

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2020

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.11722 of 2014

P.Alagarsamy

... Petitioner

Vs.

1.The Inspector General
CISF Hqrs, South Sector,
CISF Campus,
Opp. War Memorial,
Chennai – 600 009.

2.The Deputy Inspector General
CISF Hqrs, South Zone,
Block – D, 1st Floor,
Rajaji Bhawan, Besant Nagar,
Chennai – 600 090.

3.The Commandant
CISF Unit / ChPT
Diamond Jubilee Building,
Opp Port Trust Hospital,
Chennai – 600 001.

सत्यमेव जयते... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records from the first respondent herein relating to his order passed in proceedings No.V – 15014 / L & R / SS / Rev / PAS / 2011 – 105 dated 28.03.2012 confirming the orders of the 2nd and 3rd respondent herein passed in

proceedings No.V-11014/81/Disc/S-Z/2011/1189 dated 03.02.2012 and No.V-15014/Disc/MAJ-PAS/2011/7004 dated 21.11.2011 respectively and quash the same and consequentially direct the respondents herein to give all attendant benefits till the date the petitioner attained the superannuation and the pension and gratuity benefits admissible.

For Petitioner : Mr.K.Sivakumar
For Respondents : Mr.A.Veeramani
CGC

ORDER

The petitioner has filed this writ petition seeking issuance of Writ of Certiorarified Mandamus to call for the records from the first respondent relating to his order dated 28.03.2012 confirming the orders of respondents 2 and 3 dated 03.02.2012 and 21.11.2011 respectively and to quash the same and to consequentially direct the respondents to give all attendant benefits till the date the petitioner attained the superannuation and admissible pension and gratuity benefits.

2.The case of the petitioner is that the petitioner joined as constable in the Central Industrial Security Force (CISF) on 15.02.1972 and promoted as Sub-Inspector. The petitioner was transferred and posted at Chennai Port Trust, Chennai during August, 2/21

2007. When the petitioner was on duty on 20.07.2011 in 'B' shift as Shift – in – charge, surprise check was conducted by vigilance team at gate no.1 and by another vigilance team at gate no.2.

3.It is the further case of the petitioner that during the surprise check, the Head Constable had a sum of Rs.400/- in his money purse and six numbers of Saudi Arabian made Lux soaps were recovered from the hand bag of AS1. Based on the surprise check, the petitioner was placed under suspension. The petitioner submitted his explanation to the third respondent. The third respondent being not satisfied with the petitioner's explanation proposed to hold departmental enquiry and appointed Enquiry Officer. The Enquiry Officer conducted enquiry and submitted report to the third respondent holding all the charges proved. After affording opportunity to the petitioner by providing the copy of the enquiry report and being not satisfied with the further explanation offered by the petitioner, the third respondent awarded the punishment of compulsory retirement from service with immediate effect with 85% pension and gratuity benefits admissible.

4. Aggrieved by the said punishment, the petitioner preferred

appeal before the second respondent, which was rejected against which the petitioner preferred revision before the first respondent and the revisional authority also dismissed the revision. Therefore, the present petition has been filed before this Court.

5. The learned counsel appearing for the petitioner submitted that three persons were charge sheeted for the same occurrence, however, the other two persons were awarded minimum punishment, while major punishment was inflicted on the petitioner alone, which is clearly reveals the unequal treatment meted to the petitioner. Further, it is the contention of the learned counsel for the petitioner that the punishment imposed is grossly excessive and disproportionate to the delinquency and, therefore, the same requires interference at the hands of this Court.

6.The learned counsel appearing for the respondents submitted that the duty of the petitioner is to supervise his subordinates, whereas, during the surprise check, the Head Constable had a sum of Rs.400/- in his money purse and six numbers of Saudi Arabian made Lux soaps were recovered from the hand bag of AS1. He would further submit that earlier to this occurrence, the petitioner had

suffered 15 punishments and this shows his callousness attitude in the discharge of his duties inspite of very many incidents to his name. Therefore, the punishment imposed on the petitioner cannot be said to be excessive or disproportionate to the delinquency and no interference is called for.

7. Heard the submissions advanced by the learned counsel on either side and perused the materials available on record.

8. The two-fold contention of the petitioner in the present case is that the delinquency is not directly attributable to him, as he is only a supervising officer and the person, who committed the delinquent act having left with minor punishment, infliction of major punishment on the petitioner is not warranted.

9. It is to be pointed out that the petitioner has no grievance with regard to the conduct of the disciplinary proceedings and the report tabled by the enquiry officer. The petitioner's grievance is only in respect of the punishment imposed on him, which, according to him is grossly disproportionate and that he cannot be fastened with the said delinquency.

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 records disclose that at the relevant point of time the petitioner is Sub-Inspector in a supervisory capacity. The surprise check by the Vigilance Officials resulted in recovery of certain materials at the hands of the subordinates of the petitioner to which there was no proper explanation from the said individuals. The petitioner, being the supervising officer, also did not have proper explanation for the same. It is to be pointed out that the petitioner belongs to a disciplined force and the highest standards of probity and integrity is expected of persons working in the said force. However, the whole episode resulting in the recovery of certain materials reveal that the persons employed in the disciplined force have let down their standards, which, if left to go scot-free would eat into the entire force, thereby, laying the stone for indiscipline to creep into the force. With the above view in mind, the disciplinary authority has decided to impose punishments on the petitioner as well as the other persons.

15. Further, it is to be pointed out that though the delinquency is directly attributable to the other persons, who had in their possession certain materials to which they could not account for, however, the petitioner, being in the higher pedestal and in the supervisory capacity, he ought to be more strict and vigilant and the act of the petitioner

only reveals that he has failed to perform his duties in the most efficient manner. Further, it is borne out by record, as placed before this Court by the respondents, which has not been disputed by the petitioner, that the petitioner has suffered more than a dozen punishments in his career and allowing the petitioner to continue in service would only breed to more of such acts in the future. In such a backdrop, the decision of the disciplinary authority to impose punishment on the petitioner does not call for any interference.

16. Insofar as the punishment imposed on the petitioner is concerned as to its just and reasonableness, this Court would like to advert to the ratio laid down by the Courts under Article 226 of the Constitution with regard to the punishment imposed.

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

(16) SCC 415), the Hon'ble Supreme Court held as under :-

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

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

(Emphasis Supplied)

18. In the case on hand, a careful perusal of the entire records reveal that pursuant to the submission of the report of the enquiry culminating in the imposition of punishment, the rejection of the appeal by the appellate authority and the revisional authority, there has been proper and independent application of mind on the part of the concerned authorities, who dealt with the case of the petitioner. It is further to be pointed out that the offence committed by the petitioner is of such a nature, which is least expected from the incumbents of a disciplined force and they deserve no mercy. In the case on hand, the gravity of the offence committed by the petitioner is more than the gravity of offence committed by the other persons, as the petitioner was vested with the supervisory control over his subordinates, which he has not discharged in the manner expected of him and the petitioner having been inflicted with punishments more than a dozen times, shows his chronic nature in committing delinquencies, which has been properly appreciated by the disciplinary authority and has imposed the punishment above, which has been affirmed by the appellate and the revisional authorities. As already stated, this Court, sitting in judicial review, is not required to go

through the entire materials as if the matter is in appeal before this Court, but only to arrive at a subjective finding as to whether the enquiry has been conducted in a fair and proper manner and whereupon, the disciplinary authority has independently applied his mind while imposing the punishment. 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 is of the view that the same does not warrant any interference at the hands of this Court. The punishment imposed on the petitioner is also just and reasonable considering the nature of delinquency, 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.

19. The writ petition is accordingly dismissed. No costs.

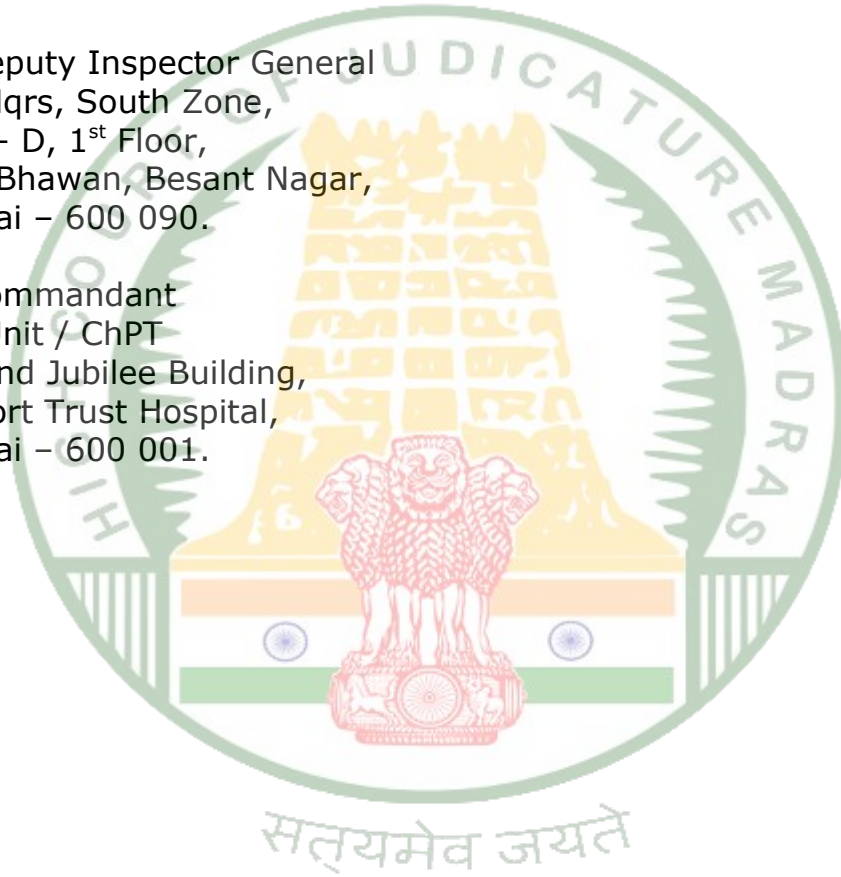
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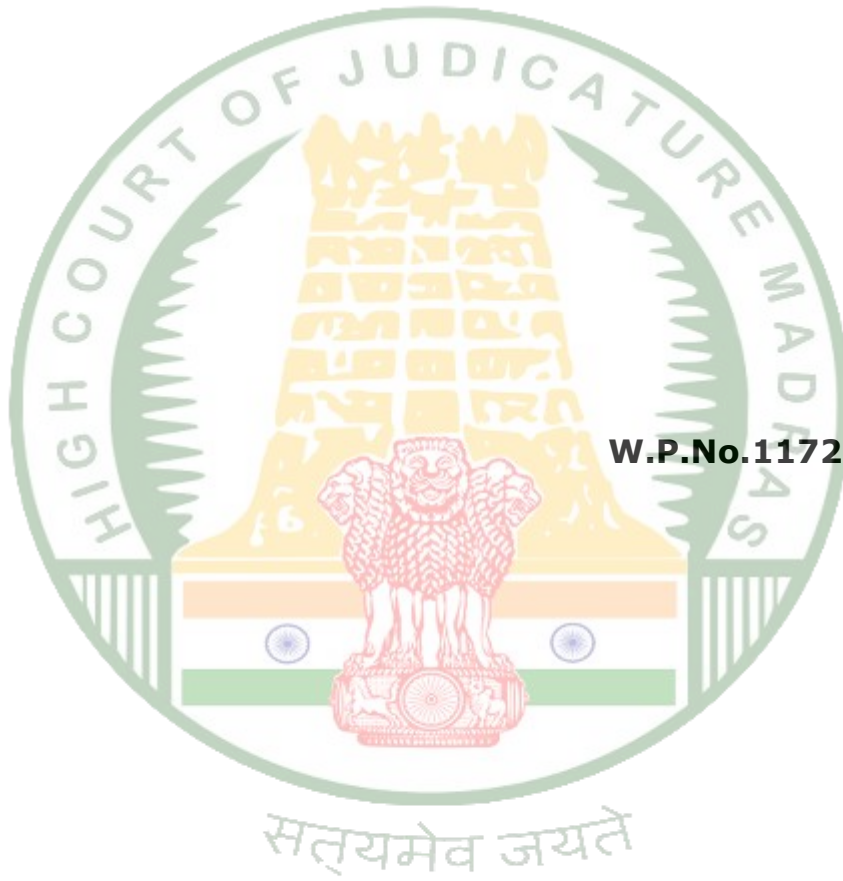
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