



W.A.Nos.2273 of 2022 and 2052 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 15.11.2023

Pronounced on : 20.11.2023

CORAM :

**THE HON'BLE MR. JUSTICE R. MAHADEVAN
AND
THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ**

**W.A.Nos.2273 of 2022 & 2052 of 2023 &
C.M.P.Nos.17332 of 2022 and 17428 of 2023**

W.A.No.2273 of 2022

1.The State of Tamil Nadu,
Rep. by Principal Secretary to Government,
Home (Police II) Department,
Fort St. George, Chennai-9.

2.The Director General of Police,
(Recruitment and Training Section),
Dr.Radhakrishnan Salai,
Mylapore, Chennai - 4.

3.The Deputy Commissioner of Police,
Headquarters,
i/c Joint Commissioner of Police,
Greater Chennai Police,
Vepery, Chennai - 7.

... Appellants

Vs.

A.Sethraman

... Respondent

Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 25.08.2021 in W.P.No.32401 of 2018.



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W.A.No.2052 of 2023

1.The Deputy Commissioner of Police,
Mount District,
Greater Chennai Police, Chennai - 16.

2.The Commissioner of Police,
Greater Chennai Police,
Vepery, Chennai - 600 008.

... Appellants

Vs.

A.Sethraman

... Respondent

Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 25.08.2021 in W.P.No.31793 of 2018.

For Appellants in both
Writ Appeals

: Mr.Silambanan
Additional Government Pleader
Assisted by Mrs.S.Anitha
Special Government Pleader

For Respondent in both
Writ Appeals

: Mr.Venkataramani
Senior Counsel
For Mr.Muthappan

COMMON JUDGMENT

(Judgment of the Court was made by R. MAHADEVAN, J.)

These Writ Appeals are directed against the common order dated 25.08.2021 passed by the learned Judge in W.P.Nos.32401 and 31793 of 2018 respectively.



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2. The necessary facts leading to the filing of these appeals would run thus:

(i) The respondent herein was appointed as Grade II Police Constable through the selection conducted by the Tamil Nadu Uniformed Services Recruitment Board (in short, "the TNUSRB") in the year 1993. Upon completion of 10 years of service, he was given upgradation as Grade I Police Constable in the year 2003 and after completion of five years of service, he was further upgraded as Head Constable in the year 2008.

(ii) While so, the respondent applied for the post of Sub Inspector of Police called for by the TNUSRB from both open category as well as in-service candidates by direct recruitment. The selection process was done zone wise in the State for the estimated vacancies. The respondent secured only 64.56 marks, as against the cut-off marks of 73.76 for the BC community at Chennai Range and hence, he was not selected.

(iii) The respondent herein filed a writ petition seeking a direction to the authorities to appoint him as Sub Inspector of Police, but the same was dismissed on the ground that he has approached the court after one year from the date of order of the Tamil Nadu Administrative Tribunal and not before 12.07.2002. Challenging the same, he preferred SLP No.11008/2011 before the Hon'ble Supreme Court. On 07.08.2014, the matter was heard along with batch of cases, and a direction was issued to appoint the respondent as Sub Inspector of Police.



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Based on the order of the Hon'ble Supreme Court, the respondent was called upon to appear for medical examination and verification of antecedents. However, he was not issued with any appointment order.

(iv) In the mean while, the respondent was implicated in a criminal case in CB CID, Chennai, Crime No.1 of 2015 for the offences punishable under Sections 323, 330, 335 IPC r/w Sections 10 and 12 of the POCSO Act and Section 23 of Juvenile Justice Act. Since he was involved in the criminal case and was suspended from service on 07.01.2015, the Commissioner of Police, Greater Chennai Police, Chennai, informed to the respondent that as per Rule 13(b) of the Tamil Nadu Police Subordinate Service Rules, he was declared unfit for the post of Tamil Nadu Sub Inspector of Police on the basis that his character and conduct are not satisfactory, by order dated 31.03.2015. Aggrieved by the same, the respondent preferred W.P.No.32401 of 2018 to quash the said order dated 31.03.2015 passed by the appellant authorities and for a direction to give him promotion to the post of Sub Inspector of Police along with his batch mates.

(v) In the criminal case, during trial, 17 witnesses were examined as P.W.1 to P.W.17, out of which, P.Ws.2, 3, 4 and 5 are juveniles and they have turned hostile and hence, the trial Court held that the prosecution has not proved the case beyond reasonable doubt and accordingly, acquitted the respondent from the charges on 17.09.2015.



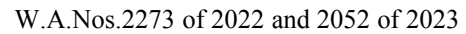
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(vi) Simultaneously, disciplinary action was taken by the department by issuing a charge memo under Section 3(b) of the Tamil Nadu Police Subordinate Service (D & A) Rules, 1955. The Enquiry Officer examined the witnesses including the juveniles, however, they have turned hostile during the oral enquiry. The Departmental witnesses have supported the prosecution based on the statements given by the juveniles in the preliminary enquiry. Hence, the Enquiry Officer filed his report holding the charges as proved. Pursuant to the same, the Disciplinary Authority/Deputy Commissioner of Police, St. Thomas Mount, Greater Chennai Police, has agreed with the findings of the Enquiry Officer and awarded the punishment of postponement of increment for three years with cumulative effect, on the respondent, vide order dated 09.02.2018. The said order of punishment was also affirmed by the appellate authority / Commissioner of Police, Greater Chennai Police, Chennai, vide order dated 09.10.2018. Challenging the said orders, the respondent filed W.P.No.31793 of 2018.

(vii) The learned Judge allowed both the writ petitions, by common order dated 25.08.2021, the relevant paragraphs of which are quoted below for ready reference:

"18. I have considered the arguments advanced by the learned counsel for the petitioner and the respondent. The criminal court has ultimately acquitted the petitioner of the crime vide its order dated 10.8.2018 in S.C.No.227 of 2016. The fact that some of the witnesses who were examined in the criminal proceedings were the only witnesses in the disciplinary proceedings is not in dispute. Barring the statement of the P.W.1~ Investigating officer who was incidentally also the prosecution witness in the criminal proceedings, there is no



19. In the case of *G.M.Tanks vs. State of Gujarat and another*, 2006 (5) SCC 446, it has been held that the distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable. In our opinion, when the evidence in the departmental as well as criminal proceedings were the same without there being any iota of difference.

35. *Since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instant case.*

"30. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by its judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed that the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.

22. *The ratio of these decisions of the Hon'ble Supreme Court squarely applies to the facts and circumstances of the case. If, the petitioner was found guilty in the criminal proceedings, the respondents could have certainly sustained the impugned proceedings. Considering the above, the entire departmental proceedings are liable to be quashed.*



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23. Accordingly, these writ petitions stand allowed and the impugned orders of the 1st respondent and second respondent dated 09.02.2018 and 09.10.2018 are hereby quashed. The respondents are therefore directed to release the arrear amount which were otherwise to be paid to the petitioner, but for the punishment order. The amounts are directed to be released to the petitioner within a period of eight weeks from the date of receipt of a copy of this order. No costs."

(viii) Challenging the aforesaid common order passed in the writ petitions, the appellants have preferred these two writ appeals.

3. The learned Additional Advocate General appearing for the appellants submitted that though the trial Court acquitted the respondent from the charges on 17.09.2015 in view of the fact that the juveniles turned hostile, the departmental proceedings ended in punishment of postponement of increment for three years with cumulative effect against the respondent, considering the grave charge of compelling the juveniles to perform unnatural act of sex and also taking note of the fact that the official witnesses supported the case of the prosecution based on the statements of the juveniles at the time of preliminary enquiry. It is also brought to the notice of this Court that the National Human Rights Commission took up the issue and directed the Chief Secretary to the Government of Tamil Nadu to pay compensation of a sum of Rs.25,000/- to each juvenile. Based on the same, the Government issued G.O.Ms.No.1128, dated 05.10.2015, and paid compensation to the juveniles, which would evident that the respondent committed the offence. The order of punishment imposed by the disciplinary



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authority was also affirmed by the appellate authority, by order dated 09.10.2018.

That apart, according to Rule 13(b) of the Tamil Nadu Police Subordinate Service Rules, the respondent was not considered and was declared as unfit for promotion to the post of Sub Inspector of Police, as his character and conduct are not satisfactory. Continuing further, the learned Additional Advocate General submitted that an order of acquittal in the criminal case has no bearing or relevance on the departmental disciplinary proceedings as the standards of proof in both the cases are different. However, the learned Judge merely relied on the order of acquittal passed by the trial court has set aside the orders so passed by the appellant authorities and directed them to appoint the respondent as Sub Inspector of Police. It is also submitted that the decisions of the Hon'ble Supreme Court in **Paul Antony v. Bharat Gold Mines Ltd [(1999) 3 SCC 679]** and **G.M. Tanks v. State of Gujarat and another [(2006) 5 SCC 446]** referred to by the learned Judge had been subsequently diluted by the Apex Court in many of the subsequent cases viz., **Maharashtra State Road Transport Corporation v. Dilip Uttam Jayabhay (2022) Live Law (SC) 3**, **Stanzen Toyattsu India Pvt. Ltd., v. Girish V. and others [(2014) 6 SCC 636]** & **State of West Bengal and others v. Sankar Ghosh [(2014) 3 SCC 610]**. Therefore, the learned Additional Advocate General sought to quash the common order passed by the learned Judge and allow these writ appeals.



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4. *Per contra*, the learned counsel appearing for the respondent / writ petitioner submitted that the Hon'ble Supreme Court, vide order dated 07.08.2014 in CA No.7679/2014 in SLP(C)No.11008 of 2011, allowed the petition filed by the respondent, thereby directing the authorities to appoint him as Sub Inspector of Police. Further, in the criminal case registered against the respondent, the prosecution failed to establish his guilt beyond reasonable doubt and hence, he was acquitted from the charges by the trial court by order dated 17.09.2015. Without properly appreciating the same, the authorities held that the charges framed against the respondent were proved and accordingly, awarded the punishment of postponement of increment for three years with cumulative effect. That apart, the respondent was denied promotion to the post of Sub Inspector of Police. However, the learned Judge has rightly considered the claim of the respondent, quashed the orders passed by the appellant authorities and allowed the writ petitions filed by him, by the order impugned herein, which does not call for any interference by this court.

5. Heard the rival submissions and also perused the materials placed on record.

6. It is not in dispute that after a long battle, the respondent had obtained an order dated 07.08.2014 in CA No.7679/2014 in SLP(C)No.11008 of 2011, in



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which, the Hon'ble Supreme Court directed the authorities to appoint him as Sub Inspector of Police. However, he was subjected to criminal proceedings as well as the departmental disciplinary proceedings, for the allegation of torture of juveniles in the station. Due to the same, he was suspended from service. Resultantly, the respondent was not considered for promotion to the post of Sub Inspector of Police. The Juveniles have turned hostile during trial in the criminal case and in the oral enquiry before the Enquiry Officer. The trial court acquitted the respondent from the charges, on the ground that the prosecution failed to establish the guilt beyond reasonable doubt. Whereas the Enquiry Officer, based on the statements of the prosecution side witnesses, held the charges as proved, based on which, the disciplinary authority awarded the punishment of postponement of increment for three years with cumulative effect, considering the grave nature of the offence and the same was also affirmed by the appellate authority.

7. Feeling aggrieved, the respondent approached the writ court, to set aside the order dated 31.03.2015 passed by the appellant authorities, declaring him as unfit for promotion to the post of Sub Inspector of Police and to direct them to appoint him to the said post; and to set aside the orders of punishment of postponement of increment for three years with cumulative effect passed by the disciplinary authority, as affirmed by the appellate authority.



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8. By the order impugned in these appeals, the learned Judge set aside the orders passed by the appellant authorities and allowed both the writ petitions, merely based on the fact that the respondent was acquitted from the criminal case.

9. This court is of the opinion that the order of acquittal passed in the criminal case, cannot have direct bearing on the disciplinary proceedings conducted by the department; and that, both are different proceedings and proceeded with independently, though the same are based on the same set of facts. In this regard, reference was made to the judgment of the Apex Court in ***State of Rajasthan & Ors. v. Heem Singh* [(2021) 12 SCC 569]**, wherein, it was held that the acquittal in a criminal case due to witness turning hostile, does not conclude a disciplinary enquiry, which has different standard of proof and has to proceed independently; and that, the punishment cannot be set aside on the strength of the order of acquittal passed in the criminal trial. The facts of the said case are strikingly similar to the instant case. The respondent by name, Heem Singh, in that case, served as a police constable. He was dismissed from service for the charge of having committed murder, while on leave from duty. The Sessions Court acquitted him and the Division Bench of the Rajasthan High Court directed reinstatement of the respondent, considering the order of acquittal passed by the Sessions Court. On appeal preferred by the State, the Apex Court



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considered the effect of acquittal on the disciplinary proceedings and ultimately, held as under:

"J. The effect of an acquittal

*38. In the present case, we have an acquittal in a criminal trial on a charge of murder. The judgment of the Sessions Court is a reflection of the vagaries of the administration of criminal justice. The judgment contains a litany of hostile witnesses, and of the star witness resiling from his statements. Our precedents indicate that acquittal in a criminal trial in such circumstances does not conclude a disciplinary enquiry in **Southern Railway Officers Association v. Union of India** (reported in **2009 9 SCC 24**), this Court held:*

"37. Acquittal in a criminal case by itself cannot be a ground for interfering with an order of punishment imposed by the disciplinary authority. The High Court did not say that the said fact had not been taken into consideration. The revisional authority did so. It is now a well-settled principle of law that the order of dismissal can be passed even if the delinquent official had been acquitted of the criminal charge." (emphasis supplied)

*39. In **State v. S. Samuthiram** (reported in **2013 1 SCC 598**), a two-Judge Bench of this Court held that unless the accused has an "honorable acquittal" in their criminal trial, as opposed to an acquittal due to witnesses turning hostile or for technical reasons, the acquittal shall not affect the decision in the disciplinary proceedings and lead to automatic reinstatement."*

10. That apart, the Hon'ble Supreme Court in **Heem Singh case** (supra), observed that the State is entitled to proceed against the delinquent for commission of grievous offence as he being a member of the police force has to maintain good conduct to safeguard its reputation and integrity. The relevant portion of the said judgment is extracted below for better appreciation:

"13. The primary charge in the disciplinary proceedings relates to the involvement of the respondent in the murder of Bhanwar Singh. According to the respondent, the disciplinary enquiry pertains to an event which took place outside the fold of his service. It was asserted that the disciplinary enquiry in regard to the involvement of the respondent in a murder bore no nexus to his employment. This submission cannot stand scrutiny, having regard to the nature of the employment and the position of the respondent as member of the police force.



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*The respondent was a constable in the service of the police department of the State of Rajasthan since 1992. **Involvement of a member of the police service in a heinous crime (if it is established) has a direct bearing on the confidence of society in the police and in this case, on his ability to serve as a member of the force. Such an individual is engaged by the State as a part of the machinery designed to preserve law and order. The State can legitimately assert that it is entitled to proceed against an employee in the position of the respondent in the exercise of its disciplinary jurisdiction, for a breach of the standard of conduct which is expected of a member of the state police service. Confidence of the State in the conduct and behaviour of persons it has appointed to the police is integral to its duty to maintain law and order.***

11. In the light of the legal principles, there is no irregularity or infirmity on the part of the appellant authorities in conducting the disciplinary proceedings against the respondent, though the criminal court acquitted him from the charges. In the departmental enquiry held against the respondent, various witnesses were examined and the respondent was called for oral enquiry on 10.04.2017, 15.05.2017, 30.05.2017 and 14.06.2017, but he did not appear for the same. Thereafter, following due procedure as well as the principles of natural justice and based on the statements of the witnesses, the enquiry officer held the charges as proved. Pursuant to the same, the respondent was awarded with the punishment of postponement of increment for three years with cumulative effect. It is also apposite to note that the National Human Rights Commission *suo motu* took up the issue and directed the Chief Secretary to the Government of Tamil Nadu to pay compensation of a sum of Rs.25,000/- to each juvenile, based on which G.O.Ms.No.1128, dated 05.10.2015 came to be passed and the Government paid monetary compensation to the juveniles.



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12. Yet another issue to be considered herein is that the respondent was denied promotion due to his alleged involvement in the commission of such a grave offence, which the enquiry officer held to be proved, as the standard of proof required in the departmental enquiry is only that of preponderance of probabilities. The Hon'ble Supreme Court in ***Union of India v. K.V. Janakiraman [(1991) 4 SCC 109]*** has held that the employee found guilty of misconduct cannot seek equal treatment with others, who have unblemished record and that, the employer has the authority to consider the antecedents of the employee, while denying promotion. It had further observed that denial of promotion in such a case is not a penalty, but a consequence of his conduct. The relevant passage of the same is quoted below for ready reference:

"29. An employee has no right to promotion. He has only a right to be considered for promotion. The promotion to a post and more so, to a selection post, depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interests. An employee found guilty of a misconduct cannot be placed on par with the other employees and his case has to be treated differently. There is, therefore, no discrimination when in the matter of promotion, he is treated differently. The least that is expected of any administration is that it does not reward an employee with promotion retrospectively from a date when for his conduct before that date he is penalised in present. When an employee is held guilty and penalised and is, therefore, not promoted at least till the date on which he is penalised, he cannot be said to have been subjected to a further penalty on that account. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct. In fact, while considering an employee for promotion his whole record has to be taken into consideration and if a promotion committee takes the penalties imposed upon the employee into consideration and denies him the promotion, such denial is not illegal and unjustified. If, further, the promoting authority can take into consideration the penalty or penalties awarded to an employee in the past while considering his promotion and deny him promotion on that ground, it will be irrational to hold that it cannot take the penalty into consideration when



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it is imposed at a later date because of the pendency of the proceedings, although it is for conduct prior to the date the authority considers the promotion."

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13. In addition to the above, useful reference can be made to the judgment in ***State of M.P. v. Bhupendra Yadav [2023 SCC Online SC 1181]*** cited by the learned Additional Advocate General appearing for the appellants. In that case, the appellant was tried for offences under POCSO (along with other IPC offences which ended in compromise) and was acquitted by the Court as prosecution witnesses turned hostile. He thereafter applied for the post of Constable in the police service disclosing his antecedents truthfully and turned out to be successful in the selection process. However, the State found him unfit for the job considering his involvement in heinous crime. The Hon'ble Supreme Court affirmed the decision of the State and observed that it is not a case of clean acquittal. The relevant paragraphs are extracted hereunder :-

"17. This is a classic example of the situation contemplated in para 38.4.3 of Avatar Singh (supra) where the charges framed against the respondent herein involved moral turpitude and though he was acquitted on the prosecution witnesses having turned hostile, but given the facts and circumstances of the case which led to his acquittal, we are of the view that the appellant – State Government was well within its right to exercise its discretion against the respondent and terminate his services on the ground that he was unfit for appointment in the police department. Here was a case where the complainant had reneged from the statement made to the police in view of a settlement arrived at with the respondent. It is noteworthy that the incident, subject matter of the criminal case had occurred on 14th February, 2015, and judgement was pronounced by the trial Court on 26th October, 2015. In the very next year, when the appellant – State Government invited applications for appointment to the post of Constable, the respondent had submitted his application. Even though this is a case of candid disclosure of the criminal case on the part of the respondent, which had culminated in an acquittal, but having regard to the fact that the prosecution could not succeed in proving the case against the respondent for the reasons noted hereinabove and further, being mindful of the fact that the case involved moral turpitude and the respondent was charged with non-compoundable



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offences of a serious nature, we are of the firm view that the judgment of the trial Court cannot be treated as a clean acquittal.

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18. The aforesaid aspects were rightly factored in by the appellant - State Government while issuing the communication dated 24th August, 2017 and declaring that the respondent was unfit for appointment to the said post. **The yardstick to be applied in cases where the appointment sought relates to a Law Enforcement Agency, ought to be much more stringent than those applied to a routine vacancy.** One must be mindful of the fact that once appointed to such a post, a responsibility would be cast on the respondent of maintaining law and order in the society, enforcing the law, dealing with arms and ammunitions, apprehending suspected criminals and protecting the life and property of the public at large. **Therefore, the standard of rectitude to be applied to any person seeking appointment in a Law Enforcement Agency must always be higher and more rigorous for the simple reason that possession of a higher moral conduct is one of the basic requirements for appointment to a post as sensitive as that in the police service.**

19. We are, therefore, of the opinion that mere acquittal of the respondent in the criminal case would not automatically entitle him to being declared fit for appointment to the subject post. The appellant-State Government has judiciously exercised its discretion after taking note of all the relevant factors relating to the antecedents of the respondent. In such a case, even one criminal case faced by the respondent in which he was ultimately acquitted, apparently on the basis of being extended benefit of doubt, can make him unsuitable for appointment to the post of a Constable. The said decision taken by the appellant-State Government is not tainted by any malafides or arbitrariness for the High Court to have interfered therewith. As a result, the judgment dated 17th November, 2017, passed by the learned Single Judge is upheld while quashing and setting aside the impugned judgment dated 24.01.2018, passed by the Division Bench of the High Court. The appeal is allowed. Parties are left to bear their own costs."

14. Thus, it is vivid that mere acquittal of the respondent in the criminal case would not automatically entitle him to be declared as fit for appointment to the post in question. Therefore, the order of the learned Judge based on the order of acquittal passed in the criminal case, warrants interference by this court. However, in the totality of the circumstances of the case, this court is of the



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opinion that the punishment of postponement of increment for three years is hereby reduced to one year, with cumulative effect.

15. Accordingly, W.A.No.2273 of 2022 is allowed by setting aside the order passed in WP.No.32401 of 2018. W.A.No.2052 of 2023 is partly allowed by modifying the order passed in WP.No.31793 of 2018. No costs. Consequently, connected miscellaneous petitions are closed.

[R.M.D,J.] [M.S.Q, J.]
20.11.2023

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Index: Yes / No.
Speaking order/ Non-speaking order
Neutral Citation: Yes / No.

To

- 1.The Principal Secretary to Government,
Government of Tamil Nadu,
Home (Police II) Department,
Fort St. George, Chennai-9.
- 2.The Director General of Police,
(Recruitment and Training Section),
Dr.Radhakrishnan Salai,
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- 3.The Deputy Commissioner of Police,
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R. MAHADEVAN, J.
and
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r n s

4.The Deputy Commissioner of Police,
Mount District,
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5.The Commissioner of Police,
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Vepery, Chennai - 600 008.

Pre Delivery Judgment in
W.A.Nos.2273 of 2022 & 2052 of 2023

20.11.2023