



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
05.01.2021	08.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. (MD) Nos.12706 and 8873 of 2010

and

M.P. (MD) No.2 of 2010

W.P. (MD)No.12706 of 2010:

S.Andrew Chandra Kumar

... Petitioner

Vs.

1.The Joint Director(Higher Secondary),
Directorate of School Education,
College Road, Chennai-600 006.

2.The Chief Educational Officer,
Thoothukudi, Thoothukudi District.

3.The Secretary,
Karapettai Nadar Higher Secondary School,
Thoothukudi-1, Thoothukudi District. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari to call for records pertaining to the impugned order in Na.Ka.114879/W5/E2/2009, dated 21.09.2010, on the file of the respondent No.1 and the order of dismissal, dated 04.10.2010 on the file of the respondent No.3 and quash the same as illegal.

W.P. (MD)No.8873 of 2010:

S.Andrew Chandra Kumar

... Petitioner

Vs.

1.The Joint Director(Higher Secondary),
Directorate of School Education,
College Road, Chennai-600 006.

2.The Chief Educational Officer,
Thoothukudi, Thoothukudi District.

3.The Secretary,
Karapettai Nadar Higher Secondary School,
Thoothukudi-1, Thoothukudi District. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari to call for records pertaining



to the impugned order in Moo.Mu.No.36781/W5/E2/09, dated 19.10.2009, on the file of the respondent No.1 and quash the same as illegal.

For Petitioner : Mr.T.Lajapathi Roy

For Respondents : Mr.C.M.Marichelliah Prabhu, AGP
for RR-1 & 2

Mr.Mohammed Ayub
for M/s Veera Associates for R-3

* * * * *

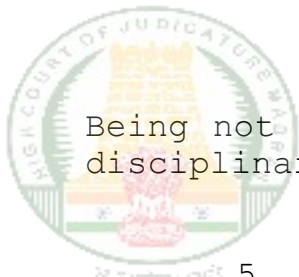
COMMON ORDER

Both the Writ Petitions have been filed by the very same petitioner and the issue involved in both the petitions being interconnected, they are disposed of by this common order.

2. The case of the petitioner is that he was appointed as Physical Education Teacher in the third respondent School in the year 1988. While so, on 12.04.2008, which was a full working Saturday, when he was on duty, supervising the physical education test in the forenoon session, the petitioner had to leave the School abruptly as he needed to attend an emergency situation due to serious illness of his wife. However, as the Head Master of the School was not available, he placed a leave application for half a day casual leave on the table of the Head Master and informed the same to the clerk by name Mr.G.Prabakar and the co-employee, viz., Mr.A.Tamil Mani and left the School.

3. The next day i.e., on 15.04.2008, the petitioner came to know that the half day leave availed by him on 12.04.2008 was not entered in the register and he was informed that the Head Master did not receive the leave application. Thereafter, though the petitioner was regular in his service for the rest of the days in the month of April, he was not initially paid the salary for the month of April and only after the intervention of the second respondent, the same was paid along with the salary for the month of May 2008.

4. While so, the Head Master of the School complained to the third respondent on 16.04.2008, as if the petitioner left the school in the afternoon on 12.04.2008 without submitting any leave application and the third respondent issued a show cause notice dated 17.04.2008. After the receipt of the said show cause notice, the petitioner submitted a detailed explanation on 22.04.2008 stating that on account of urgent personal necessities, he took casual leave for half a day and he submitted the leave application. However, not accepting the explanation, the third respondent issued a further show cause notice, dated 08.05.2008, levelling certain charges and called upon the petitioner to submit his explanation, to which the petitioner submitted his explanation, dated 21.05.2008.



Being not satisfied with the explanation offered by the petitioner, disciplinary proceedings was initiated.

5. The third respondent appointed a retired Assistant Director as the Enquiry Officer. After enquiry, the Enquiry Officer filed an enquiry report, dated 06.07.2008, holding the charges levelled against the petitioner proved. The petitioner was provided with the enquiry report and called upon to submit further explanation to which the petitioner submitted his further explanation objecting the enquiry report. However, the third respondent, vide his proceedings, dated 18.08.2008, imposed a punishment of stoppage of increment for one year, without cumulative effect from 01.04.2009 on the petitioner.

6. Challenging the said order of punishment passed by the third respondent, the petitioner preferred an appeal before the first respondent, on 10.09.2008 and after a long time, the first respondent rejected the appeal, vide his proceedings dated 19.10.2009. Challenging the order of rejection passed by the first respondent, the petitioner has filed the writ petition in W.P.(MD) No.8873 of 2010.

7. In the connected writ petition in W.P.(MD)No.12706 of 2010, it is the case of the petitioner that he was in service, he was issued with a charge memo on 25.07.2009, levelling three charges against him and the same are as follows:

(i) *The petitioner deliberately failed to give physical education coaching up to 05.30 p.m., for the Higher Secondary students on certain dates;*

(ii) *The petitioner forcibly entered the Head Master's room at about 1.20 p.m, on 15.07.2009 and forcibly signed in the Register; and*

(iii) *The petitioner compelled the student of XI-B to sign forcibly in the text prepared by him.*

8. After the receipt of the said charge memo, the petitioner submitted a detailed explanation on 29.07.2009 by stating that he served the School regularly without fail daily even upto 06.00p.m., though the same goes against G.O.Ms.No.1307, Education Department, dated 05.10.1984, which fixes the working hours upto 04.15 p.m. Thereafter, the petitioner sent another detailed representation on 10.08.2009, to the third respondent. However, enquiry was initiated by appointing an enquiry officer. The petitioner demanded certain vital documents so as to enable him to face the enquiry. However, the documents asked for by the petitioner were not provided to him and, therefore, he did not attend the enquiry. The Enquiry Officer drew an exparte report holding the charges proved. Thereafter, the third respondent called for further explanation from the petitioner and the petitioner submitted his explanation on 27.10.2009.



9. The third respondent sought for approval from the second respondent, as per Section 22 of the Tamil Nadu Private Schools Regulation Act, 1973 for imposing the punishment of dismissal from service, which was refused by the 2nd respondent and the 2nd respondent remanded the matter back to the third respondent for fresh consideration of the punishment.

10. Aggrieved by the said order passed by the second respondent, the third respondent filed an appeal before the first respondent. The petitioner was called for personal hearing before the first respondent, on 17.08.2010 and accordingly, the petitioner appeared before the 1st respondent on the same date and he was plainly asked to sign in the attendance sheet and no explanations were sought for from the petitioner. However, the order of the second respondent, dated 15.02.2010 was not served on the petitioner. Further, the third respondent issued the impugned order of dismissal, dated 04.10.2010, enclosing the order of the first respondent, dated 21.09.2010, granting approval to the third respondent for imposing punishment of dismissal from service. Challenging the same, the petitioner has filed W.P. (MD) No.12706 of 2010.

11. Mr.T.Lajapathi Roy, learned counsel appearing for the petitioner submitted that the writ petition in W.P.(MD)No.8873 of 2010 rests upon the order that would be passed in W.P.(MD)No.12706 of 2010 and if the petitioner succeeds in the writ petition in W.P. (MD)No.12706 of 2010, the writ petition in W.P.(MD)No.8873 of 2020 would become infructuous.

12. Learned Counsel appearing for the petitioner submitted that though the petitioner was issued with a charge memo levelling three charges against the petitioner and the first charge is that the petitioner deliberately failed to give physical education coaching up to 05.30 p.m., for the Higher Secondary students on certain dates, which is against G.O.Ms.No.1307, Education Department, dated 05.10.1984, which fixes the working hours upto 04.15 p.m. The finding rendered by the Enquiry Officer, without reveals total non-application of mind and, therefore, the finding that the allegation stood proved is bad as the said finding is contrary to the above said Government Order.

13. Learned Counsel appearing for the petitioner further submitted that in respect of charges 2 and 3 that the petitioner forcibly entered the Head Master's room at about 1.20 p.m, on 15.07.2009 and forcibly signed in the Register; and the petitioner compelled the students of XI-B to sign forcibly in the text prepared by him, the petitioner had repeatedly asked for certain documents from the Enquiry Officer, which were not provided to him, but the enquiry officer had gone on to hold that the charge stood proved,



which is to the dictates of the 3rd respondent. It is the further submission of the learned counsel for the petitioner that the order of the 2nd respondent, not acceding to the request of the 3rd respondent for imposing the punishment of dismissal from service stares writ large on the face of the respondents and disproves the report tabled by the enquiry officer. In the light of the above facts, Hence, this Court may set aside the same and remand the matter back to the authorities for fresh consideration.

14. Learned Counsel for the petitioner would further submit that even assuming that the charges levelled against the petitioner are proved, no major punishment can be imposed and if this Court is not inclined to remand the matter to the authorities for fresh consideration, this Court may modify the punishment imposed on the petitioner.

15. In support of his contentions, the learned Counsel for the petitioner relied upon the order passed by this Court in W.P.No.5637 of 2006, dated 19.04.2018.

16. Per contra, the learned counsel appearing for the respondents submitted that though the first charge appears to be not of serious nature, charges 2 and 3 are serious ones. Charges 2 and 3 are not only grave charges, but those charges show the unbecoming conduct of the petitioner, who is a teacher, who is supposed to inculcate discipline to the next generation citizens. The petitioner, as a Physical Education Teacher, should act as a role model to his student, but the act perpetrated by the petitioner is unpardonable and deplorable. Learned counsel for the respondents further drew the attention of this Court to the oral evidence of the Management witnesses, viz., the Head Master A.Sankaralingam; the Co-Staff viz., R.Ganaraj; the Junior Assistant viz., G.Prabhakar, who were examined to prove the delinquency of the petitioner and who have clearly deposed about the conduct of the petitioner. Not only the staff of the school, but the students, who signed the text prepared by the petitioner as also their parents, have been examined. It is the further submission of the learned counsel for the respondents that the documents sought for by the petitioner did not have any relevance to the allegations levelled against the petitioner and further the petitioner also did not take part in the enquiry and the conduct of the petitioner in the enquiry was also bad. It is therefore the submission of the learned counsel for the petitioner that the enquiry having been conducted in a proper manner and findings have been rendered and punishment imposed, this court, sitting in judicial review, shall not interfere with the punishment imposed on the petitioner by reappreciating the evidence, as the Court is not sitting in appeal, but only reviewing the order passed by the authorities. Accordingly, he prays for dismissal of the writ petitions.



17. Heard the learned Counsel appearing for the petitioner and the learned Counsel appearing for the respondents and perused the materials placed before this Court.

18. 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 in disciplinary proceedings, 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)

19. 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."



20. 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)

21. 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.

22. A perusal of the materials reveal that a detailed representation along with a letter dated 10.09.2009 was addressed by the delinquent to the Enquiry Officer seeking some documents and details, which are as follows:

"(i) Under which Government rule, the enquiry officer was appointed?

(ii) Whether the enquiry officer was paid any



honorarium for his work.

(iii) Whether the former enquiry officer, received any honourarium for his enquiry work?

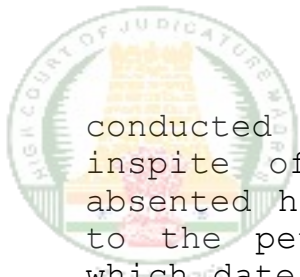
(iv) The District Education Officer, Thoothukudi was to be called upon as witness to give explanation whether he has powers to issue any instruction to the teachers."

23. A careful perusal of the contents of the above letter shows the attitude of the petitioner. There is no strict rule for conducting disciplinary proceedings. The minimum requirement in the conduct of disciplinary proceedings is the following of principles of natural justice. In the present case, the School Committee appointed Thiru.P.Arul Prakasam, a retired Higher Secondary Headmaster to conduct enquiry. The enquiry was conducted on different dates. Without participating in the enquiry proceedings, the petitioner submitted a letter dated 10.08.2009 raising questions, which are not pertinent to the charges framed against him. The act of the petitioner is clearly a misdemeanour on the part of the petitioner and shows his high-handed attitude, which, was one of the issues, which has been spoken to by the witnesses in their deposition before the enquiry officer.

24. A perusal of the records reveal that both oral and documentary evidence has been adduced on behalf of the employer in the enquiry, however, no oral or documentary evidence has been tabled on behalf of the delinquent. However, it is the contention of the petitioner that though he sought for certain copies of documents, they have not been given to him, which has disabled him to effectively defend himself. Though such a stand is taken by the petitioner, however, it is the stand of the respondents that the documents sought for by the petitioners are not relevant to the case and, therefore, the same has not been provided to the petitioner.

25. It is not the case of the petitioner that the documents sought for by him have formed part of the documentary evidence placed by the employer. The nature of the documents/information sought for by the petitioner, which has been extracted above, clearly falls short of those documents being pertinent documents, which would bolster the case of the delinquent. The documents sought for by the petitioner are information, which have no bearing on the charges framed against him. Such being the case, the contention of the petitioner that the documents sought for by him having not been provided to him has disabled him from effectively representing his case, cannot be acceded to by this Court, as the said contention is too large an ask for this Court to accept in the absence of any credible and tangible averment taken by the petitioner before this Court.

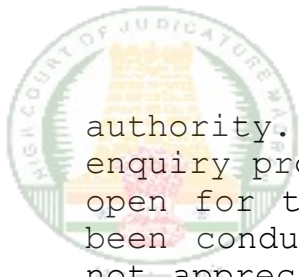
26. Further, it is to be pointed out that the enquiry was



conducted on 12.09.2009 and all the witnesses were present and inspite of prior information to the petitioner, the petitioner absented himself from the enquiry. To provide another opportunity to the petitioner, the enquiry was rescheduled on 19.09.2009 on which date also the petitioner had not participated in the enquiry, which led the enquiry officer to proceed with the enquiry in the absence of the petitioner. The petitioner has not placed any letter before the enquiry officer, either on the first date or on the second date, seeking for adjournment of the enquiry for any different date. Merely he absented himself from the enquiry and in such a circumstance, the enquiry officer has rightly proceeded with the enquiry and no fault can be found on the conduct of the enquiry proceedings.

27. 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.

28. In the case on hand, as could be seen from the materials, though violations of principles of natural justice is claimed by the petitioner stating that he has not been provided with the documents sought for, but as held above, the said documents sought for by the petitioner have no relevance to the charges framed against the petitioner. Once a finding is rendered by the enquiry officer, which has been accepted by the disciplinary and appellate authorities, as stated above, this Court, sitting under Article 226 of the Constitution cannot re-appreciate the evidence in toto, as if it is sitting in appeal. Once this Court finds that the procedure has been followed in the conduct of the disciplinary proceedings, unless it is shown that a fair conclusion is not reached or that the evidence has not been admitted or inadmissible evidence has been admitted which prevailed upon the disciplinary authority to come to the erroneous conclusion, this Court would not be justified in interfering with the decision arrived at by the disciplinary



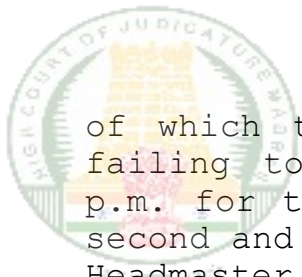
authority. Further, the petitioner having not participated in the enquiry proceeding, inspite of opportunities given to him, it is not open for the petitioner to contend that either the enquiry has not been conducted in a proper manner or that the enquiry officer has not appreciated the materials in proper perspective while rendering his finding. Further, it is also evident that no extraneous considerations have influenced either the enquiry officer or the disciplinary authority. Such being the case, there being no lacunae or discrepancy, as pointed out by the Hon'ble Supreme Court, in the conduct of the departmental proceedings, this Court, in exercise of its powers under Article 226 is not inclined to re-appreciate the evidence as if sitting in appeal over the appellate decision.

29. Though it is contended that the second respondent had initially not approved the order of dismissal passed by the third respondent, which enures to the benefit of the petitioner, as the said order suffers the vice of arbitrariness, which made the 2nd respondent to remand the matter back for fresh consideration to the 3rd respondent, however, on appeal, the same stood reversed by the 1st respondent by approving the order of dismissal. Though it is the stand of the petitioner that certain documents were forcibly obtained by him, however, even here, the petitioner has not placed any oral or documentary evidence before the enquiry officer to substantiate his case. Mere averment would not partake the character of proof and in the absence of any material, the averment of the petitioner pales into insignificance.

30. Coming to the factual matrix of the issue projected before this Court, it is to be pointed out that the standard of proof required in a departmental proceeding 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.

31. The punishment of dismissal from service imposed on the petitioner by the third respondent as approved by the first respondent under Section 18 and 22 of the Private Schools (Regulation) Act, 1973 is put to test before this Court.

32. Three charges have been levelled against the petitioner



of which the first charge relates to the petitioner deliberately failing to give necessary Physical Education Coaching upto 05.30 p.m. for the Higher Secondary Students on various dates, while the second and third charges relate to the petitioner's conduct with the Headmaster in the presence of the teachers and his act of using abusive and filthy language and his forcible signing in the attendance register. A perusal of the materials reveal that to

prove the second charges, the employer has examined three witnesses, who were present at the scene of occurrence, who have spoken in tandem about the act perpetrated by the petitioner. All the three witnesses have spoken in unison about the act of the petitioner/delinquent and the Headmaster has spoken about the subsequent act of issuing of suspension order and serving the same on the petitioner.

33. To prove the third charge relating to taking signature of the students in the text prepared by the delinquent, students and the parents, viz., father, of certain students have been examined, who have also spoken about the delinquency of the petitioner. In this regard as well, the witnesses have spoken in unison on the delinquency of the petitioner.

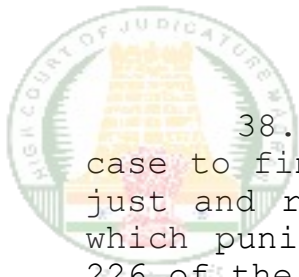
34. Similarly documentary evidence have also been adduced before the enquiry officer, which have been gone into by the enquiry officer to return a finding of guilt on the petitioner. The petitioner having not participated in the enquiry, is estopped from questioning the conduct of the enquiry as sham. The enquiry has been conducted in a fair and proper manner by placing both oral and documentary evidence and the enquiry officer has appreciated all the evidence placed before him before returning a finding of guilt on the petitioner.

35. Only if the principles of natural justice stood violated by not providing the delinquent with opportunity to defend himself, then the said enquiry could be interfered with. However, in the present case, the petitioner has been provided with opportunities, which he failed to utilise by not turning up for the enquiry, which necessitated proceeding with the enquiry by the enquiry officer. Therefore, this Court is of the view that setting the petitioner ex-parte and proceeding with the enquiry is just and reasonable and does not call for any interference as there is no violation of principles of natural justice. Further, the plea raised by the petitioner for remanding the matter back to the authorities for fresh consideration would also not arise, as the petitioner has invited the said finding by getting himself set ex-parte by not attending the proceedings. Therefore, no useful purpose would be served in remanding the matter back to the authorities, as it would only result in multiplicity of litigation at the behest of one party or the other in the next round.



36. It is to be stressed, at the risk of repetition, that the Court in its power of judicial review does not act as appellate authority to re-appreciate 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 re-appreciate 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.

37. In the above backdrop, it is to be pointed out that the petitioner, being a Physical Education Teacher has to be a role model to the students, who are to follow his footsteps and he is the pivot around which the students revolve in learning good habits, gaining good character and conduct. However, the act of the petitioner in assaulting the School Headmaster is not only unbecoming of a teacher, and not an acceptable one, but it undermines the stature of his position in the eyes of the students, before whom he is projected as their role model. Teacher is the backbone of the next generation and unless the teacher inculcates good habits in the minds of the students, who look upon the teacher as their hero, the foundation for the country would greatly stand shaken. The misconduct committed by the petitioner, in the presence of the other members of staff, teacher and students on the Headmaster cannot be brushed aside without inflicting punishment on the petitioner. Therefore, the finding of the enquiry officer as to the guilt of the petitioner and the acceptance of the same by the respondents does not call for any interference.



38. Before 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.

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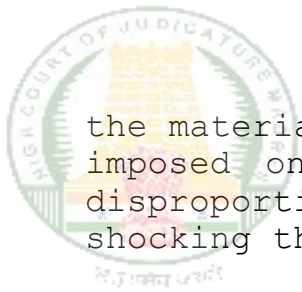
39. It has been the consistent view of the Courts that it is always within the domain of the appointing authority to decide on the punishment to be imposed on the delinquent, which should be proportionate to the act of the delinquent. Only when the punishment is disproportionate and shocking to the conscience, 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)

40. This Court, keeping in mind the ratio laid down by the Hon'ble Apex Court in relation to interfering with the punishment imposed by the disciplinary authority, would now proceed to dissect



the materials available on record to find out whether the punishment imposed on the petitioner is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the court requiring interference.

41. This court has already held that the delinquency of the petitioner has been proved beyond doubt. However, the short issue is whether the said delinquency warrants the punishment of dismissal from service. True it is that the delinquency committed by the petitioner is unbecoming of a teacher and paints the teachers in bad light before the eyes of the pillars of the next generation, viz., the students. However, that alone cannot be the scale to hold that the petitioner ought to be dismissed from service. It is to be pointed out that even it is the case of the petitioner that on the previous day, he had left the school availing half a day's leave to attend to his ailing wife, who had fallen seriously sick all of a sudden. It cannot be ruled out that the nature of illness suffered by his wife would have been running in the mind of the petitioner and at some point of time in the course of his duties, the volatile mind had erupted that had led to the unforeseen incident that had taken place on the particular day. Further, it is to be pointed out that it is not the case of the respondents that the petitioner is a chronic offender and such acts had taken place previously as well for which the petitioner was visited with punishments. The only other incident related to the incident covered in the other writ petition in which the petitioner was visited with punishment. Therefore, it cannot be gainsaid that the petitioner is a chronic offender. Such being the case, imposing the punishment of dismissal from service on the petitioner, that too at the fag end of his service, the petitioner being aged about 50 years on the date of filing of the petitions, does not augur well in the mind of this Court. This Court, in the fitness of things, is of the considered opinion that the punishment imposed on the petitioner requires a slight modification keeping in mind the reasons recorded above. In the fitness of things, this Court is of the considered view that the punishment imposed on the petitioner should be modified to one of compulsory retirement with one-third cut in pension upto his normal age of retirement.

42. Accordingly, W.P.(MD) No.12706 of 2010 is dismissed, but the punishment imposed on the petitioner is modified from one of dismissal from service to one of compulsory retirement with cut of one-third pension for the period upto his normal age of retirement. Beyond the period of his normal age of retirement, the petitioner would be entitled to receive the regular pension due to him. The respondents are directed to calculate the monetary benefits payable to the petitioner as a result of the modification of the punishment and pay the same to the petitioner within a period of twelve weeks from the date of this order. However, the petitioner would not be entitled for any interest on the said payment. In view of the



dismissal of W.P. No.12706 of 2010, W.P.(MD) No.8873 of 2010 also stands dismissed confirming the punishment imposed on the petitioner. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

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Assistant Registrar (Crl Side)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

SSL

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Joint Director(Higher Secondary),
Directorate of School Education,
College Road,
Chennai-600 006.

2.The Chief Educational Officer,
Thoothukudi,
Thoothukudi District.

3.The District Educational Officer,
Thoothukudi,
Thoothukudi District.

+2 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-876[F] dated 11/01/2021)

+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-718[F] dated 08/01/2021)

+1 CC to M/s.GP (SR-799[F] dated 11/01/2021)

W.P. (MD) Nos.12706 and 8873 of 2010

08.01.2021

DKS (CO)

KK(01.02.2021) 19P 8C