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W.A.No.2545 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on : 03.10.2023

Judgment delivered on : 12.10.2023

CORAM

**THE HONOURABLE MR. JUSTICE R. MAHADEVAN**  
and  
**THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ**

Writ Appeal No. 2545 of 2022

and

C.M.P. No. 20017 of 2022

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1. The Government of Tamil Nadu  
rep. by its Secretary to Government  
Home Department  
Fort St. George  
Chennai - 600 009
2. The Director General of Police  
Tamil Nadu  
Dr. Radhakrishnan Salai  
Chennai - 600 004
3. The Commissioner of Police  
Greater Chennai Police  
Vepery  
Chennai - 600 007
4. The Deputy Commissioner of Police  
Flower Bazaar District  
Chennai - 600 001

.. Appellants



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Versus

Prabhakaran (Gr.I.P.C 26539)  
formerly working in  
B-1 North Beach Police Station  
No.17, U Block  
Kondithoppu Police Quarters  
Chennai

.. Respondent

Writ Appeal filed under Clause 15 of the Letters Patent against the Order dated 09.08.2021 passed in Writ Petition No. 18157 of 2020 on the file of this Court.

For Appellants : Mr. P.Kumaresan, Additional Advocate  
General assisted by Mrs.S. Anitha,  
Special Government Pleader

For Respondent : Mr. C. Vigneswaran

### **JUDGMENT**

#### **R.MAHADEVAN, J**

This appeal is filed by the appellants, assailing the order dated 09.08.2021 passed in Writ Petition No. 18157 of 2020, in and by which, the learned Judge allowed the said writ petition filed by the respondent herein.

2. The brief facts which are absolutely germane and necessary for consideration of this appeal, as unfolded from the documents enclosed in the typed set of papers, are as under:



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3. The respondent/writ petitioner had joined as Grade-II Constable in the Police Department on 31.12.2003 and was promoted as Grade-I Constable during the year 2013. While he was working as such, he was issued with an order of suspension passed by the fourth appellant on 08.12.2018 on the basis of the complaint given by one Nathiya / defacto complainant. It was alleged in the said complaint that in connection with Crime No. 361 of 2018 registered for the offences punishable under Sections 323, 324, 506 (ii) of Indian Penal Code and Section 4 of the Tamil Nadu Prohibition of Women Harassment Act, the husband of the defacto complainant was arrested and sent for remand; and the respondent herein, being the Grade-I Police Constable at that time, accompanied the husband of the defacto complainant to Puzhal Central Prison for remand. While so, the respondent had obtained the mobile number of the defacto complainant from her husband and taking advantage of the fact that her husband was remanded to judicial custody, the respondent called the defacto complainant in her mobile phone, sent obscene messages and even called her over phone during odd hours. The defacto complainant informed it to her husband after he came out on bail and thereafter, on 19.07.2018, the defacto complainant, along



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with her husband, gave the complaint against the respondent herein.

4. On the basis of the complaint dated 19.07.2018 made by the defacto complainant, the respondent was placed under suspension. Subsequently, a charge memo dated 10.01.2019 was issued to the respondent containing three charges. The crux of the charges is that the respondent had sent obscene messages in whatsapp, besides SMS (short messaging service) to the defacto complainant from his mobile phone and thereby he had sexually harassed her, which would show indiscipline towards his duties. During the departmental enquiry, the defacto complainant and her husband were examined and cross-examined by the respondent/writ petitioner extensively. After considering the statements of the witnesses, the enquiry officer in his report dated 10.08.2019 held that all the charges levelled against the respondent are proved. Enclosing the report of the enquiry officer, a second show cause notice was issued to the respondent, to which, he submitted his explanation on 27.08.2019 pointing out that the enquiry officer, without any basis and in utter disregard to the statement of the defacto complainant and her husband in the cross-examination, held that the charges have been proved and therefore, he prayed for exonerating him from



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all the charges. Notwithstanding the explanation so submitted, the fourth appellant passed the order dated 10.09.2019 removing the respondent from service. Aggrieved by the same, the respondent filed an appeal before the third appellant, and the same was rejected on 03.01.2020. A mercy petition dated 22.01.2020 filed by the respondent before the second appellant was also rejected on 14.04.2020. Therefore, challenging the aforesaid orders passed by the appellant authorities, the respondent herein preferred writ petition bearing No.18157 of 2020.

5. Opposing the writ petition, the fourth appellant filed a detailed counter affidavit, wherein, it was stated that to prove the charges levelled against the respondent, departmental enquiry was conducted, in which, 11 witnesses were examined by the prosecution and the respondent was also given opportunity to cross-examine the witnesses. On an in-depth analysis of the statement of the witnesses, the enquiry officer has concluded that the charges against the respondent are proved. The report of the enquiry officer was served on the respondent. Thereafter, the disciplinary authority passed the order of removal, which was also affirmed by the appellate authority as well as the revisional authority. Therefore, according to the fourth appellant,



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all the procedures were duly followed and the respondent was given adequate opportunity to defend himself in the departmental proceedings in the touch stone of principles of natural justice.

6. As regards the merits of the charges, it was stated by the fourth appellant that the defacto complainant in her complaint stated that she has frequently received abusive message to her cell phone from mobile Number 98940 84659, which was the number given by the respondent, when she was in the police station. PW2, Prashanth, husband of the defacto complainant also stated that the respondent had obtained the mobile number of his wife at the time of his remand and spoken to his wife frequently. According to PW2, the respondent had taken advantage of his absence and contacted his wife even during odd hours, without any basis. Even otherwise, a discreet enquiry was conducted against the respondent's activities by PW4, Assistant Commissioner of Police, who, in his statement before the enquiry officer stated that during such secret enquiry, it unfolded that the respondent is in the habit of misbehaving with ladies living with their family in the platforms and a report has been sent to transfer the respondent from B-1 North Beach Police Station. Subsequently, the instant complaint came to be filed by the



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defacto complainant justifying the secret information collected against him.

Taking note of the antecedents of the respondent and the fact that the harassment perpetrated against the defacto complainant is adequately proved, the fourth appellant in his counter affidavit stated that the order of removal passed against the respondent is wholly justifiable and it does not call for any interference by this Court in exercise of powers under Article 226 of The Constitution of India.

7. The learned Judge, upon hearing the counsel for both sides, concluded that the averments in the complaint lodged by the defacto complainant and her statement in the cross-examination make it abundantly clear that the complaint is vexatious and therefore, the punishment of removal from service imposed on the respondent is harsh and disproportionate, and if at all, he ought to have been warned from repeating such lapses. Accordingly, the learned Judge set aside the orders passed by the appellant authorities and allowed the writ petition, by order dated 09.08.2021, which is impugned in this writ appeal.

8. The learned Additional Advocate General appearing for the



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appellants submitted that the learned Judge, in exercise of power under Article 226 of The Constitution of India, ought to have confined his jurisdiction to ensure, whether all the procedural formalities have been complied with or not, while conducting the disciplinary proceedings by the appellant authorities, however, he substituted his views and opinions as that of the disciplinary authority, appellate authority and the revisional authority to conclude that the act of the respondent/writ petitioner is free from any blemish. Elaborating further, the learned Additional Advocate General drew the attention of this court to the complaint given by the defacto complainant, wherein she stated that the respondent had repeatedly sent obscene messages to her mobile phone and unable to bear such harassment, she disclosed it to her husband, after he came out on bail; immediately thereafter, the complaint was given by the defacto complainant; and therefore, it cannot be said that the complaint is false. According to the learned Additional Advocate General, there was an element of harassment clearly made out in the complaint given by the defacto complainant and it was also adequately proved during the disciplinary enquiry conducted against the respondent. Without properly appreciating the same, the learned Judge, taking note of some stray answers elicited during the cross-examination of the PW1/defacto complainant, has



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allowed the writ petition filed by the respondent. The learned Additional Advocate General therefore prayed for setting aside the order passed by the learned Judge and allowing this writ appeal.

9. Per contra, the learned counsel for the respondent / writ petitioner at the outset, submitted that after analysing the entire factors in detail, the learned Judge has correctly set aside the orders passed by the appellant authorities and allowed the writ petition. Adding further, the learned counsel submitted that there are various contradictions in the complaint as well as in the statement of the defacto complainant and her husband in their cross-examination. In the complaint, it was stated that the mobile number of the respondent was furnished by him to PW1/defacto complainant in the police station. However, PW2/husband of defacto complainant admitted that when he was about to be remanded, he asked the respondent to give his mobile number through which he called the defacto complainant/wife and spoke to her. Therefore, the allegation that the respondent gave his mobile number and asked the defacto complainant for any help, appears to be incorrect. Further, PW1 in her cross-examination admitted that she did not receive any Whatsapp message, but what she



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received was only SMS. Further, the she herself admitted that she contacted the respondent twice after the remand of her husband; and that, she had sent a message to the respondent in his mobile phone to call her, when he did not attend to her call. It is also pointed out that to question No.15 as to whether the respondent had talked to her in any vulgar words or obscenity, it was replied that the respondent asked her to accompany him in his bike when she want to go over to the hospital and that itself is a vulgarity. Therefore, the foundation, based on which the complaint was given by the complainant, is false and motivated. The learned Judge, considering the reply given by the defacto complainant and her husband in their cross-examination, has arrived at a conclusion that there was no element of harassment by the respondent and the phone calls made by him, cannot be construed as sexual harassment perpetrated against him. While concluding so, it was held that the punishment of removal from service is harsh and disproportionate to the evidence made available in the disciplinary enquiry; and accordingly, it was observed that at the best, the respondent herein could have been warned instead of dismissing him from service.

10. The learned counsel for the respondent/writ petitioner also submitted that the orders passed by the appellate authority as well as the



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revisional authority are cryptic in nature, without assigning any reasoning.

There was no discussion made as to how the order passed by the disciplinary authority is justifiable and is proper. They, without application of mind to the charges levelled, the deposition of witnesses and the grounds raised, have simply rejected the appeal/revision by passing orders, by affirming the order of the disciplinary authority. In this context, the learned counsel placed reliance on the decision of the Honourable Supreme Court in ***Sher Bahadur v. Union of India and others [(2002) 7 Supreme Court Cases 142]*** wherein it was held as follows:

*"7. It may be observed that the expression "sufficiency of evidence" postulates existence of some evidence which links the charged officer with the misconduct alleged against him. Evidence, however voluminous it may be, which is neither relevant in a broad sense nor establishes any nexus between the alleged misconduct and the charged officer, is no evidence in law. The mere fact that the enquiry officer has noted in his report, "in view of oral, documentary and circumstantial evidence as adduced in the enquiry" would not in principle satisfy the rule of sufficiency of evidence. Though the disciplinary authority cited one witness Shri. R.A. Vashist, Ex.CVI/Northern Railway, New Delhi, in support of the charges, he was not examined. Regarding documentary evidence, Ext.P-1 referred to in the enquiry report and adverted to by the High Court, is the order of appointment of the appellant, which is a neutral fact. The enquiry officer examined the charged officer but nothing is elicited to connect him with the charge. The statement of the appellant recorded by the enquiry officer shows no more than his working earlier to his re-engagement during the period between May 1978 and November 1979 in different phases. Indeed, his statement was not relied upon by the enquiry officer. The finding of the enquiry officer that in view of the oral, documentary and circumstantial evidence, the charge against the appellant for securing the fraudulent appointment letter duly signed by the*



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*said APO (Const) was proved is, in the light of the above discussion, erroneous. In our view, this is clearly a case of finding the appellant guilty of charge without having any evidence to link the appellant with the alleged misconduct. The High Court did not consider this aspect in its proper perspective as such the judgment and order of the High Court and the order of the disciplinary authority, under challenge, cannot be sustained, they are accordingly set aside.*

By pointing out the above decision, the learned counsel for the respondent submitted that there was no sufficient evidence made available in the departmental enquiry to connect the respondent with the alleged charge. Therefore, the order of the learned Judge, setting aside the order of punishment passed by the disciplinary authority as affirmed by the appellate as well as revisional authorities, is perfectly right and the same warrants no interference at the hands of this court.

11. As regards the plea of the appellants that judicial review in a case of this nature is impermissible, the learned counsel for the respondent /writ petitioner placed reliance on the following decisions:

(i) ***Commissioner of Police, Delhi and others v. Jai Bhagwan [(2011) 6 Supreme Court Cases 376]*** wherein the Honourable Supreme Court, while dealing with a case under the provisions of Prevention of Corruption Act, held that mere proof of demand and receiving illegal gratification cannot be drawn from returning of the amount. It was further



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held that suspicion cannot take the place of proof and the charges must be proved beyond certain degree of proof. When there is lack of proof of alleged demand and acceptance of gratification, the delinquent is entitled for reinstatement.

(ii) *Allahabad Bank and others v. Krishna Narayan Tewari [(2017) 2 Supreme Court Cases 308]* in which it was held by the Honourable Supreme Court that the writ courts must be slow in interfering with the findings of fact recorded by departmental authority. However, if the findings are unsupported by evidence or are such as no reasonable person would arrive at, then writ court is justified, if not duty-bound, to examine the matter. Even in cases where the departmental authority has not applied its mind to the evidence or has not assigned reasons for its conclusion, then the writ courts can interfere with the orders of punishment.

(iii) *S.R. Tewari v. Union of India and another [(2013) 6 Supreme Court Cases 602]* wherein it was held that courts can interfere if the punishment is shockingly disproportionate to the gravity or misconduct or is arbitrary in violation of Article 14 of the Constitution of India. While examining the issue of proportionality, the courts can consider the



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circumstances under which misconduct was committed and consider the effect of it.

With these submissions, the learned counsel prayed for dismissal of this writ appeal filed by the appellants.

12. Heard both sides and perused the original records produced by the appellant authorities.

13. Admittedly, the respondent, while working as Grade-I Police Constable, was placed under suspension on 08.12.2018. Consequently, disciplinary proceedings was conducted, which ended in the order of punishment of removal from service. The appeal and revision filed by the respondent against the said order of the disciplinary authority also came to be rejected. However, the learned Judge set aside all the orders and allowed the writ petition filed by the respondent. Therefore, this writ appeal by the appellant authorities.

14. To appreciate the rival contentions, it is but necessary to look into the evidence recorded during the disciplinary proceedings initiated



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against the respondent herein. The defacto complainant Nathiya was examined as P.W.1. During the course of her cross examination by the respondent on 11.06.2019, for question No.3 as to how the defacto complainant got his mobile number, she deposed that the respondent himself has given it when she was standing in front of the police station and asked her to contact him for any help. For question No.5 as to whether any message was received by the complainant from the mobile number 9498132208, she asserted that she received messages not only from that phone number but also from other phone numbers, including the phone number of the police station. For question No.5 as to how many times the respondent had contacted the defacto complainant from his mobile number, she went on to state that he contacted her daily. For question number 6 as to how many days the respondent contacted her, it was her reply that the respondent contacted her in phone for 10 days when her husband was in prison. For question No.8 as to whether any SMS was sent by the respondent from his mobile number, it was replied that she received SMS from the mobile number 9894084659 between 12.00 am and 01.00 am in the midnight and from 10.00 am in the morning. For question No. 9 as to whether the mobile subscription number referred to by the complainant belongs to him, the respondent reiterated that



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it was his number. For question No.10, as to whether the respondent had talked to her only for 5 times, it was replied that he had contacted her for more than 5 times. For the last question viz., question No.15, as to whether the respondent had spoken anything vulgar or offensive, the defacto complainant had replied that the respondent called her to accompany him in his bike and that itself is wrong, besides, he asked her to think over and inform him of her decision.

15. On going through the statement of the defacto complainant in her cross-examination, it is clear that the respondent had interacted with the respondent much to her chagrin and it is not appreciable. Further, the conversations made by the respondent with the complainant have nothing to do with the discharge of his employment as a Police Constable and they are irrelevant. The respondent, being an employee in the Police force, ought to have refrained him from making any conversation with the complainant. That apart, in departmental enquiry, the preponderance of probability alone has to be looked into and nothing more. According to the said principle, if there is an element of misconduct made out against the delinquent, it is sufficient to



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hold that the charges are proved, unlike the criminal case, wherein, the offence framed against an accused has to be proved beyond reasonable doubt.

In the present case, there are abundant material evidence made available during the departmental enquiry, to prove the connection of the respondent with the alleged misconduct and that, the acts of the respondent demonstrate deliberate lack of discipline in discharge of his duties, thereby tarnishing the reputation and image of the police force. The Hon'ble Supreme Court time and again held that "an employee in the uniformed service presupposes a higher level of integrity as such a person is expected to uphold the law" [Refer: ***Jainendra Singh v. State of Uttar Pradesh, (2012) 8 SCC 748***]. For better appreciation, the observation of the Hon'ble Supreme Court in ***Commissioner of Police, New Delhi v. Mehar Singh, [AIR 2013 SC 2861]***, is extracted below:

*"35. The police force is a disciplined force. It shoulders the great responsibility of maintaining law and order and public order in the society. People repose great faith and confidence in it. It must be worthy of that confidence. A candidate wishing to join the police force must be a person of utmost rectitude. He must have impeccable character and integrity..."*

In the light of the above legal proposition, the order of the disciplinary authority in dismissing the respondent from service for the proven charges, cannot be faulted.



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16. With respect to the submission made on the side of the respondent / writ petitioner that the orders passed by the appellate authority as well as revisional authority are cryptic in nature, without assigning any reason, it is seen that in the order dated 03.01.2020, the third appellant/ appellate authority had referred to the three charges levelled against the respondent as well as the order passed by the fourth appellant / disciplinary authority and thereafter, taking note of the gravity of the delinquency, it was concluded that the punishment awarded to the respondent appears to be apt. Similarly, the revisional authority also, after having referred to the charges levelled against the respondent and the conclusion of the enquiry officer, disciplinary authority as well as the appellate authority, held that there are no convincing materials made available, warranting any interference with the punishment awarded to the respondent. Thus, we are of the opinion that the appellate authority as well as the revisional authority have applied their mind to the charges levelled against the respondent herein and have come to such conclusion, in the light of the records made available. It is needless to mention that the orders of the appellate authority or the revisional authority need not run into pages. Even a brief recording of opinion, justifying the



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decision made, would suffice to withstand the test of a reasoned order.

Therefore, the plea of the respondent that the orders of the appellate authority as well as revisional authority are non-speaking orders, cannot be countenanced by this court.

17. As regards the quantum of punishment, we feel that the appellants, being employer, have lost the confidence on the respondent in discharge of his duties especially when his conduct had the tendency to bring down the image of the department in the midst of the general public. The respondent who is employed in Police Force, is expected to discharge his duties with utmost devotion, diligence, integrity and honesty and without any room for complaint. Furthermore, it unfolded during the discreet enquiry conducted by the fourth appellant that the respondent had indulged in unceremonious behaviour with ladies living with their families in the platforms and a report has already been sent to transfer him from B-1 North Beach Police Station and the same is pending action. While so, the defacto complainant lodged the complaint against the respondent, which culminated in the order of his removal from service. The Hon'ble supreme court in *State*



*of Meghalaya & Ors. v. Mecken Singh N. Marak [(2008) 7 SCC 580],*

while dealt with the imposition of punishment, has held as follows:

*“14. In the matter of imposition of sentence, the scope for interference is very limited and restricted to exceptional cases. The jurisdiction of High Court, to interfere with the quantum of punishment is limited and cannot be exercised without sufficient reasons. The High Court, although has jurisdiction in appropriate case, to consider the question in regard to the quantum of punishment, but it has a limited role to play. It is now well settled that the High Courts, in exercise of powers under Article 226, do not interfere with the quantum of punishment unless there exist sufficient reasons therefor. The punishment imposed by the disciplinary authority or the Appellate Authority unless shocking to the conscience of the court, cannot be subjected to judicial review. In the impugned order of the High Court no reasons whatsoever have been indicated as to why the punishment was considered disproportionate. Failure to give reasons amounts to denial of justice. The mere statement that it is disproportionate would not suffice.*

*15. While considering the question of proportionality of sentence imposed on a delinquent at the conclusion of departmental inquiry, the court should also take into consideration, the mental set up of the delinquent, the type of duty to be performed by him and similar relevant circumstances which go into the decision making process. **If the charged employee holds the position of trust where honesty and integrity are in-built requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct, in such cases has to be dealt with iron hands.***

*16. The respondent belonged to a disciplined force. He was supposed to carry out instructions given to him by his superior. Not only he flouted the instructions but conducted himself in such a manner that he caused loss of part of pay to be deposited with the exchequer and loss of service revolver with ammunition which could be misused. When a statute gives discretion to the administrator to take a decision, the scope of judicial review would remain limited. **The proved charges clearly established that the respondent, who was a police officer failed to discharge his duties with utmost integrity, honesty, devotion and diligence and his acts were prejudicial to the exchequer and society.***



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17. *Even in cases where the punishment imposed by the disciplinary authority is found to be shocking to the conscience of the court, normally the disciplinary authority or the Appellate Authority should be directed to reconsider the question of imposition of penalty. The High Court in this case, has not only interfered with the punishment imposed by the disciplinary authority in a routine manner but overstepped its jurisdiction by directing the Appellate Authority to impose any other punishment short of removal. By fettering the discretion of the Appellate Authority to impose appropriate punishment for serious misconducts committed by the respondent, the High Court totally misdirected itself while exercising jurisdiction under Article 226...."*

Keeping the above legal position in mind and having regard to the fact that the disciplinary authority, appellate authority and revisional authority, in unison, have formed an opinion that the punishment of removal from service will be commensurate to the charges framed against the respondent and such an opinion was formed not only on the basis of the material records collected during the course of the departmental enquiry, but also by relying upon the report of the fourth appellant during his discreet enquiry, we are of the view that the punishment imposed on the respondent is not shockingly disproportionate to the charges and hence, taking a lenient view, in the given facts and circumstances, is unwarranted.

18. Further, in the decision in ***State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya [(2011) 4 Law Weekly 769]*** it was held by the Hon'ble Supreme Court that in exercise of the powers conferred under Article



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226 of the Constitution of India, the High Court cannot interfere with an order of dismissal preceded by a valid enquiry, unless it is noticed that such enquiry is perverse and the conclusion arrived at is contrary to the evidence available on record. In this case, an enquiry was conducted, in which the respondent was given adequate opportunity to put forth his defence. It is not the case of the respondent that the enquiry conducted by the appellants is a farce or in violation of the principles of natural justice. In such circumstances, it can be inferred that the order of punishment imposed on the respondent, was preceded by the valid enquiry and therefore, the same cannot be interfered with by the learned Judge under Article 226 of the Constitution of India.

19. That apart, there is no power of judicial review under Article 226 of the Constitution of India to interfere with the order of punishment recorded by the disciplinary authority by re-appreciating the materials on record. In this context, it may be relevant to refer to the decision of the Honourable Supreme Court in *High Court of Judicature at Bombay through its Registrar v. Udaysingh and others* [AIR 1997 Supreme Court 2386]



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wherein it was held that the High Court, in exercise of power under Article 226 of The Constitution of India, has no power to entrench on the jurisdiction of the disciplinary authority and to re-appreciate the evidence. All that is permissible is to ensure that the conclusion arrived at is based on evidence supporting the finding or whether the conclusion is based on no evidence. Applying the same to the facts of the present case, wherein, the conclusion reached by the appellant authorities to impose the punishment of removal from service on the respondent is supported by the evidence recorded during the course of departmental enquiry as well as the discreet enquiry, we are of the view that the order passed by the learned Judge, in interfering with such conclusion, is against the settled legal position and is hence, liable to be set aside.

20. Accordingly, this writ appeal is allowed by setting aside the Order dated 09.08.2021 passed by the learned Judge in Writ Petition No. 18157 of 2020. No costs. Consequently, connected miscellaneous petition is closed.

**(R.M.D., J) (M.S.Q., J)**



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Speaking/Non-Speaking Order

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1. The Secretary to Government  
Home Department  
Fort St. George  
Chennai - 600 009
2. The Director General of Police  
Tamil Nadu  
Dr. Radhakrishnan Salai  
Chennai - 600 004
3. The Commissioner of Police  
Greater Chennai Police  
Vepery  
Chennai - 600 007
4. The Deputy Commissioner of Police  
Flower Bazaar District  
Chennai - 600 001



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**R. MAHADEVAN, J**  
and  
**MOHAMMED SHAFFIQ, J**

rsh /rk

Pre-delivery Judgment in  
WA No. 2545 of 2022

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