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W.P.(MD) Nos.5166 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.12.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD) Nos.5166 and 7021 of 2020
and WMP(MD)Nos.4502/2020, 6448/2020 and 1708/2021

M.Sekaran

.. Petitioner in both WPs

- Vs -

1.The Additional Chief Secretary to Government
Home Department
Secretariat
Chennai 600 009.

2.The Director General of Police,
Kamarajar Salai
Mylapore, Chennai.

3.The Commissioner of Police,
Madurai City
Madurai.

4.The Deputy Commissioner of Police,
Head Quarters
Madurai City, Madurai.

.. Respondents in both WPs

Prayer in W.P.(MD) No.5166/2020:- Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order in C.No.D2(2)/4805/2017



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dated 01.11.2019 on the file of respondent No.4 and quash the same as illegal and consequently for a direction, directing the respondents to disburse the amount of Rs.40,320/- (Rupees forty thousand three hundred and twenty only) recovered from the petitioner within the time stipulated by this Court.

Prayer in W.P.(MD) No.7021/2020:- Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order in C.No.D2(2)/PR.16/2017 CPO NO.1657/2017 dated 16.11.2017 on the file of the respondent No.4 and consequential impugned order in C.No.D2(2)/PR No.16/2017 Appeal No.1/2018 dated 06.01.2018 on the file of the respondent No.3 and consequential impugned order in Rc.No.055811/AP.2(3)/2018 dated 30.08.2018 on the file of the respondent No.2 and quash the same as illegal.

For Petitioner : Mr.T.Lajapathi Roy

For Respondents : Mr.S.P.Maharajan, Spl. GP

COMMON ORDER

Challenging the impugned order of the fourth respondent dated 01.11.2019 and for a consequential direction to disburse the amount of Rs.40,320/- recovered from the petitioner, W.P.(MD) No.5166/2020 has been filed.



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2. Challenging the impugned orders dated 16.11.2017, 06.01.2018 and 30.08.2018 imposed by the respondents 4, 3 and 2 respectively, W.P.(MD) No. 7021/2020 has been filed.

3. The case of the petitioner is that he was appointed as Grade II Constable in the year 1988 and over the period of time, the petitioner got promotions and during the year 2019, he was holding the post of Special Sub Inspector of Police posted at Madurai Teppakulam (Traffic) Police Station. After rendering 31 years of service, he got retired voluntarily on 30.09.2019.

4. It is his further case that during the year 2017, in several parts of Tamil Nadu against the order banning Jallikattu by the Hon'ble Supreme Court, a State wide protest had taken place. On 19.01.2017, while the petitioner was on duty, a large number of people were protesting at Tamukkam ground at Madurai and at that point of time, in order to regulate the traffic, the petitioner addressed the gathering. For the said act, on the directions of the Assistant Commissioner of Police, the third respondent initiated disciplinary proceedings under Section 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1985 and a charge memo dated 28.02.2017 was served on the petitioner. Upon receipt



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of explanation and being not satisfied, enquiry was ordered by appointing an enquiry officer on 07.06.2017. After enquiry, the 4th respondent has issued the impugned order dated 16.11.2017 imposing the punishment of postponement of increment for a period of three years. On appeal preferred to the third respondent on 11.12.2017, the said punishment was upheld vide order dated 06.01.2018. Challenging the same, the petitioner preferred further appeal to the 2nd respondent on 19.02.2018. The second respondent vide impugned order dated 30.08.2018 dismissed the appeal filed by the petitioner. In the meantime, stating family circumstances, the petitioner gave voluntary retirement and accordingly, he was relieved from service on 30.09.2019. While so, after the retirement, the impugned order of recovery has been passed by the 4th respondent whereby a sum of Rs.40,320/- has been recovered on 01.11.2019 from the DCRG payable to the petitioner. Challenging both the disciplinary proceedings and also the recovery order, the petitioner is before this Court.

5. The learned counsel for the petitioner submits that after the retirement of the petitioner on 30.09.2019, the order of recovery is illegal and in violation of principles of nature justice, when the respondents have not reserved their right to continue the disciplinary proceedings to its logical conclusion culminating in



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the implementation of the punishment. He further submits that though punishment was imposed, the punishment was not implemented and for non implemented punishment, and in the absence of reserving the right to enforce the punishment, the order of recovery passed as a consequence of punishment imposed on the petitioner, that too, after his retirement, is unsustainable. It is further submitted that in an identical circumstance, in respect of one Mayazhagu, punishment of postponement of increment for a period of one year without cumulative effect was imposed, whereas, the petitioner was been awarded with postponement of increment for a period of three years without cumulative effect. In the absence of reserving of right to enforce the punishment imposed on the petitioner, upon severance of master-servant relationship due to the retirement of the petitioner from service, the order of recovery is bad in the eye of law and, therefore, the impugned recovery requires interference.

6. Per contra, learned Special Government Pleader submits that since the petitioner had violated Rule 16(2) of the Tamil Nadu Subordinate Police Officers Conduct Rules, 1964 by taking part in the Jallikattu protest, charges have been levelled against the petitioner by the respondent No.4, followed by charge memo, appointment of enquiry officer and upon completion of enquiry, the petitioner



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has been awarded with a punishment of postponement of increments for a period of three years without cumulative effect. While the punishment was imposed against the petitioner, the petitioner was allowed to retire voluntarily from service on 30.09.2019 as per FR56(3). Therefore, in order to recover the amount towards the punishment imposed on the petitioner with regard to postponement of increment for a period of three years, the amount of Rs. 40,320/- was sought to be recovered from from DCRG, which pertains to the period 2017 to 2019 through bill dated 10.02.2020. It is the further submission of the learned Addl. Government Pleader that the appeal and revision against the order of punishment was duly considered by the appellate and revisional authority and in the absence of any rebuttal of the charge and no fresh material was placed before the said authorities to take a different view, the appeal as well as revision was rejected. It is further submitted that in respect of any punishment imposed on a delinquent employee, who has since retired from service, is to be recovered from the the DCRG payable to the said employee as per Rule 58 of the Tamil Nadu Pension Rules, 1978. The respondents, invoking the said rule, had recovered the amount of Rs.40,320/- from the DCRG of the petitioner, which cannot be found fault with and, therefore, no interference is warranted with the orders impugned.



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7. Heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondents.

8. Two writ petitions have been filed by the petitioner, one in W.P. No. 5166/2020 questioning the order of recovery passed by the 4th respondent pertaining to the implementation of punishment imposed on the petitioner, in lieu of which the amount is sought to be recovered from the DCRG and the other writ petition in W.P. No.7201/2020 has been filed questioning the imposition of punishment by the 4th respondent and the affirmation of the same by the appellate and revisional authorities, viz., the 3rd and 2nd respondent.

9. Though the petitioner has put in issue the punishment imposed, however, learned counsel appearing for the petitioner, at the time of arguments, fairly conceded that a quietus given to W.P. No.5166/2020 would have a bearing on the order that may be passed in W.P. No.7021/2020 and, therefore, this Court, would venture into the facts of W.P. No.5166/2020 to find out whether the order of recovery can be sustained.



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10. The sequence of events relating to disciplinary proceedings taken up against the petitioner, the conduct of the enquiry and the aftermath of the enquiry culminating into the imposition of punishment and, thereafter, the appeal and revision, which were ultimately rejected are not disputed. Though challenge has been mounted on the disciplinary enquiry, the main grievance of the petitioner is with regard to recovery sought to be made from the DCRG payable to the petitioner, which is an off-shoot of the punishment imposed, which had not been implemented when the petitioner was in service.

11. It is settled principle of law that upon an employee retiring from service, the employer-employee relationship gets severed. However, the service rules provides for continuance of disciplinary proceedings against a delinquent/employee to be continued upon the superannuation of an employee, provided the employer invokes the provision for continuing the proceedings beyond the period of retirement. In effect, the order of retirement would be without prejudice to the right of the employer to continue the disciplinary proceedings. If such a right is not reserved by the employer, the severance of the relationship ends the disciplinary proceedings as well. There can be no quarrel with the above proposition of law by the learned counsel on either side.



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12. Keeping the above ratio in mind, this Court will now proceed to analyse the materials to come to a conclusion as to whether the recovery ordered by the respondents is sustainable.

13. Though the petitioner has put in issue the enquiry and the consequential punishment imposed, however, the petitioner, but for the recovery, 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. Though certain discrepancies were pointed out in the conduct of the enquiry, yet the said discrepancies do not affect the substratum of the disciplinary proceedings warranting any interference at the hands of this Court. However, definitely the quantum of punishment requires to be looked into based on the principles laid down with respect to interference with the punishment inflicted on a delinquent employee by the disciplinary authority.

14. It has been the consistent view of the Courts that it is always within the domain of the disciplinary authority to decide the punishment to be imposed on



the delinquent and the Court has to only look into the proportionality of the punishment vis-a-vis the charges. 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 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



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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)

15. The petitioner is a member of a disciplined force and discipline and dedication to duty, more especially the duty entrusted to the delinquent is of utmost importance, as any infraction of the same would be nothing but throwing away discipline to the winds. Discipline cannot be compromised at any point of time and only in that backdrop, the disciplinary proceedings has been initiated, which has culminated in the imposition of punishment. The punishment imposed on the petitioner, considering all the factors surrounding the issue, cannot be said to be disproportionate or shocking the conscience of this Court and, therefore, this Court cannot sit in appeal over the punishment imposed by the disciplinary authority as confirmed by the appellate and revisional authorities by substituting its view and, therefore, no interference is warranted with the punishment imposed.

16. Be that as it may. A perusal of the materials available on record reveal



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that though the disciplinary authority has imposed the punishment of postponement of increment for a period of three years vide proceedings dated 16.11.2017, the said punishment was not implemented in its entirety. Even after the appeal and revision ended in rejection as early as on 30.8.2018, the said punishment could be given effect to only partly, as the petitioner had submitted his intent for voluntary retirement, which was acted upon by the respondents and the petitioner superannuated from service on voluntary retirement on 30.9.2019.

17. As stated above, it is the duty of the respondents to see to it that the punishment is implemented during the period in which the delinquent was in service and in case of superannuation of the delinquent before completion of the punishment, the respondents have to resort to invocation of the relevant provisions of the Pension Rules, post retirement of the employee in case any recovery has to be made from the employee. Once the respondents decide to relieve the petitioner from service upon acceptance of application for voluntary retirement, to recover any amount due from the employee, even if the loss is not pecuniary in nature, the respondents have to invoke Rule 9 (1) (a) of the Pension Rules, in case of any loss calling upon the acceptance of the employee and in the absence of any concurrence from the employee, necessarily, the respondents



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have to solicit the views of the Tamil Nadu Public Service Commission in this regard, as on and from 30.9.2019, the master-servant relationship between the petitioner and the respondents stood severed.

18. It is further evident from the materials available on record that the revision was rejected by the 2nd respondent on 30.8.2018 and, thereafter, the punishment was started to be implemented. It is borne out by record that the annual increment of the petitioner fell due on 1.10.2018, which is not disputed. Therefore, the first of the increment was stopped on 1.10.2018, in effect the petitioner was not provided with the increment. However, thereafter, upon the petitioner submitting his letter for voluntary retirement, the respondents have acted upon the same and have relieved the petitioner on 30.9.2019. Therefore, no increment stood accrued and due for the petitioner thereafter, which effectively made the punishment as one of postponement of increment for a period of one year and the balance portion could not be implemented.

19. In this backdrop, Rule 56 (1) of the Fundamental Rules and Rule 9 (1) (a) of Pension Rules assume significance and for for better appreciation, the same are extracted hereunder :-



“Statutory Provisions

I. Tamil Nadu Government Fundamental Rules 56(1)

Retirement on Superannuation.

(a) Every Government servant in the superior service shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty-eight years. He shall not be retained in service after that age except with the sanction of the Government on public grounds, which must be recorded in writing but he shall not be retained after the age of sixty years except in very special circumstances:

Provided that this clause shall not apply to Government servants who are treated as in superior service for the purpose of these rules but as in the Tamil Nadu Basic Service for the purpose of pension. Such Government servants as well as all basic servants shall retire on attaining the age of sixty years :

Provided further that on and from the 1st January 1993, a District Judge, Chief Judicial Magistrate, Sub-ordinate Judge or District Munsif-cum-Judicial Magistrate, who, in the opinion of the High Court, Madras, has potential for continued useful service beyond the age of fifty-eight years, shall retire from service on attaining the age of sixty years.

Explanation I. When a Government servant is required to retire, revert or cease to be on leave on attaining a specific age, the day on which he attains that age is reckoned as a non-working day and the Government servant shall retire, revert or cease to be on leave, with effect on and from that day.

Explanation II. The grant under rule 86 or corresponding other rules of leave extending beyond the date on which a



Government servant must retire or beyond the date upto which a Government servant has been permitted to remain in service shall not be treated as sanctioning an extension of service for the purpose of Pensionary or Contributory Provident Fund benefits or retention of lien. The Government servant shall, for purpose of pensionary benefits, be deemed to have retired from service on the date of retirement or on the expiry of the extension of service, if any, and shall become eligible to all pensionary benefits from the date of retirement or from the day following the date of termination of extension of service, as the case may be.

(b) [Omitted]

(c) Notwithstanding anything contained in clause (a), a Government servant who is under suspension,

(i) on a charge of misconduct; or

(ii) against whom an enquiry into grave charges of criminal misconduct or allegations of criminal misconduct, is pending; or

(iii) against whom an enquiry into grave charges is contemplated or is pending; or

*(iv) against whom a complaint of criminal offence is under investigation or trial shall not be permitted by the *appointing authority to retire on his reaching the date of retirement, but shall be retained in service until the enquiry into the charge of misconduct or criminal misconduct or the enquiry into allegations of criminal misconduct or the enquiry into contemplated charges or disciplinary proceeding taken under rule 17(c) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules or rule 3(c) of the Tamil Nadu Police Sub-ordinate service*



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(Discipline and Appeal) Rules, as the case may be, in respect of item (iv) above is concluded and a final order passed thereon by the competent authority or by any higher authority.

Explanation. For the purpose of this clause, the expression criminal misconduct shall have the same meaning as in Section 13 of the Prevention of Corruption Act, 1988 (Central Act) 49 of 1988).

Instruction under Rule 56 (1) (c).Whether a Government servant referred to in clause (c) is fully exonerated or not, he shall be considered to have been on extension of service for the period from the date of retirement to the date of termination of the proceedings. During such an extension of service, the service rights which have accrued to the Government servant shall freeze at the level reached on the date of retirement and the salary during that period shall not exceed the pension which has accrued to the Government servant on that date.

II. Tamil Nadu Pension Rules, 1978 Rule 9(1)(a). The Government reserve to themselves the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period if, in any departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement, and such withholding or withdrawing the pension may be effected irrespective of the fact whether or not any pecuniary loss on account of such grave misconduct or negligence was caused to the Government, to any local body or to any co-operative society comprising of government servants and registered under the



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Tamil Nadu Co-operative Societies Act, 1961;

(Provided that before passing an order under this sub-rule withholding or withdrawing the pension of a pensioner, the Tamil Nadu Public Service Commission shall be consulted if the pensioner does not agree to such withholding or withdrawal of the pension. The Tamil Nadu Public Service Commission need not be consulted in cases where the pensioner agrees to withholding or withdrawal of the pension but a copy of the order passed by the Government in such cases shall be sent to the commission:) Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the limit specified in sub-rule (5) of Rule 43.

(b) In case there is any pecuniary loss caused to the Government, to any local body or to any co-operative society comprising of Government servants and registered under the Tamil Nadu Co-operative Societies Act, 1961, and if, in any departmental or Judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement, the Government shall also have the right of ordering recovery from the pension (or Death-cum-Retirement Gratuity) of the whole or part of the pecuniary loss caused by such grave misconduct or negligence:

Provided that the Tamil Nadu Public Service Commission shall be consulted before any final orders under this clause are passed."

(Emphasis Supplied)



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20. In the case on hand, the punishment was started to be implemented on 1.10.2018 by not providing the petitioner with the annual increment. However, the petitioner was permitted to retire on 30.9.2019 on voluntary retirement, which means that he was allowed to superannuate voluntarily. Therefore, if the respondents were really interested to implement the balance portion of punishment imposed on the petitioner, the course that was open to the respondents was to have written to the Tamil Nadu Public Service Commission for invoking the provision under Rule 9 (1) (a) for recovering the portion of the unimplemented punishment, viz., the recovering of the balance of the two increment amounts, from the pension of the petitioner. There is no rule which permits the respondents to recover any portion of the amount of the unimplemented portion of the punishment from the DCRG of the petitioner. Only if pecuniary loss is caused to the Government by the act of a delinquent, the said pecuniary loss is recoverable from the DCRG and any other punishment inflicted on a delinquent employee, who is allowed to superannuate, the portion of the punishment, which stood unimplemented, could be recovered only from the pension and not from the DCRG payable to the petitioner.



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21. Further, as stated above, when the respondents have not taken proper steps to address the Tamil Nadu Public Service Commission for effecting withholding or withdrawing the pension irrespective of the fact whether or not any pecuniary loss on account of grave misconduct or negligence was caused to the Government by the petitioner, recovering the amount, which is the portion of the unimplemented punishment from the DCRG of the petitioner is not only unsustainable, but it is wholly impermissible from the relevant provisions of the Pension Rules. Further, to advert to such a procedure, the employee should have been put on notice as to whether he accepts for the said course of recovery and if the employee accepts, only then the said amount can be recovered from the pension and if not, then the Tamil Nadu Public Service Commission has to be addressed and only thereafter, recourse to recovering the said amount from the pension can be enforced by the Government on the employee.

22. In the case on hand, as already aforesaid, there is no pecuniary loss caused to the Government and, therefore, the respondents cannot recover any amount from DCRG, which is payable to the employee. The respondents could have recovered any amount, which remains recoverable on account of the punishment not being implemented in its entirety by following the procedure



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prescribed under the Pension Rules. However, in a callous and reckless act, without following the procedure prescribed under the Pension Rules, the respondents have proceeded to recover the amount towards the unimplemented portion of the punishment from the DCRG of the petitioner, which is *per se* impermissible and the said act is wholly unsustainable as it is arbitrary and not in accordance with the relevant provisions of the pension rules.

23. The respondents should have exercised due diligence in implementing the residual portion of the punishment, which has been inflicted on the petitioner and pending completion. When the respondents have not exercised due diligence, the petitioner cannot be made to suffer the punishment imposed on him by way of recovery of the amount from DCRG, when the same does not have the approval of law, as there is no pecuniary loss caused to the Government by any act of the petitioner. Therefore, the recovery made from the DCRG of the petitioner to the tune of Rs.40,320/- deserves to be set aside to be refunded back to the petitioner, as the said procedure does not have the seal of law.

24. The petitioner has since retired from service and has also started receiving his pension, which has since been fixed by the competent authority. If



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at all the respondents want to recover the portion of the punishment, which is unimplemented, the course open to the respondents is to proceed for recovery of the amount by initiating proceedings under the Pension Rules, if so advised by following the provisions under the Pension Rules and the present impugned order recovering the amount from the DCRG cannot be allowed to survive.

25. Accordingly, the impugned order dated 01.11.2019 directing recovery of the amount from the DCRG of the petitioner is set aside and the writ petition in W.P. No.5166/2020 stands allowed. The respondents are directed to refund the amount, if any, recovered from the DCRG of the petitioner back to the petitioner within a period of four weeks from the date of receipt of a copy of this order.

26. Insofar as the punishment imposed on the petitioner, which is the subject matter of W.P. No.7021/2020 is concerned, the said punishment neither being disproportionate to the charges nor shocks the conscience of this Court, no interference is called for with the punishment, which has been passed by the disciplinary authority, as confirmed by the appellate and revisional authorities.



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27. Accordingly, for the reasons aforesaid, while W.P. No.7021/2020 is dismissed, W.P. No.5166/2020 is allowed with the aforesaid observations and directions and the respondents are directed to repay the amount of Rs.40,320/- recovered from the DCRG of the petitioner within a period of four weeks from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently connected Miscellaneous Petitions are closed.

15.12.2022

Index : Yes/No
Internet : Yes

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To

1.The Additional Chief Secretary to Government
Home Department
Secretariat
Chennai 600 009.

2.The Director General of Police,
Kamarajar Salai
Mylapore, Chennai.

3.The Commissioner of Police,
Madurai City
Madurai.

4.The Deputy Commissioner of Police,
Head Quarters, Madurai City, Madurai.



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RR

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