



W.P.(MD)No.2196 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.12.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.2196 of 2020

and

W.M.P(MD) No.1848 of 2020

P.Neethimohan

... Petitioner

Vs.

1. The Director General of Police
Chennai – 600 004.
2. The Additional Director General of Police,
(Law & Order)
Chennai – 600 004.
3. The Commissioner of Police,
Trichy City.
4. The Inspector of Police,
Vigilance and Anti-Corruption Wing,
Trichy.

... Respondents



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Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records from the 1st respondent in his proceedings in Rc.No.179051/AP.IV(1)/2018 dated 05.03.2019, by confirming the order of the 2nd & 3rd respondents in their proceedings in Rc.No.022258/AP.IV/2018 dated 18.05.2018 and C.No.H1/PR28/2014 dated 17.01.2018 respectively and quash the same.

For Petitioner : Mr. N.Sathish Babu

For Respondents : Mr. G.Vairam Santhosh,
Additional Government Pleader

ORDER

Aggrieved against the order of removal from service passed by the 3rd respondent as confirmed by respondents 1 and 2 vide the impugned proceedings, the petitioner has come up with the present petition assailing the said order.



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2. The petitioner was appointed as Sub Inspector of Police by direct recruitment and after successful completion of training was posted at Pochampalli Police Station, Dharmapuri District. The petitioner was thereafter transferred to various stations and upon promotion as Inspector of Police, was posted at Singampunari Police Station, Sivagangai District. While he was working as Inspector of Police at City Crime Branch, Trichy City, on the complaint given by one Sarojini relating to certain illegal acts being committed by the petitioner, a trap was laid on 15.12.2012 in which the petitioner was caught red-handed resulting in registration of crime in Crime No.4 of 2012 against the petitioner under Section 7 of the Prevention of Corruption Act, 1988. Consequent upon the trap, the home and personal safe deposit locker of the petitioner, maintained at Indian Bank, Ponnagar Branch, Trichy, was searched which resulted in confiscation of certain material documents.

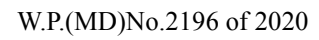
3. Pursuant to the above, a charge memo was issued alleging four charges against the petitioner. One of the charge related to the purchase of a house by the petitioner at D.No.22, Joshwa Street, Singarayar Nagar,



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Karumandabam, Trichy, for a consideration of Rs.14,95,000/- in the name of his wife Ananthi which was registered in Doc.No.3365 of 2008, without obtaining permission of the competent authority, which is in violation of Rule 9(1) of the Tamil Nadu Subordinate Police Officers Conduct Rules, 1964. The next charge related to obtainment of vehicle loan to the tune of Rs.3,00,000/- from Indian bank, Ponnagar Branch, Trichy for the purchase of a Maruthi Swift Dzire Car bearing Registration No.TN45 AU 4889 for a sum of Rs.6,45,739/- in the petitioner's name, without obtaining prior permission from the competent authority in violation of the rules and the third charge is that during the period from 06.10.2011 to 15.02.2012, the petitioner failed to record the diary entries, which is in gross negligence and dereliction of duty and that the petitioner kept the case properties, viz., cash to the tune of Rs.87,764/-; 196 numbers of counterfeit currency notes of Rs.500/- denomination; and retention of foreign passports in the name of Nigerian nationals and 3 numbers of foreign currency kept in the personal safe deposit locker of the petitioner, which offences related to Trichy City CCB Crime No.9 of 2003, CCB Crime No.5 of 2010 and CCB Crime No.14 of 2010. The reprehensible conduct and lack of integrity and honesty



4. Learned counsel appearing for the petitioner submitted that the charges levelled against the petitioner with regard to the petitioner not obtaining prior permission for the purchase of house and also the loan for



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purchase of a car cannot be said to be offences which warrants the extreme punishment of removal from service, as the said allegations are mere procedural infractions of the service rule, which could very well be cured by way of post-facto approval of the competent authority as the the said allegations cannot be said to be so grave in nature. It is the further submission of the learned counsel that insofar as the charge against the petitioner keeping certain case properties in the safe deposit locker maintained by him in his personal capacity, it has been the stand of the petitioner that for want of safety locker at the police station, considering the crucial nature of the documents related to the aforesaid crime numbers, only as a matter of precaution, the petitioner had kept the case properties in his personal locker and no other motive has been attributed against the petitioner with regard to retention of the case properties in his personal locker. The aforesaid retention of case properties being the off-shoot of other charges and also the trap, the said trap is nothing but an engineered one at the behest of the complainant, only to prejudice the department against the acts of the petitioner, which was without any motive or malice and, therefore, the allegations levelled against the petitioner cannot be said



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to be of such a nature that it warrants the punishment of removal from service, which is not only disproportionate to the gravity of the charges, but also shocks the judicial conscience and necessarily the said punishment deserves to be interfered with, as otherwise, it deprives the petitioner of the retiral benefits to which he is entitled to, more so considering the long and unblemished service rendered by the petitioner.

5. The learned Additional Government Pleader appearing for the respondents submitted that pursuant to the charge memo dated 30.09.2014 containing 4 charges, enquiry was conducted resulting in the tabling of the enquiry report on 19.04.2017 and the disciplinary authority, having agreed with the findings of the enquiry authority, upon calling for explanation, after fulfilling all the formalities, has awarded the punishment which is commensurate with the gravity of the charges levelled against the petitioner. The appeal preferred by the petitioner before the Additional Director General of Police, Chennai on 16.02.2018 was rejected on 18.05.2018 and the mercy petition was also unsuccessfully filed before the Director General of Police, Chennai, resulting in the proceedings dated 05.03.2019. It is therefore the



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submission of the learned Addl. Government Pleader that all the aforesaid authorities, having carefully considered the delinquency of the petitioner, have thought it fit to impose the punishment of dismissal from service, this Court, in exercise of its inherent jurisdiction shall not interfere with the said punishment unless it is grossly disproportionate and shocks the conscience of this Court, as has been held in a catena of decisions. The punishment imposed on the petitioner is neither excessive nor disproportionate, but well considered considering the gravity of the charges, which necessitates the imposition of punishment, more so when the petitioner is a member of the disciplined force. Therefore, no interference is warranted with the punishment imposed on the petitioner. Accordingly, he prayed for dismissal of the writ petition.

6. Heard the learned counsel on either side and perused the materials available on record.

7. The Hon'ble Supreme Court, in ***B.C. Chaturvedi – Vs - Union of India, (1995 (6) SCC 749)***, while dealing with issue relating to the power



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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



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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. - Vs - 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



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9. In a recent decision in the ***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 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



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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



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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*



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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;*



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(vii) go into the proportionality of punishment unless it shocks its conscience.”

(Emphasis Supplied)

10. From the ratio laid down above, it is implicitly clear that the Courts, in exercise of its power of judicial review, cannot extend the examination to the correctness of the act of the disciplinary authority, but only limit itself to the manner in which the decision has been arrived at by the authorities and whether the same is in accordance with law. This Court is to test only the correctness of the decision arrived at by the authorities on the basis of the evidence before it and not proceed with the case as if it is an appeal against the impugned order.

11. In the case on hand, the petitioner is neither attacking the manner in which the enquiry was conducted as flawed and not in accordance with law nor the petitioner claims any relief on the touchstone of violation of principles of natural justice. The enquiry has not been attacked in any manner by the petitioner, but the stand of the petitioner is only that the gravity of the charges alleged against the petitioner does not call for the



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extreme punishment of removal from service, thereby denying the petitioner of all the benefits to which he is otherwise entitled to, considering his otherwise long and unblemished service.

12. Therefore, the only issue that is left for the consideration of this Court is the extent to which this Court could interfere with the punishment imposed on a delinquent under Article 226 of the Constitution.

13. 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, but the only determination that is left to the Court is the proportionality of the punishment with regard to the gravity of the charges that stood proved against the delinquent. Only when the punishment is disproportionate and shocking to the conscience of the Court, should the Courts interfere with the same in exercise of powers under Art. 226 of the Constitution. The Hon'ble Supreme Court, in ***Prem Nath Bali – Vs - High Court of Delhi (2015 (16) SCC 415)***, has held as under:

“20. It is a settled principle of law that once the charges



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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)

14. As already aforesaid, no attack has been mounted on the conduct of the enquiry, which resulted in the charges being held proved against the



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delinquent. The materials available on record also reveal that the enquiry has been conducted in accordance with law and as per the procedure contemplated under the relevant rules, though certain discrepancies had crept in the departmental proceedings, as highlighted before this Court by the petitioner. However, it is to be pointed out that departmental proceedings is not a judicial proceeding requiring stern following of all the legal requirements and what is required in the departmental proceeding is the compliance of procedural requirement, which, on the face of the records, stood completely complied with and satisfactory. Though certain discrepancies are alleged in the departmental proceedings, but the said discrepancies in no way affects the report submitted by the enquiry officer, which is in consonance with the rules. Once the report has been accepted by the disciplinary authority and punishment imposed on the petitioner, which has been unsuccessfully challenged by the petitioner before the appellate authorities, this Court is only left with the task to determine whether the punishment imposed on the petitioner is disproportionate to the charges framed and shocks the conscience of the Court.



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15. To the above, it can be held without an iota of doubt that the answer to the same cannot be in the affirmative. The punishment imposed on the petitioner, in no way could be termed to be disproportionate to the delinquency and further it cannot also not be said that it shocks the conscience of this Court. The task entrusted on this Court is only to find out whether the authorities have applied their mind to the materials before imposing the punishment.

16. It is to be pointed out that the petitioner is a member of a disciplined force and a great amount of integrity and honesty is required of individuals holding the posts in the disciplined service. Not only the fate and status of the country is in the hands of the members of the disciplined force, but the rights and liberties of the individual citizens would be greatly hampered if the members of the disciplined commit offences, as has been alleged and proved against the petitioner. It would not only put the fate of the citizens in peril, but would have a jeopardizing effect on the safety and security of the nation and would be in detriment to the livelihood of the citizens.



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17. Corruption is a pest, which, if left to go without being nipped in the bud, will eat out the law and order in the nation and would have a cascading effect in all fields and in all forms of employment. The petitioner, being a member of a force, which is required to have the highest standards of integrity and honesty and discipline being paramount, having thrown the qualities to the winds, is nothing but a leech in system, who, if not removed in entirety, will corrupt the entire force. Therefore, prudence warrants that the disciplinary authority should take action in such a manner against such persons, so that the others do not follow the footsteps of such individuals, thereby, safeguarding the stature of the force.

18. In the above backdrop, this Court, on a perusal of the materials placed is of the firm opinion that the punishment imposed on the petitioner could in no way be said to be disproportionate and shocking to the conscience of this Court. Interference, if any, with the punishment imposed on the petitioner by this Court would be nothing but misplaced sympathy, which has no room in the justice delivery system, when it is the duty of the



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Court to see that justice is not only be done but should seem to be done.

Therefore, the punishment, in the considered view of this Court is just and reasonable and, this Court is of the opinion that no interference is warranted with the impugned order of punishment passed by the respondents.

19. For the reasons aforesaid, this writ petition is devoid of merits and, accordingly, the same is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

12.12.2022

Index : Yes / No

Speaking Order : Yes / No

RM/GLN



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