

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 07.12.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.24613 of 2014
and
M.P.No 1 of 2014

V.C.Kandasamy

... Petitioner

- Vs -

- 1.Government of Tamil Nadu
Rep. By Secretary to Government,
Home (Police) Department,
Chennai 600 009.
- 2.The Director General of Police,
Tamil nadu,
Chennai 600 004.
- 3.The Deputy Inspector -General of Police,
Railways,
Chennai 600 008.
- 4.The Superintendent of Police,
Railways,
Chennai 600 008.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of Certiorarified Mandamus, calling for the records relating to the orders in (1) PR.No.G1/22/97 3(B) dated 26.02.1998 of the 4th respondent, (2) Pro.Rc.No.A2/2775/09 dated 21.07.2009 of the 3rd respondent, (3) D.O.No.348/2009 (C.No.G1/PR.22/1997) dated 25.07.2009 of the 4th respondent and (4) Pro.Na.Ka.No.223730/M.E.Mu.4(2)/2012 dated 18.05.2014 of the 2nd respondent, to quash the same and issue consequential directions to the respondents to reinstate the Petitioner in service with all consequential service and monetary benefits.

For Petitioner : Ms.Priya Ravi

For Respondents: Mr.S.Thangavel, Spl.G.P.

ORDER

The writ petition has been filed by the petitioner to call for the records relating to the orders in (1) PR.No.G1/22/97 3 (B) dated 26.02.1998 of the 4th respondent, (2) Pro.Rc.No.A2/2775/09 dated 21.07.2009 of the 3rd respondent, (3) D.O.No.348/2009 (C.No.G1/PR.22/1997) dated 25.07.2009 of the 4th respondent and (4) Pro.Na.Ka.No.223730/M.E.Mu.4(2)/2012 dated 18.05.2014 of the 2nd respondent, to quash the same and issue consequential directions to the respondents to reinstate the Petitioner in service with all consequential service and monetary benefits.

2.It is the case of the petitioner that while he was serving as Police constable (No.809) at Government Railway Police Stain, Salem, he was served with a charge memo under Rule 3 (b) of the Tamil Nadu Police Subordinate Service (Disciplinary and Appeal) Rules, by the fourth respondent herein, in respect of his absence from duty from 07.03.1997 onwards for more than 21 days. The petitioner was called upon to submit his explanation and, accordingly he submitted his explanation stating that he was arrested by the District Crime Special Party at Salem, on suspicion on 07.03.1997 and confined to illegal custody till 29.03.1997 without producing him in any court for remand, that inspite of his requests to the Special party to allow him to inform to his higher authorities about his detention, however, he was not allowed to do so and that was the reason for his absence from duty from 07.03.1997 onwards. Not satisfied with the reasons, the 4th respondent by his proceedings dated 28.04.1997 declared the petitioner as a deserter under Police Standing Order No.88(1) with effect from 07.03.1997 and it was served on him on 12.05.1997. Thereafter the petitioner made request to the 4th respondent for his reinstatement, in response he was informed that the question of reinstating him would be considered after the disposal of the said proceedings. The fourth respondent nominated the Deputy Superintendent of Railway Police, Coimbatore, as the Enquiry officer, who commenced enquiry on 03.10.1997, and subsequent to the submission of his defence statement, the enquiry was proceeded with and finally, the enquiry officer submitted his enquiry report dated 04.12.1997 to the 4th respondent and a copy of the same was furnished to the petitioner on which further explanation was called for. However, even before the petitioner could submit his further explanation, the 4th respondent passed the final order dated 12.02.1998, imposing the penalty of dismissal from service by treating the period of alleged absence from 07.03.1997 to the date of said order as desertion. Against the said order of dismissal from service, the petitioner preferred appeal to the 3rd respondent and since there was no response to the said appeal, he preferred O.A.No.1570/99

on the file of the Hon'ble Tamil Nadu Administrative Tribunal, Chennai. On abolition of the Tribunal, the case was transferred to the file of this Court and was renumbered as W.P.NO.38562/2006 and this Court, vide order dated 15.04.2009, directed the Appellate Authority to dispose of his appeal dated 13.04.1998 on merits and in accordance with law on or before 31.07.2009. Pursuant to the same, the 3rd respondent has passed a non-speaking order vide proceedings dated 21.07.2009 and rejected the appeal filed by the petitioner. Aggrieved by the said order, the petitioner preferred review before the 2nd respondent and in the absence of any response and having come to know that his review petition has been misplaced, the petitioner submitted a fresh review petition dated 11.12.2012 to the 2nd respondent and even thereafter, there was no response. Hence he submitted a mercy petition to the 1st respondent/Government. Further, the petitioner filed WP.No.1419 of 2014 before this Court seeking directions to respondents 1 and 2 to reinstate him into service by considering his representation dated 10.04.2013 and review petition dated 11.12.2012 and this Court by its order dated 21.01.2014 issued directions to the respondents 1 and 2, to dispose of the review petitions dated 11.12.2012 on merits and in accordance with law within a period of three months. Pursuant to the said order, the 2nd respondent vide order dated 18.05.2014, rejected the review of the petitioner by way of a non-speaking order. Another mercy petition was preferred by the petitioner on 14.07.2014. Since no order was passed on the said application, the present petition has been filed.

3. Learned counsel appearing for the petitioner submitted that though the dismissal order is passed on the ground that the petitioner did not attend the duty and has deserted the job, however, the explanation submitted by the petitioner that he was kept under illegal detention, has not been considered in proper perspective by the respondents. It is the further submission of the learned counsel that the explanation of the petitioner stands fortified by the case registered against him by the Special Crime Branch Party, Hasthampatty Police station u/s 457 IPC and other offences and that his production before the Judicial Magistrate No.3, Salem and his subsequent remand and his coming out on bail thereafter are all matters of record. It is the further submission of the learned counsel for the petitioner that he has not committed any offence, but only detained illegally and that he has not absented himself from duty on his own volition to be declared as deserter. The above aspects have not been taken into consideration in proper perspective by the authorities and the appellate and reviewing authorities, through non-speaking order, have affirmed the order of dismissal passed by the disciplinary authority, which requires to be interfered with.

4. In support of his contentions, the learned counsel for the petitioner, relied upon the categorical decisions of this Court and the relevant paragraphs are extracted here under:

(i) In WP. No.1992 of 2007, dated 13.07.2018 [K.Ramesh Vs. The Secretary to Government and others] in paragraph No.5, this Court following the decision of the Hon'ble Supreme Court in (2006)4 SCC 713 [Narinder Mohan Arya V. United India Insurance company Limited & Others] held as under :-

"5.....

* * * * *

12. It is also the fact that on the 59th day the respondent appeared before the Superintendent of Police with medical certificate and he was permitted to join duty. We are not expressing any opinion about the said factual aspect in this appeal and we leave it open to the appellate authority to consider the same while passing fresh orders in the appeal.

13. In the result, we set aside the order of the appellate authority dated 12.08.2006 and remit the matter to the first appellant herein to pass fresh orders following Rule 6(1) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955, within a period of four weeks from the date of receipt of copy of this order. The order of the learned single Judge is set aside."

(ii) In WP.No.93/2008, dated 02.07.2012 [G.Anandan Vs. The State of Tamilnadu and others] this Court, held as under :-

"18. The above recommendations are given by this Court only to see that the problems of the police are highlighted, as the police is being criticized from many quarters for their actions as well as inaction. The problems are required to be identified and solved so that morale and efficiency of the police is enhanced and it would be in the interest of the society.

19. For the reasons stated above, the writ petitions except W.P.No.27942 of 2004 are ordered with the above recommendations. No costs. Consequently the connected miscellaneous petitions M.P.No.2 of 2007 in W.P.No.2471 of 2007, M.P.No.2 of 2008 in W.P.No.21740 of 2008, and WVMP.No.534 of 2005 in W.P.M.P.No.33963 of 2004 in W.P.No.27942 of 2004 are closed. "

(iii) In WP.(MD)No.5976/2009, dated 25.06.2012 [R.Premkumar Vs.The Deputy Inspector General of Police and one another] the Madurai Bench of this Court held as follows:

"Therefore, in the light of the aforesaid judgement of the First Bench of this Court, the impugned orders are quashed and the matter is remitted back to the second respondent to consider the matter with regard to the quantum of punishment imposed on the petitioner in the light of the aforesaid judgement within a period of 8 weeks from the date of receipt of a copy of this order. It is made clear that if the punishment is modified from dismissal to some other punishment, the petitioner is not entitled to wages for the period of non employment and however, he could be granted continuity in service so as to get notional fixation of pay and other benefits."

(iv) In W.A.No.58/2011, dated 27.01.2011, the Hon'ble Division Bench of this Court has held as follows:-

"After hearing the learned senior counsel for the appellant and the learned Government Pleader, we are prima facie of the view that the punishment imposed on the appellant is disproportionate to the charge levelled against him and it is in fact, shocking the conscience of this Court. We, therefore, allow this writ appeal, set aside the impugned judgment passed by the learned single Judge and remit back the matter to the disciplinary authority, viz. the second respondent herein, to reconsider the matter with regard to the quantum of punishment imposed on the appellant and to take a decision within six weeks from today. It is made clear that in the event the quantum of punishment imposed on the appellant is reduced, he shall not make any claim with regard to the wages for the period he has not performed his duty, but the continuity in service will not be affected. There shall be no order as to costs. Consequently, M.P.No.1 of 2010 is closed."

5. Learned Special Government Pleader appearing for the respondents, while reiterating the contentions raised in the counter further submitted that this Court shall not normally

interfere with the punishment imposed by the disciplinary authority unless it is shown to be perverse and passed in violation of principles of natural justice. It is further submitted that on proper appreciation of the materials placed, the appellate and the reviewing authorities have affirmed the imposition of punishment on the petitioner and unless it is shown that the punishment imposed is shockingly disproportionate and shocks the conscience of this Court, the Court shall not interfere with the said punishment. The authorities have applied their mind to the materials placed before them and have arrived at the punishment imposed and this Court, sitting under Article 226 of the Constitution shall not interfere with the same by invoking its inherent powers. It is the further submission of the learned Special Government Pleader that the petitioner was arrested by the District Crime Special party, Salem on 29.03.1997 and he was produced before the Judicial Magistrate III, Salem on 29.03.1997 and remanded for his involvement in the following criminal cases:

- 1.Omalur Police Station Cr.No.306/1996
- 2.Elachipalayam P.S. Cr.No.438/1996
- 3.Hasthampatti P.S Cr.No.1007/1996
- 4.Mallasamudram P.S Cr.No.129/1997
- 5.Sooramangalam P.S Cr.No.413/1997
- 6.Namakkal P.S Cr.No.533/1997 and
- 7.Namakkal P.S Cr.No.559/1997

6. This Court paid its undivided attention to the submissions advanced by the learned counsel on either side and also perused the materials available on record and also the decisions relied on by the learned counsel for the petitioner.

7. 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 reappraise the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In *Union of India v. H.C. Goel* [(1964) 4 SCR 718 : AIR 1964 SC 364 : (1964) 1 LLJ 38] this Court held at p. 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued."

(Emphasis Supplied)

8. 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."

9. 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, advertng 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)

10. 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.

11. In the case on hand, it is not the case of the petitioner that he has not been provided with adequate opportunity to represent his case and that there was violation of principles of natural justice in the conduct of enquiry. However, it is the case of the petitioner that the authorities have not taken into consideration his explanation in proper perspective relating to his remand and have branded him as a

deserter, which shows non-application of mind on the part of the authorities, which makes the impugned order liable for interference.

12. 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 civil 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.

13. 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.

14. Further, it is to be stressed that the Court 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 disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappraise the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence

cannot be permitted to be canvassed before the Court. It has been the consistent view of the Courts that the nature of evidence required in a disciplinary proceedings is not in the same level as required in a criminal trial, as in the disciplinary proceedings, the finding is arrived at on the basis of preponderance of probabilities. In such a scenario, it is not the function of the High Court under its writ jurisdiction to review the evidence, and arrive at an independent finding on the evidence. If the enquiry is properly held within the four boundaries of legal necessities, then the departmental authority is the sole judge of facts, and if there is some legal evidence on which the findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a writ petition. An error of law which is apparent on the face of the record can be corrected by a writ court, but not an error of fact, however grave it may be. High Court in exercise of its power under Articles 226 and 227 of the Constitution of India shall not venture into re-appreciation of the evidence and further the Supreme Court has also codified the circumstances under which re-appreciation of evidence is permissible.

15. Though a contention has been raised by the petitioner that the orders passed by the appellate and reviewing authorities are non-speaking orders, however, a careful perusal of the said orders reveal that the orders have been passed by the authorities after carefully applying their mind not only to the materials available on record, but also on the delinquency committed by the petitioner.

16. The petitioner being a member of a disciplined force is bound to maintain high standards of integrity and probity. In the present case, not one, but the petitioner has been remanded in a handful of cases by the learned Judicial Magistrate, which has weighed more in the mind of the authorities below, while considering the case of the petitioner. Further, it is borne out by record that the petitioner was under lawful custody and no effort has been taken by the petitioner to keep his superiors informed. The petitioner has not taken any steps to inform his superiors before he came out on bail and only on being served with a notice relating to his desertion from duty, the petitioner has submitted his explanation giving the above details. The act of the petitioner speaks volumes against his conduct and this Court is refraining itself from amplifying it any further.

17. In the case on hand, the enquiry officer, having analyzed the evidence placed before him, has given a finding as to the guilt of the petitioner, which has been accepted by the disciplinary authority on independent application of mind and

confirmed by the appellate and revisional authorities on the basis of the materials available before them. Once the said authorities have concurred with the view on the basis of the materials, this Court, sitting under Article 226 of the Constitution of India, shall desist from interfering with such a decision, unless it is shown to be so very perverse and is not on the basis of materials available on record. In the case on hand, as aforesaid, independent application of mind in exhibited in all the orders passed by the concerned authorities and all the orders are speaking orders, which dovetail all the details based on which the said conclusion have been arrived at. Therefore, the technical pleas raised by the petitioner cannot be gone into by this Court under Article 226 of the Constitution.

18. Proceeding to analyse the facts of the present case to find out whether the punishment awarded to the petitioner is just and reasonable, the ratio laid down with regard to matters in which punishment has been imposed, which is impugned under Article 226 of the Constitution requires to be considered.

19. 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)

20. In the case on hand, as discussed above, the petitioner has not only been implicated in very many crimes against him and remanded to judicial custody, but has refrained from bringing the said matter to the knowledge of his superiors at the earliest point of time. The said conduct of the petitioner is not in consonance with the post held by him, being a member of a disciplined service and, therefore, the disciplinary authority, on the materials placed before him, including the enquiry report, has imposed punishment which has been confirmed by the appellate and the revisional authorities. On a holistic consideration of the entire issue, this Court is of the considered view that pursuant to proper enquiry and based on the enquiry report and the materials, the disciplinary authority has imposed the punishment on the petitioner, which has been confirmed by the appellate and the revisional authorities, which punishment, could in no way be said 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 proved 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.

21. 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

To

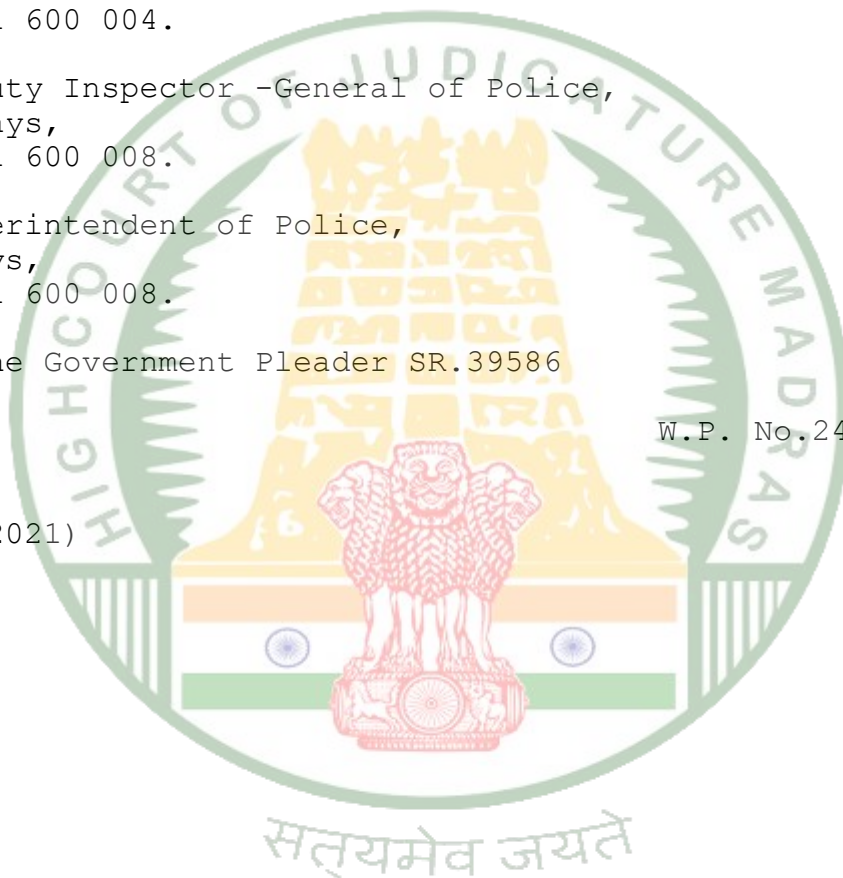
To

1. The Secretary to Government,
Home (Police) Department,
Government of Tamil Nadu
Chennai 600 009.
2. The Director General of Police,
Tamil nadu,
Chennai 600 004.
3. The Deputy Inspector -General of Police,
Railways,
Chennai 600 008.
4. The Superintendent of Police,
Railways,
Chennai 600 008.

+1cc to the Government Pleader SR.39586

W.P. No.24613 of 2014

LN (CO)
CB (10/03/2021)



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