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WP.No.38672 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.09.2024

PRONOUNCED ON : 27.09.2024

CORAM

THE HON'BLE Mr.JUSTICE C.KUMARAPPAN

WP.No.38672 of 2015

M.Ramamurthy

... Petitioner

- Vs -

1. The Superintendent of Police,
Kancheepuram District.
2. The Deputy Inspector General of Police,
Kancheepuram Range, Kancheepuram.
3. The Additional Director General of Police,
Law & Order, Dr.Radhakrishnan Salai,
Mylapore, Chennai-600 004.
4. The Director General of Police
Tamil Nadu, Dr.Radhakrishnan Salai,
Mylapore, Chennai-600 004.

... Respondents

Writ petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, calling for the records of the 1st respondent in connection with the impugned order passed by him in PR No.34/2013 dated 11.10.2013 and confirmed by the respondents 2 & 3 respectability in C No.B2/ 8878/2013 Range Appeal No.20-2013 dated 30.12.2013 and RC No.24424/ AP1(2)/ 2014 dated 5.11.2014 and quash the same.



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For petitioner : Mr.K.Venkataramani
Senior Counsel
for Mr.M.Muthappan

For Respondents : Mr.S.John J.Raja Singh
Additional Govt. Pleader for R1 to R4

ORDER

The instant writ petition has been filed challenging the punishment imposed against the petitioner in PR No.34/2013 dated 11.10.2013 which was later confirmed by the respondents 2 and 3 in Range Appeal No.20-2013 dated 30.12.2013, and in RC No.24424/AP1(2)/2014 dated 5.11.2014.

2. While flitting the facts, the following facts are necessary for the disposal of the instant writ petition. The petitioner entered into the service as Grade-II Police Constable on 01.12.2003. During 2010, he was transferred to Law and Order establishment and was attached to Satraz Police Station since 2010. While so, on 18.12.2013 at about 6.30.a.m, the Circle Inspector, Padalam came to the Police Station with 2 lorries, an Indica car, and 2 motor cycles, which were seized in connection with the illegal sand mining. Besides, they have also apprehended 4 persons. It is the case of the petitioner that the above vehicles and persons were handed over to the custody of



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Mr.Sasikumar, the then Special Sub-Inspector of Police. Whereas, the Special Sub-Inspector of Police has released all the 4 persons after obtaining their undertaking. Therefore, according to the petitioner, for the alleged releasing of vehicle, which according to the petitioner may be a misconduct of the Special Sub-Inspector of Police, he was also served with a charge memo dated 15.05.2013, and ultimately, found guilty and imposed with a punishment for the postponement of increment for 2 years with cumulative effect vide order dated 11.10.2013, which was subsequently, confirmed in the appeal.

3. The learned Senior Counsel Mr.K.Venkataramani appearing on behalf of the petitioner would vehemently contend that the Enquiry Officer, without any material on record, has arrived at a conclusion that the charge of unauthorizedly releasing the persons, was proved. It was the further contention of the learned Senior Counsel that the impugned order of punishment is a non speaking order, and contrary to Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules. It was also further contended that even the order of Appellate Authority is also a non speaking order. The learned Senior Counsel would further contend



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that there is no entrustment of the person with the petitioner, therefore, he being the constable, he cannot be penalized for the act of his superior. Thus, prayed to allow this writ petition.

4. Per contra, the learned Additional Government Pleader would vehemently contend that, the order passed by the Disciplinary Authority, as well as the Appellate Authority has considered all the aspects including the merits of the matter, and has passed a detailed speaking order, therefore, the same does not require any interference. It was also the further contention of the learned Additional Government Pleader that the standard of proof in the disciplinary proceedings is only the preponderance of probabilities, and that the Enquiry Officer has dealt into the various material evidence and has rightly arrived at a conclusion that the charge against the petitioner has been proved. It was further contended that the insufficiency of material to reach such conclusion cannot be a ground to be interfered unless such finding is an error apparent on the face of records, and that no ordinary prudent man would take such decision. Therefore, learned Government Pleader prayed to dismiss the writ petition.



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5. I have given my anxious consideration to either side submissions.

6. The first and foremost contention of the learned Senior Counsel is that the impugned order dated 11.10.2013 and 30.12.2014 are non speaking orders, which contravenes Rule 3(b) and Rule 6 of Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules.

7. I have harmoniously gone through both the impugned orders. On harmonious reading of those orders, the Disciplinary Authority as well as the Appellate Authority have considered as to the necessity for initiating the disciplinary proceedings, and have also considered the enquiry proceedings and its ultimate finding. There is also a reference as to the consideration of the explanation given by the delinquent and only after having considered all these aspects, (to put it differently, all the material particulars), has reached the conclusion of imposing punishment.

8. Similarly, in the appeal order also, the Authority has followed the due procedure and stated the process in reaching the ultimate conclusion. Therefore, the arguments put forth by the learned Senior Counsel that the



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impugned order is not a speaking order, cannot be accepted at all. No doubt, it is inexorable requirement that the order of the Disciplinary Authority should be a speaking one. But the speaking order does not mean to re-appreciate the entire evidence let in before the Disciplinary Authority.

9. In the case in hand, the Disciplinary Authority has placed with an enquiry report, along with the finding rendered by the Enquiry Officer. It is pertinent to mention here that an explanation was also sought for from the delinquent employee on the enquiry report and that was also considered. Therefore, on the bare and plain reading, the same demonstrates the application of mind of the Disciplinary Authority as well as the Appellate Authority. Thus, I am of the considered opinion that the order of the Disciplinary Authority and the Appellate Authority is a speaking one.

10. The next contention put forth by the learned Senior Counsel is that when the entrustment of 4 persons and vehicles with a Special Sub-Inspector of Police, who is the superior officer to the petitioner, there cannot be any charge against the petitioner.



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11. Before we delve into the above aspect, it is relevant to refer the judgment of the Hon'ble Supreme Court in ***Central Industrial Security Force v. Abrar Ali*** reported in (2017) 4 SCC 507, wherein the Hon'ble Supreme Court in categorical term has enunciated that the High Court should not have entered into the arena of facts which tantamounts to re-appreciation of evidence. It was further held that the re-appreciation of evidence is not permissible in exercise of jurisdiction under Article 226 of The Constitution of India. In the above judgment, the Hon'ble Supreme Court has also relied upon the judgment of ***State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya*** [*State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya* and *Union of India v. P. Gunasekaran* reported in (2015) 2 SCC 610. The relevant paragraphs are paragraphs 14 and 15 and the same read as under:-

“14. In *State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya* [*State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya*, (2011) 4 SCC 584 : (2011) 1 SCC (L&S) 721] , this Court held as follows : (SCC p. 587, para 7)

“7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be



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grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (Vide *B.C. Chaturvedi v. Union of India* [B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44] , *Union of India v. G. Ganayutham* [Union of India v. G. Ganayutham, (1997) 7 SCC 463 : 1997 SCC (L&S) 1806] , *Bank of India v. Degala Suryanarayana* [Bank of India v. Degala Suryanarayana, (1999) 5 SCC 762 : 1999 SCC (L&S) 1036] and *High Court of Judicature at Bombay v. Shashikant S. Patil* [High Court of Judicature at Bombay v. Shashikant S. Patil, (2000) 1 SCC 416 : 2000 SCC (L&S) 144] .)”

15. In *Union of India v. P. Gunasekaran* [Union of India v. P. Gunasekaran, (2015) 2 SCC 610 : (2015) 1 SCC (L&S) 554], this Court held as follows : (SCC pp. 616-17, paras 12-13)

“12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence.



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The High Court can only see whether:

- (a) the enquiry is held by a competent authority;*
- (b) the enquiry is held according to the procedure prescribed in that behalf;*
- (c) there is violation of the principles of natural justice in conducting the proceedings;*
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*
- (i) the finding of fact is based on no evidence.*

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

- (i) reappreciate the evidence;*
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;*
- (iii) go into the adequacy of the evidence;*
- (iv) go into the reliability of the evidence;*
- (v) interfere, if there be some legal evidence on which findings can be based.*
- (vi) correct the error of fact however grave it may appear to be;*
- (vii) go into the proportionality of punishment unless it shocks its conscience.”*



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12. In yet another judgment in ***General Manager Vs. Giridhari Sahu and others*** reported in (2019) 10 SCC 695, the Hon'ble Supreme Court has referred the Constitution Bench judgment of this Court in ***Yakoob v. K.S. Radhakrishnan*** reported in AIR 1964 SC 477, and held in paragraph 23 as follows:-

“23. A Constitution Bench of this Court, in Yakoob v. K.S.Radhakrishnan [Yakoob v. K.S. Radhakrishnan, AIR 1964 SC 477] , has spoken about the scope of writ of certiorari in the following terms: (AIR pp. 479-80, para 7)

“7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the court or tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate court. This limitation necessarily means that findings of fact reached by the inferior court or tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of



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law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Ahmad Ishaque [Hari Vishnu Kamath v. Ahmad Ishaque, AIR 1955 SC 233] , Nagendra Nath Bora v. Commr. of Hills Division and Appeals [Nagendra Nath Bora v. Commr. of Hills Division and Appeals, AIR 1958 SC 398] and Kaushalya Devi v. Bachittar Singh [Kaushalya Devi v. Bachittar Singh, AIR 1960 SC 1168]).

(emphasis supplied)''

**[Emphasis supplied by this Court]*

13. Therefore, through the above precedent, it is abundantly clear that an error of law, which is apparent on the face of the record can be corrected



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by a writ, but not an error of fact, howsoever grave it may appear to be. It is also made clear that while issuing a writ of Certiorari, the finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant material evidence adduced before the Tribunal were inadequate to sustain the impugned finding. It was also held that the adequacy or sufficiency of evidence led on a point, and the inference of fact to be drawn from the said finding, are within the exclusive jurisdiction and domain of the tribunal, and thus, the same cannot be agitated before a writ court.

14. In the present case, the main focus of the learned Senior Counsel is that though the witnesses had stated during chief examination that the accused were let under the custody of both the Special Sub-Inspector and this petitioner, during the cross examination all the witnesses have consistently stated that the accused were let off only by the Special Sub-Inspector. But the fact remains that the entrustment of those accused under the custody of both the Special Sub-Inspector and the respondent has not been disputed. The mere action of the other person letting off the accused cannot absolve the petitioner from the charges, as there is a positive evidence of entrustment of person with the the petitioner also. The authority has considered both the statement and reached a final conclusion. Therefore, I do not find any



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perversity over the said finding.

15. At this juncture, it is pertinent to mention here that as per the above ratio, when there are some material available to arrive at such conclusion, the sufficiency of evidence or otherwise cannot be gone under Writ jurisdiction. As stated supra, while reading the testimony of the prosecution witnesses, they have categorically stated about the entrustment in the joint custody of both the Special Sub-Inspector and this petitioner. Therefore, when such of the evidence is available, the findings rendered by the Enquiry Officer cannot be held to be perverse. Hence, this Court does not find any ground to interfere with the impugned order.

16. In the result, this writ petition stands dismissed. No costs.

27. 09.2024

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Index : Yes/No

Speaking Order/Non Speaking Order

NCC : Yes/No



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C.KUMARAPPAN, J

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To

1. The Superintendent of Police,
Kancheepuram District.
2. The Deputy Inspector General of Police,
Kancheepuram Range,
Kancheepuram.
3. The Additional Director General of Police,
Law & Order, Dr.Radhakrishnan Salai,
Mylapore,
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Pre-delivery Order in
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