



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.02.2021

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P(MD)No.5965 of 2010

and

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

A.Ramesh

.. Petitioner

Vs.

1. The Joint Registrar of Co-operative Societies,
Tiruchirappalli Region,
Tiruchirappalli.

2. Y.T.54 Tiruchirappalli Co-operative
Printing Works Limited, rep. by
The Special Officer having office at
No.12/1, E.V.R.Road,
Chinthamanni Supermarket Compound,
Puthur, Tiruchirappalli - 620 017.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a writ of Certiorarified Mandamus, calling for the records of the impugned order passed by the first respondent dated 30.01.2010 bearing Revision Petition Na.Ka.No.7071/09/Sa Pa. by confirming the order passed by the second respondent dated 31.03.2009 and quash the same and direct the respondents to reinstate the petitioner with all consequential and monetary benefits.

For Petitioner : Mr.V.Sasikumar

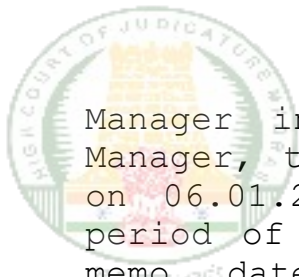
For Respondent No.1 : Mr.A.Karthik, GA

For Respondent No.2 : Mr.K.R.Singaravadivel

ORDER

This writ petition is filed seeking a writ of Certiorarified Mandamus, to quash the order passed by the first respondent dated 30.01.2010 and to direct the respondents to reinstate the petitioner with all consequential and monetary benefits.

2. The case of the petitioner is that the petitioner was appointed as a Binder in the second respondent Society in the year 1988 and due to his sincere work, he was promoted to the post of



Manager in-charge in the year 2006. While he was working as Manager, the second respondent initiated disciplinary proceedings on 06.01.2009 and suspended the petitioner from service for a period of three months. The petitioner was issued with a charge memo dated 28.01.2009 alleging five charges against the petitioner.

The sum and substance of the charges are as follows:

(1) the first charge is that the petitioner purchased the materials by preparing bogus records as if he had purchased the Books and Forms from one Raja Binding Works, Melakasi Road, Trichy-8 and caused loss to the tune of Rs.50,390/- to the Society and admittedly there is no such printing press existing and the said binding works are not registered under TNGST Act;

(2) the second charge is that without getting prior permission and without passing any resolution, the petitioner had purchased the raw-materials for printing from other Districts to the tune of Rs.3,85,897/- in the name of Trichy Women Stationery Cooperative Society, which is in dormant status and also spent a sum of Rs.47,982/- by way of commission for the said purchase due to which, cost of printing increased and the same was supplied to various cooperative printing press at higher cost than the market value and thereby he gained self-profit;

(3) the third charge is that since there is no offset printing machine in the second respondent society, the petitioner entered into understanding with NCCF and purchased the bills to the tune of Rs.44,84,000/- as if printing materials were purchased from them on second sales basis. However, NCCF did not have offset printing machine on its own and NCCF have only office at TVR Apartment, Thennur. Hence, there is no possibility to purchase printing materials from NCCF. Therefore, there is no possibility for printing materials from NCCF. However, the petitioner had billed Rs.48,262/- towards delivery through rental vehicle charges and thereby he caused loss to the tune of Rs.48,262/- to the Society and apart from personal gain, the petitioner also paid agency commission to NCCF and caused huge loss to the second respondent Society;

(4) the fourth charge is that though there was imbalance in payment and deficit was to the tune of Rs.75,00,000/- due to the District Central Cooperative Bank and hence, the Bank stopped sanction of funds and though they are not in a position even to pay ESI and PF and other statutory contribution to their employees, contrary to the resolution and the by law of the

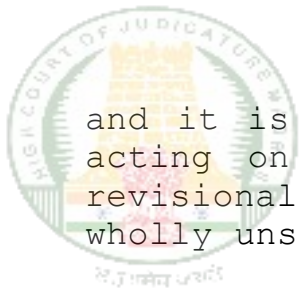


society, the petitioner caused huge losses to the second respondent society by way of raising bills towards delivery charges for delivery of materials without actually spending the said amount; and

(5) the fifth charge is that though the petitioner was given in-charge of the post of Manager, he did not do his duties as per the bye-law of the Society and without any authority, he attended various meetings held by the Registrar of Cooperative Societies and Regional Joint Registrar of Cooperative Societies and he handled the CCIW cases in respect of the then Managers, namely, Selvaraj and Rajkumar and he himself handled their disciplinary files and accordingly, he misused the given in-charge post instead of doing his allotted duties and responsibilities, namely, to recover the dues from the outsiders, to increase the production and sales of the Society and thus he caused huge loss to the Society.

3. For the above said charges, domestic enquiry was ordered and an enquiry officer was appointed. After conducting a detailed enquiry, the enquiry officer, after affording opportunity to the petitioner, held the charges proved. The findings of the enquiry officer was served on the petitioner on 07.03.2009 along with a show cause notice for which the petitioner submitted his explanation on 27.03.2009. After receipt of the explanation, being not satisfied, the second respondent passed the order of termination on 31.03.2009. Aggrieved against the order of termination, the petitioner filed a revision petition before the first respondent under Section 153 of Tamil Nadu Cooperative Societies Act. However, the revisional authority confirmed the order of the second respondent. Challenging the same, the present writ petition is filed.

4. The learned counsel for the petitioner would submit that though the charge memo was issued as if the petitioner committed a huge loss for a particular period, however, no audit objections have been raised for the concerned period. There being no objections by the audit department, the initiation of disciplinary proceedings by the second respondent clearly reveals non-application of mind. It is the submission of the learned counsel for the petitioner that the enquiry report does not reveal of any monetary loss caused by the petitioner due to his acts and further the Trichy Women Stationery Industrial Co-operative Society Limited is not in a dormant state and is actively engaged in transactions not only with the respondent society but also with Trichy District Milk producer's union Ltd., etc. The said society is also subjected to routine departmental audits. The findings arrived at by the enquiry officer are based on mere surmises and conjectures



and it is not borne out by any material available on record and acting on the said report, the disciplinary authority and the revisional authority have passed the orders impugned, which is wholly unsustainable and the same deserves to be interfered with.

5. Per contra, the learned counsel for the respondent society would submit that in the present case, though opportunities were afforded to the petitioner to prove his innocence, he has not taken any steps to prove his case and the Society proved the charges levelled on him based on the materials on record. The petitioner perused the documents filed in the enquiry and he has not disputed the said documents and thereby admitted the contents of documents and therefore, there are ample documentary proof to prove the misconducts committed by him. The petitioner neither disputed the documents marked nor cross-examined the management witness to disprove the charges levelled against him. Hence, the petitioner cannot come before this Court and allege that the charges are ambiguous. After verification of pleadings and after examination of various persons, charge memo was issued and after a detailed enquiry he was terminated from service by the disciplinary authority, which has been confirmed by the revisional authority and this Court, in exercise of its writ jurisdiction shall not ordinarily interfere with the order unless it is shown to be perverse and, accordingly, prays for dismissal of this writ petition.

6. Heard the learned Counsel on either side and carefully perused the materials placed on record.

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 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)

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, advertent to the various decisions of the Apex Court relating to the interference by the High Court in exercise of its writ jurisdiction with respect to disciplinary proceedings, including the decision in *Chaturvedi's* case (supra), held as under :-

"12.1 It is well settled that the High Court must not act as an appellate authority, and re-appreciate the evidence led before the enquiry officer.

We will advert to some of the decisions of this Court with respect to interference by the High Courts with findings in a departmental enquiry against a public servant.

In **State of Andhra Pradesh v S.Sree Rama Rao**, a three judge bench of this Court held that the High Court under Article 226 of the Constitution is not a court of appeal over the decision of the authorities



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



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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.

<https://hcservices.ecourts.gov.in/hcservices/> 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. The main contention advanced by the learned counsel for the petitioner is that there being no audit objections, the disciplinary proceedings on the ground that loss has been caused to the society is not made out. It is to be pointed out that only insofar as not following the procedures prescribed, objections are raised by audit. It is not the case of the respondents that the petitioner has not followed the procedures, but the case of the respondents is that the petitioner, for certain considerations, has not discharged his duties in the manner as is required to be discharged in the post held by the petitioner. It is the further allegation of the respondents that loss has been caused by the petitioner due to his acts, which are not in consonance with the welfare of the society and due to the said acts, the society has entailed loss. To substantiate the said allegations, materials have been placed before the enquiry officer by the respondents to which the petitioner was oblivious of and he has also perused all the materials. Further, witnesses have been examined in the departmental proceedings on the side of the respondents and though opportunity was given to the petitioner to cross examine the said witnesses, the petitioner did not take up the opportunity to cross examine the said witnesses. Further, no oral or documentary



evidence has been marked by the petitioner to prove his side of the case. On an appreciation of the materials placed, the enquiry officer returned a finding holding the charges against the petitioner proved.

12. It is not the case of the petitioner that he has not been provided with opportunity to cross examine the witnesses or peruse the documents. The disciplinary authority, on a careful consideration of the materials placed before him, along with the report of the enquiry officer, considering the gravity of the charges, has held that the allegations have been made out against the petitioner and has imposed the punishment, which has also been confirmed by the revisional authority.

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. It is to be stressed 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. In such a backdrop, this Court, sitting under Article 226 of the Constitution of India, is not inclined to reappreciate the evidence, as the same is not perverse and, therefore, the finding recorded does not warrant any interference.

15. 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 quantum 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)

16. From the ratio laid down by the Apex Court above, it is crystal clear that the power to interfere with the punishment should be exercised only if 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 and, thereby, shocking the conscience of the Court or if it is in contravention of the Rules. In the case on hand, the petitioner has caused a huge loss by not carrying out his duties diligently, which has resulted in the punishment of termination being imposed on the petitioner. The gravity of the charges has resulted in the termination of the petitioner, which, by no stretch of imagination could be said to be excessive, disproportionate or shocking the conscience of the Court and, therefore, no interference is warranted with the said punishment.

17. For the reasons aforesaid, the writ petition fails and the same is dismissed. No Costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PJL

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
The Joint Registrar of Co-operative Societies,
Tiruchirappalli Region,
Tiruchirappalli.

+1 CC to M/s.J. GUNASEELAN MUTHIAH, Advocate (SR-2722[F] dated 02/02/2021)

+1 CC to M/s.GP (SR-2850[F] dated 02/02/2021)

W.P (MD) No.5965 of 2010
01.02.2021

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