer any benefit on the petitioner for the purpose of service and retiral benefits.

13. It is to be pointed out that the modification of punishment is not to confer benefits on the petitioner, but only is a scale on which the delinquency of the petitioner is adjudged and he is inflicted with a lesser punishment. The delinquency of the petitioner is so very grave, that modification in punishment given to the petitioner itself is a leniency shown to him. The petitioner, after committing such a malicious act, cannot come and claim that the punishment should still be reduced and mercy be granted to him so as to enable him to earn service and retiral benefits.

14. Be that as it may. 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 to 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)

15. In the case on hand, a perusal of the materials available on record reveal that the allegation leveled against the petitioner is a grave one, which shows upon his character and conduct, more so the petitioner being a member of the disciplined force. The delinquency of the petitioner is not one which is expected of the position being held by the petitioner. Further, the enquiry report having found the petitioner guilty of the offence, and the disciplinary authority, on proper appreciation of the materials, having imposed the punishment of dismissal from service, later was modified on review and the said punishment in no way could be termed to be disproportionate or shocking the conscience of the Court warranting interference. The petitioner has not proved that the punishment imposed on him is arbitrary or bad or the punishment is disproportionate to the gravity of the charges and is in contravention of the rules. In such circumstances, this Court is of the considered view that the punishment imposed on the petitioner is just and reasonable and the same does not warrant any interference at the hands of this Court.

16. For the reasons aforesaid, this writ petition is devoid of merits and deserves to be dismissed. Accordingly, this writ petition is dismissed. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

jrs

To

1.The Secretary to Government,
Home Department,
Fort St. George,
Chennai-09.

2.The Director General of Police,
Mylapore, Chennai 04.

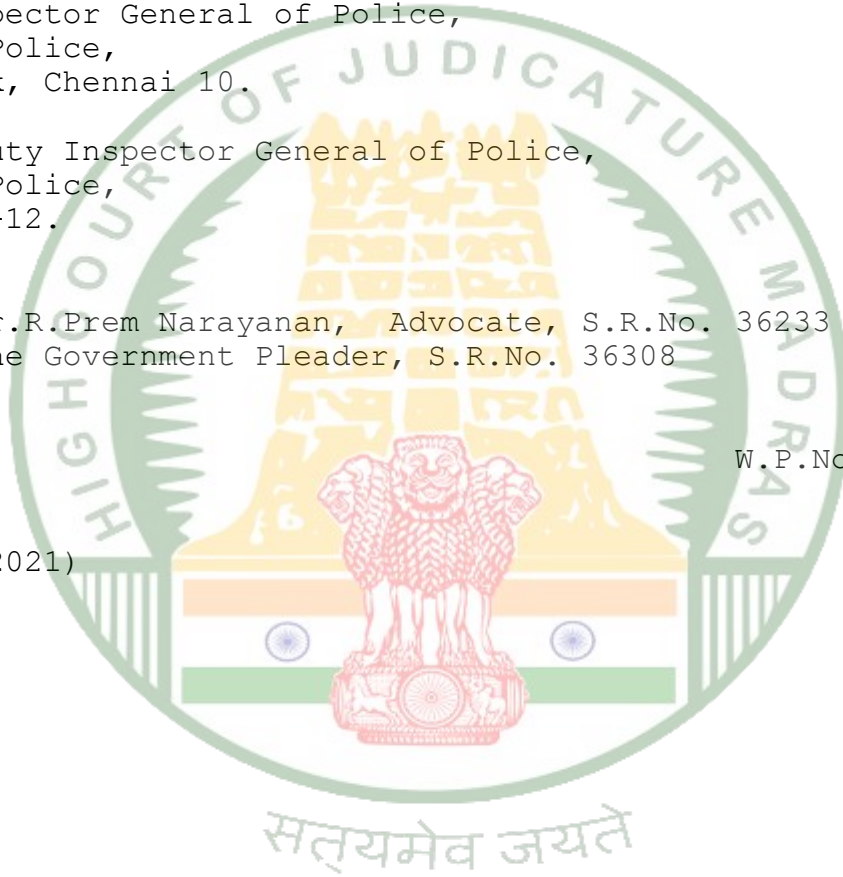
3.The Inspector General of Police,
Armed Police,
Kilpauk, Chennai 10.

4.The Deputy Inspector General of Police,
Armed Police,
Trichy-12.

+1cc to Mr.R.Prem Narayanan, Advocate, S.R.No. 36233
+1cc to the Government Pleader, S.R.No. 36308

W.P.No.11438/2014

SR(CO)
GN(05/02/2021)



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