



W.P.No.11430 of 2003

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY ORDERS RESERVED ON : 18.10.2022

ORDERS PRONOUNCED ON : 07.11.2022

CORAM:

THE HON'BLE MR.JUSTICE S.S.SUNDAR

AND

THE HON'BLE MRS.JUSTICE.N.MALA

W.P.No.11430 of 2003

Sowrimuthu

... Petitioner

VS.

1.The Government of Tamil Nadu,
Rep. by Commissioner and
Secretary to Government,
Home Department,
Fort St. George,
Madras – 9.

2.The Inspector of General of Police,
Madras.

3.The Commissioner of Police,
Madras.

4.The Deputy Commissioner of Police,
L & O (North) Madras.

5.The Registrar,
Tamil Nadu Administrative Tribunal,
Madras.

... Respondents



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Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a WRIT OF CERTIORARIFIED MANDAMUS, direction to call for the records on the file of the 5th respondent in proceedings in O.A.2835/1992 dated 07.11.2002 and to quash the same as illegal, incompetent and for consequential orders and to direct the respondents to reinstate the petitioner in service.

For Petitioner : Mr.V.Raghavachari

For R1 to R4 : Mr.A.Selvendran
Special Government Pleader

For R5 : Tribunal

* * * * *

ORDER

[Pre-delivery Order of the Court was made by N.MALA, J.]

This Writ Petition is filed for a Writ of Certiorarified Mandamus, to call for the records on the file of the 5th respondent in proceedings in O.A.2835/1992 dated 07.11.2002 and to quash the same as illegal, incompetent and for consequential orders and to direct the respondents to reinstate the petitioner in service.



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2. The petitioner was working as a Police Constable and was attached to the North Raiding Party of the Prohibition Enforcement Wing, Madras Washermenpet Range from 01.08.1978. While so, the petitioner on 01.03.1979 at about 02.00 a.m. was found in the company of a woman by name Karumari of questionable character in her residence in a drunken state, Tvl.M.S.Madhavan, S.Mani, K.Govindan, P.Manalan office bearers of Dr.Ambedkar Gudisai Vaazhvor Podhunala Manram, Korukkupet, Madras found him and produced him before the Sub Inspector of Police, Washermenpet. A criminal case in Cr.No.328/79 was registered against the petitioner in H5, New Washermenpet Police Station. The petitioner was also examined by a Medical Officer of the Government Stanley Medical College Hospital, at about 5.50pm on 01.03.1979 and he gave a Medical Certificate that the petitioner had consumed alcohol and was intoxicated. The criminal case in Cr.No.328/79 under Section 4(A) of the Tamil Nadu Prohibition Act was later dropped in pursuance of the G.O.Ms.No.2531, Home Department 1979. Though the criminal case was withdrawn, the departmental proceedings were initiated by issuing a charge memo in which two charges were framed as follows:



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(1) Grave misconduct and unbecoming conduct on the part of the member of the police force in being found in the company of one Karumari, a woman of questionable character at about 2.00 hours on 01.03.1979 at the later's house at Senniamman Koil Street, Korukkupet Madras and (2) to have been in an intoxicated state. Enquiry was conducted by the Assistant Commissioner of Police, after following the due procedure. In the enquiry proceedings 7 witnesses were examined and documents were marked. The petitioner participated in the enquiry proceedings but neither examined any witnesses on his behalf nor did he file any documents. The Enquiry Officer based on the evidence on record and documents filed, found that the charge No.1 was not proved, but charge No.2 was proved. The Disciplinary Authority i.e. Deputy Commissioner of Police (Law and Order), North, imposed the penalty of removal from service against the petitioner. The petitioner approached this Court against the order of dismissal from service by way of a Writ Petition in W.P.No.7879 of 1983, which was dismissed by this Court on 24.02.1984, giving the petitioner an opportunity to file an appeal against the dismissal order. The petitioner thereafter submitted the appeal on 09.03.1984 and the third respondent vide order dated 15.05.1994 rejected the same. The petitioner filed a Review Petition on 13.06.1984 and



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the same was also rejected by the Inspector General of Police vide proceedings dated 19.01.1985. Thereafter the petitioner sent petitions to the Government, which were also rejected vide G.O.Ms.No.1299, Home (Police-VII) Department dated 21.05.1986. The petitioner thereafter filed the original application before the Tamil Nadu Administrative Tribunal in O.A.No.2835 of 1992, which was also dismissed by the learned Tribunal against which, the above writ petition is filed.

3.It was the petitioner's case that a false case was foisted against him and that once the first charge was held to be not proved, the second charge would automatically fall. According to the petitioner in the absence of Forensic report on his blood and urine samples the respondents could not have found that the petitioner was intoxicated. The justification for presence of alcohol given by the petitioner was that he had consumed tonic mixed with alcohol as prescribed by the medical practitioner. The petitioner further relied on the discrepancies in the oral evidence of the departmental witnesses to establish that the charge against him were not proved.

4.No counter was filed by the respondents.



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WEB COPY 5. During the pendency of the writ petition, the petitioner died and his legal heirs were brought on record vide the order dated

6. The learned counsel for the petitioner submitted that from the evidence of the management witnesses, it is seen that there were a lot of discrepancies and inconsistencies, so the contention of the petitioner that a false case was foisted against him has to be accepted. The learned counsel further submitted that, when the authorities themselves found that the charge No.1 was not proved, then the second charge should also have been held to be disproved. He further submitted that unless the blood and urine samples of the petitioner were sent to the Forensic Science Department and the report obtained from the said Department, the finding of drunkenness could not be sustained. The learned counsel elaborately dwelled into the documents and the evidence of the witnesses during the enquiry proceedings and prayed that the writ petition may be allowed.

7. Lastly the learned counsel submitted that the punishment imposed is disproportionate to the nature of misconduct imputed and considering the fact



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that the petitioner died during the pendency of the writ petition, a sympathetic view may be taken in favour of the legal heirs of the deceased petitioner so as to enable them to draw pensionary benefits.

8.The learned Special Government Pleader who appeared for the respondents submitted that no leniency can be shown to the petitioner because, as a member of the Uniformed force the petitioner was expected to maintain good conduct and discipline. The learned Special Government Pleader further submitted that the contention of the petitioner's counsel that in the absence of blood and urine test, it could not be held that the petitioner was intoxicated cannot be accepted because under Ex.P3 the doctor who was examined as P.W.7 in the enquiry proceedings certified about the petitioner's drunkenness. The learned counsel therefore submitted that the writ petition is devoid of merits and the same should be rejected.

9.We have heard the respective learned counsels and have perused the records.



10. Though the learned counsel for the petitioner has taken us through the enquiry proceedings and the evidence of various witnesses examined by the Department, we are not inclined to interfere in the findings of the fact as all the authorities below have concurrently held that the II charge against the petitioner had been proved. It is fairly settled that the scope of judicial review is very limited in such cases. In exercise of power under Article 226 of the Constitution of India, we cannot re-appreciate the evidence or interfere with the conclusions in the enquiry proceedings unless and until the same are established to be perverse. On a perusal of the enquiry proceedings we find no perversity as all the findings are based on evidence.

11. We find that on charge No.2 the enquiry officer held as follows:

“26. The charge under count No.2 is for reprehensible conduct in having consumed alcohol and found in a state of intoxication at 02.00 hours on 01.03.1979. The delinquent was produced at H5 P.S. At 04.15 hours on 01.03.1979 before the Sub-Inspector. The S.I. sent the delinquent before the doctor P.Loganathan (PW-7) who examined the delinquent and he found the delinquent's breath was smelling alcohol, pupils dilated and sluggish reaction to light, patient delirious, speech,



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slurred, gait staggered. The doctor has certified that the delinquent has consumed alcohol and was under its influence at the time of examination. He has issued a certificate to the effect which is Ex.P-3. The evidence of P.W-7 by Ex.P-3 amply proves that the delinquent has consumed and was found in a state of intoxication at the time of the examination by P.W.7. Hence I held the charge under count No.2 proved. “

12.We find that the petitioner neither examined any witness on his side nor did he file any documents to controvert the Department's evidence. We are therefore of the view that the finding of the enquiry officer is based on evidence and as such no interference is called for. It is now fairly well settled that the power of judicial review cannot be exercised to re-appreciate the evidence, as this Court does not act as the Appellate Authority. It is only when the proceedings against the delinquent is conducted in a manner in-consistent with the rules of natural justice or in violation of statutory rules prescribing the mode of enquiry or where the conclusion of findings arrived by the disciplinary authority are based on no evidence that interference by judicial review under Article 226 is permissible. It is also settled that the strict rules of legal evidence and adequacy of evidence or reliability of evidence cannot be



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agitated before this Court. We are fortified in our view by the judgment of the

Hon'ble Supreme Court in the case of *Union of India and Others Vs. Dalbir Singh* reported in (2021) 11 SCC 321. In the said judgment, the Hon'ble Supreme Court referred to several judgments and held that interference by the High Court with the disciplinary proceedings will be justified only if the findings of the disciplinary authority is based on no evidence, infraction of rules/regulations or violation of principles of natural justice. The Hon'ble Supreme Court in the case of *Union of India Vs. P.Gunasekaran* reported in (2015) 2 SCC 610 has laid down the parameters for exercise of jurisdiction of judicial review, para 13 of the judgment is relevant for the present purpose

“Under [Article 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 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.”



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We are therefore of the view that the findings of fact of the authorities below cannot be interfered with. One additional aspect which has to be borne in mind is that the petitioner who was posted on prohibition duty was himself a violator and hence no leniency can be shown. It is like the proverbial “Fence eating the crop”.

13. The learned counsel for the petitioner relied on two judgments of the Hon'ble Supreme Court reported in (1971) 3 SCC 930 and (2010) 15 SCC 399 in support of his contention that, in the absence of Forensic report on the petitioner's urine and blood samples the conclusion that the petitioner was drunk could not be sustained. We have gone through the Judgment and we find that the Judgment reported in 1971 3 SCC 930 relates to a criminal case and therefore the Hon'ble Supreme Court held in favour of the appellant therein.

14. In the second judgment reported in 2010 15 SCC 399, we find that the same was based on the fact that there was an element of doubt about the presence of alcohol and the enquiry officer therein had relied on the incomplete report of the Dispensary Doctor for his findings. The facts of that



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case are distinguishable from the facts of the present case. In the present case the Doctor was examined as P.W.7 and he gave his report Ex.P3, where under he certified that the petitioner was drunk. It is trite law that the degree of proof in Departmental enquiry is limited to preponderance of probability and does not need proof beyond reasonable doubt as in criminal trial. In spite of having an opportunity to lead evidence, the petitioner failed to utilise the same. We are therefore of the considered view that the judgments referred to by the learned counsel for the petitioner do not apply to the facts of the case.

15. Even on the quantum of punishment we find no reasonable justification for interfering with the same. Though the petitioner's counsel pleaded to take a sympathetic view of the matter that the petitioner died and his legal heirs who are impleaded would receive some pensionary benefits, we are not inclined to do so. We find that the misconduct and the nature of charges framed are serious in nature, considering that, the petitioner was a Police Constable and was entrusted with the duty of enforcing prohibition as admittedly prohibition was in force at the time of delinquency. As a member of Uniformed force the petitioner had to maintain discipline in the service and also maintain efficiency.



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For all the above reasons, the writ petition is dismissed. There shall be no order as to costs.

(S.S.S.R.J.) (N.M.J.)
07.11.2022

Index : Yes/No
Internet : Yes/No
ah/dsn

To

- 1.The Commissioner and
Secretary to Government,
Home Department,
Fort St. George,
Madras – 9.
- 2.The Inspector General of Police,
Madras.
- 3.The Commissioner of Police,
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S.S.SUNDAR, J.

and

N.MALA, J.

ah/dsn

PRE-DELIVERY ORDER IN
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