



W.P.No.27729 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2024

WEB COPY

CORAM :
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE K.RAJASEKAR

W.P.No.27729 of 2023
and
W.M.P.No.27209 of 2023

R.Rajavelu

... Petitioner

Vs.

1.The Registrar General,
High Court, Madras,
High Court Buildings,
Chennai – 600 104.

2.The Additional Registrar (Vigilance),
High Court Madras,
High Court Buildings,
Chennai – 600 104.

3.The Government Of Tamilnadu,
Represented by its Additional Chief Secretary,
Home (Courts-I) Department,
Secretariat, Chennai – 600 009.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of writ of Certiorarified Mandamus, to call for the records from



W.P.No.27729 of 2023

the 3rd respondent relating to G.O.(2D).No.172 Home (Courts-I) Department, dated 03.04.2023 and quash the same and consequently direct the respondent to reinstate the petitioner in service as Civil Judge (Junior Division) with attendance and other benefits including seniority and promotion.

For Petitioner	: Mr.R.Murali for Mr.R.Ragevendran
For R1 & R2	: Mr.Karthik Ranganathan
For R3	: Mrs.P.Raja Rajeswari Government Advocate

ORDER

(Order of this Court delivered by S.M.SUBRAMANIAM,J.)

The penalty of dismissal from service imposed in G.O.(2D).No.172 Home (Courts-I) Department 03.04.2023 is sought to be quashed in the present writ proceedings before us.

2. Before advertng to the facts, we would like to consider the governing principles in the matter of disciplinary proceedings. The power of Judicial Review of the High Court under Article 226 of the Constitution of India is to ensure the processes through which a decision has been taken by



W.P.No.27729 of 2023

the Competent Authority in consonance with the Statutes and Rules in force,
but not the decision itself.

3. In exercise of Judicial Review, the Court does not act as an Appellate Forum over the findings of the Disciplinary Authority. The Court does not re-appreciate the evidence on the basis of which the finding of misconduct has been arrived at in the course of the disciplinary enquiry.

4. The Court in exercise of Judicial Review must restrict its review to determine whether:

- (i) the rules of natural justice have been complied with;
- (ii) the finding of misconduct is based on some evidence;
- (iii) the Statutory Rules governing the conduct of the disciplinary enquiry have been observed;
- (iv) the findings of the Disciplinary Authority suffer from perversity;
- (v) the penalty is disproportionate to the proven misconduct.

In the context of the above principles, the nature of departmental domestic enquiry cannot be compared with the criminal trial.



5. The procedures to be adopted for departmental disciplinary proceedings and the criminal trial are distinct and different. Strict proof is required to convict a person under the criminal law. However, no such strict proof is required to punish an employee under the Discipline and Appeal Rules. Preponderance of probabilities would be sufficient to punish an employee. Even moral turpitude and certain misconducts are prescribed as misconducts under the conduct Rules. Therefore, the Courts have time and again reiterated the power of Judicial Review of the High Court in disciplinary matters are expected to be confined with reference to the principles stated above. A public servant is expected to behave properly both inside the Office and outside. His conduct at all circumstances must be in the expected standard, since the public servants enjoys status in the society. By virtue of their status, people repose confidence in public administration. More importantly, in Judicial services, the conduct of the Judges are expected to be far above the conduct of other Government Servants. Particularly, the Uniformed Personnels and the persons in the Judicial Services are expected to behave properly and maintain good conduct at all circumstances.



W.P.No.27729 of 2023

6. With this background, we commence the facts:

The writ petitioner was appointed as Civil Judge (Junior Division) in Tamil Nadu State Judicial Service on 11.10.2012. He was transferred to various places and posted as Judicial Magistrate-VI at Coimbatore. A Charge Memorandum was issued under Rule 17(b) of the Tamil Nadu Civil Services Discipline and Appeal Rules. Five charges were framed against the writ petitioner as under:

Charge No.1:

That you, Tr.R.Rajavelu, while serving as Judicial Magistrate-VI, Coimbatore, during the period from 18.09.2015 to 30.04.2018, had wantonly adjourned the cases in which, appeared as an Advocate before your court, to the evening session and took up those cases for hearing in your Chamber with malafide intention of being closed with her. Further, you had obtained her mobile phone number in the guise of discussing about the case details and started contacting her over phone frequently and spoke indecently to her with sexually coloured remarks like, wants to see her constantly and speak to her, fallen in love with her, she looks beautiful etc. and you had even invited her to have tea with you, with malafide intention and threatened her not to reveal your indifferent attitude to anyone. You have continuously repeated your obscene ways of harassing the said Advocate,



despite her cautioning you, to behave properly.

Your aforesaid act of making sexually coloured remarks on the Advocate appearing before your court had created an unsafe working environment to her and also created mental agony to carry out her profession in a peaceful manner.

Thus, you had violated the code of conduct and failed to maintain the dignity and decorum of the Judiciary which is unbecoming of a Judicial Officer, thereby rendering yourself liable to be proceeded under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal Rules) read with Rule 20 of the Tamil Nadu Government Servants Conduct Rules.

Charge No.2:

That you, Tr.R.Rajavelu, while serving as Judicial Magistrate-VI, Coimbatore, during the period from 18.09.2015 to 30.04.2018, after calling work, you were in the habit of entering into the room of your Stenographer, ... silently and standing behind her seat without her knowledge and on seeing her frightened after realizing your presence, enjoyed her fearing nature. You had also instructed her to close the door while dictating judgments with ulterior motive and also embarrassed her by sitting close to her while dictating the judgments. Further, at times, you had made physical contact over her under the guise of picking up a pencil from her table and leaning towards her standing behind her chair and also insisted her not to wear the coat



WEB COPY



W.P.No.27729 of 2023

inside the Chamber with mala fide intention and prevented her from discharging her official duties in a peaceful manner which forced her to obtain transfer and move away from out court.

Thus, your aforesaid act of indecent misbehaviour towards the staff working under your control amounts to sexual harassment in the work place. As a Superior Officer, you should provide protection and a safe working environment for the female staff working under your control. Instead, you had indulged in such unwelcome advances towards your subordinate just as fence itself grazing the crop.

Thus, you had violated the code of conduct and failed to maintain the dignity and decorum of the Judiciary which is unbecoming of a Judicial Officer, thereby rendering yourself liable to be proceeded under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal Rules) read with 20 of the Tamil Nadu Government Servants Conduct Rules.

Charge No.3:

That you, Tr.R.Rajavelu, while functioning as Judicial Magistrate-VI, Coimbatore, during the period from 18.09.2015 to 30.04.2018, had misbehaved with head clerk, by calling her to your court chambers and passing sexually coloured comment that she looks young and on another day, when she came to your chambers to get permission for taking half a day leave, you asked her to lay down in the lunch room with sexual intention. Since, she did



WEB COPY



W.P.No.27729 of 2023

not yield to your sexual favour, you continued to harass and insult her by issuing Memos and keeping the files put up by her unsigned besides keeping her idle without allocating any work and by entrusting her Head Clerk work to some other staff, thus deliberately causing mental agony to her.

You being a Judicial Officer should ensure the protection of women employees working under your control; instead you had created a very unsafe environment to those women staff and shattered the faith they had upon you by indulging yourself in such shameful acts.

Thus, you had violated the code of conduct and failed to maintain the dignity and decorum of the Judiciary which is unbecoming of a Judicial Officer, thereby rendering yourself liable to the proceeded under Rule 17(b) of the Tamil Nadu Civil Services (D&R) read with Rule 20 of the Tamil Nadu Government Servants Conduct Rules.

Charge No.4:

That you, Tr.R.Rajavelu, while functioning as Judicial Magistrate-VI, Coimbatore, during the period from 18.09.2015 to 30.04.2018, had misbehaved with ..., Assistant, when she entered your chambers for obtaining signature, by enquiring about her age and when she replied that she is going to retire within 3 years, you immediately remarked that you could not believe the same, thus making implications of sexual nature to her indirectly. Further, on another occasion, you made wilful physical contact with her, by holding her



hands suddenly thus exhibiting your sexual intent and when refused to yield to your lust, you started insulting her in open court.

You being a Judicial Officer should ensure the protection of women employees working under your control; instead you had created a very unsafe environment to those women staff and shattered the faith they had upon you by indulging yourself in such shameful acts.

Thus, you had violated the code of conduct and failed to maintain the dignity and decorum of the Judiciary which is unbecoming of a Judicial Officer, thereby rendering yourself liable to be proceeded under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal Rules) read with Rule 20 of the Tamil Nadu Government Servants Conduct Rules.

Charge No.5:

That your, Tr.R.Rajavelu, while serving as Judicial Magistrate No.VI, Coimbatore, during the period from 18.09.2015 to 30.04.2018, had close acquaintance with the Police Constables, viz., ... and ... who were deputed to attend the Court and you had illegally utilised their services for your personal use, by directing them to accompany where ever you go, purchase non vegetarian items to your residence and to arrange car for your personal travel.

Thus, your aforesaid act amounts to misuse of your official position and reveals your improper motive of achieving an object which does not fall within the realm of



WEB COPY



W.P.No.27729 of 2023

judicial discipline and creates a bonafide suspicion over your integrity which is unbecoming of a Judicial Officer thereby rendering yourself liable to be proceeded under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal Rules) read with Rule 20 of the Tamil Nadu Government Servants Conduct Rules.”

7. The petitioner has submitted his explanation denying the allegations set out in the Charge Memorandum. Not satisfied with the explanation, the Disciplinary Authority has appointed an Enquiry Officer. Annexure-II of the Charge Memorandum provides statement of allegations/imputations. Annexure-IV provides list of witnesses. We do not find any infirmity in respect of the Charge Memorandum issued under Rule 17(b) of the Discipline and Appeal Rules.

8. The Enquiry Officer appointed in the cadre of District Judge conducted the Enquiry. The Enquiry Officer in his findings held that the charges 1,2,4 & 5 are proved and charge no.3 alone held not proved. The Final Report of the Enquiry Officer was accepted by the Disciplinary Authority. By enclosing the copy of the Report, a 2nd show cause notice was



W.P.No.27729 of 2023

issued to the writ petitioner. The petitioner submitted his objections on the findings of the Enquiry Officer in his Report. The Disciplinary Authority considered the materials available on record and passed final orders, imposing the penalty of dismissal from service.

9. Mr.R.Murali, learned Counsel for the petitioner would submit that the charges framed against the petitioner were not proved beyond doubt. The statements of the interested witnesses were taken into consideration and the Staff members who were examined with ulterior motive deposed against the writ petitioner, since he was a strict Judge. The Advocates who were examined also wantedly deposed, since the petitioner in his capacity as a Judge declined to grant adjournments at the request of the Advocates. He further solicit the attention of this Court with reference to the statements made by the witnesses.

9.1 Relying on certain portion of the depositions, Mr.R, Murali, learned Counsel for the petitioner would contend that such statements would be insufficient to form an opinion that the allegations against the petitioner



W.P.No.27729 of 2023

are held proved. Based on the insufficient evidence, the major penalty of dismissal from service was imposed. Therefore, it is the obligation on the part of the High Court to protect the interest of the District Judiciary. In order to malign the judicial institution, such bald allegations are made frequently against many Judicial Officers. Therefore, the situation prevailing is to be taken into consideration.

9.2 In support of his contention, the learned Counsel for the petitioner would rely on the Judgement of the Hon'ble Supreme Court of India in the case of ***NirmalaJ.Jhala Vs. State of Gujarat*** reported in (2013) **4 SCC 301**. The relevant portions are extracted hereunder:

“41. In the aforesaid backdrop, we have to consider the most relevant issue involved in this case. Admittedly, the enquiry officer, the High Court on administrative side as well on judicial side, had place a very heavy reliance on the statement made by ShriC.B.Gajjar, Advocate, Mr.G.G.Jani, complainant and that of ShriP.K.Pancholi, Advocate, in the preliminary inquiry before the Vigilance Officer. Therefore, the question does arise as to whether it was permissible for either of them to take into consideration their statements recorded in the preliminary inquiry, which had been held behind the back of the appellant, and for which she had no opportunity to cross-examine either of them.



WEB COPY



W.P.No.27729 of 2023

42.

43.

44.

45. *In view of the above, it is evident that the evidence recorded in preliminary inquiry cannot be used in regular inquiry as the delinquent is not associated with it, and opportunity to cross-examine the persons examined in such inquiry is not given. Using such evidence would be violative of the principles of natural justice.”*

9.3 Mr.R.Murali, learned Counsel for the petitioner would reiterate that in the present case, the preliminary enquiry statements were relied upon which is impermissible. In the above Judgment, the Hon'ble Apex Court held that such preliminary enquiry conducted behind the back of the delinquents cannot be relied upon, since no opportunity to cross-examine the person, who has given statement was provided to the Delinquent Officer. Therefore, the evidence recorded in the preliminary enquiry cannot be used in regular enquiry as the delinquent is not associated with such statements.

9.4 He would further rely on the case decided in ***Ram Lal vs. State of Rajasthan*** by the Apex Court reported in ***(2024) 1 SCC 175***, which reads as under:



WEB COPY



W.P.No.27729 of 2023

“23. It is very clear that relevant and material evidence being, the deposition of PW 5/Raj Singh; the marksheet of 8th class of the appellant (enclosed to the charge-sheet) and the original marksheet independently marked as Ext.D-3 by the defence have been completely left out in the discussion and consideration. Inference has been drawn about the proof of the charges by ignoring crucial, relevant and material evidence which had come on record. The evidence of PW 5 Raj Singh and the marksheet enclosed in the documents annexed to the charge-sheet and the original marksheet marked as Ext.D-3, were materials having a direct bearing on the charge. The disciplinary authority has merely reiterated the reasoning in the enquiry report. Equally so are the findings of the appellate authority. It is well settled that if the findings of the disciplinary authorities are arrived at after ignoring the relevant material the court in judicial review can interfere. It is only to satisfy ourselves to this extent, that we have scrutinised the material to see as to what was reflected in the record. We are satisfied that the disciplinary proceedings are vitiated and deserve to be quashed.”

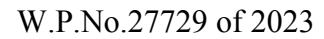
With reference to the above observations of the Apex Court, the learned Counsel for the petitioner states that if the findings of the disciplinary authority are arrived after ignoring the relevant materials, the Court in



W.P.No.27729 of 2023

Judicial Review can interfere. In the present case, the Disciplinary Authority relied on the preliminary enquiry reports and one witness admittedly, became hostile and the over all statements of the deposition relating to the allegations against the petitioner would be insufficient to impose the major penalty of dismissal from service.

10. With reference to the Judgment in **Ram Lal's case**, the Hon'ble Supreme Court of India has made an observation that the findings of the Disciplinary Authority are arrived at, after ignoring the relevant materials, the Court in Judicial Review can interfere. It is only to satisfy ourselves to this extent that we have scrutinised the materials to see as to what was reflected in the record. Therefore, the Hon'ble Supreme Court while examining the records in that particular case, formed an opinion that the Disciplinary Authority in the case of **Ram Lal** has arrived a decision, ignoring the relevant materials on record. Therefore, the said decision is not supporting the case of the writ petitioner. In the case of **Nirmala J. Jhala**, the Hon'ble Apex Court said that the statements recorded in the preliminary enquiry, which had been held behind the back of the appellant, cannot be relied upon for arriving a



<https://www.mhc.tn.gov.in/judis>



W.P.No.27729 of 2023

WEB COPY

10.3 We have carefully gone through the depositions of P.W 1 to P.W. 8 and D.W.1 (Petitioner) and D.W.2. The Court Staffs in clear terms deposed about the conduct of the petitioner while functioning as Judge. Names of the witnesses are not mentioned in view of the nature of charges against the Delinquent Officer.

P.W.1-Advocate, Coimbatore.

P.W.2-Formerly Head Clerk, Judicial Magistrate Court No.VI, Coimbatore.

P.W.3-Formerly Assistant, Judicial Magistrate Court No.VI, Coimbatore.

P.W.4-Formerly Assistant, Judicial Magistrate Court No.VI, Coimbatore.

P.W.5-Additional Public Prosecutor, Judicial Magistrate Court No.VI, Coimbatore

P.W.6-Formerly Office Assistant, Judicial Magistrate Court No.VI, Coimbatore.

P.W.7.-Formerly, Head Constable, E2 Crime Peelamedu Police Station, Coimbatore.

P.W.8-Formerly Steno-Typist, Judicial Magistrate Court No.V, Coimbatore.



WEB COPY

10.4 Perusal of the discussions and evidences of the Enquiry Officer

in his report would reveal that,

(i) *P.W.1 had deposed that the Delinquent had obtained her phone number and tried to flirt with her over phone indulging in a sexual innuendo filled conversation like 'he fallen in love with her'.*

(ii) *P.W.2 had deposed that the delinquent used to awfully scold her and created mental agony. Hence, she had requested the Principal District Judge to transfer her. In her further examination, she had accepted the statement given by her with regard to the delinquent's misbehaviour with ... and ...*

(iii) *P.W.3 had deposed that there was an untold dispute between the delinquent and the Head Clerk. She was not aware of the underlying problem between them directly. Due to this cold war, the delinquent had directed her to look after the work of Head Clerk. But being stuffed with her own workload, she was unable to carry out this additional assignment. As a result, the delinquent had re-directed this additional work of the Head Clerk to Steno-typist In her further examination, by Presenting Officer, she had narrated the happenings witnessed by her as follows:*

The Delinquent used to converse with young lady advocates in his chamber and when she raised concern about



WEB COPY



W.P.No.27729 of 2023

his he used to scold her. The two Police Constables viz., ... and were close to the Judicial Magistrate, always accompanying him where ever he went. Even while trying to contact him under an emergency situation of recording a dying declaration, the Judicial Magistrate would not attend the call. Since ... always accompanied him, they would contact him and convey the crisis to the Judicial Magistrate through him. Amount the female staff he was found to be very close with Typist, as she would not refuse him. While dealing with case files also, he had preferences and disposed the cases of particular Advocates Office. He was rude with other advocates, humiliating and triggering a mental anguish in them.

P.W.4. in her deposition had stated that the delinquent, without any reason, used to abuse her in filthy language, thereby leaving her in an emotional distress. In her further examination she had shared her own encounters with the delinquent. One day, when she went to his chamber to officially get his signature, he began a personal conversation enquiring about her age. When she replied that she was old enough to retire within three years, he made coquettish exclamation that he could not believe the same. On another occasion, he had expressed his lust for her by holding her hands suddenly. Since she refused to his sexual intention, he held his grudge against her by rudely shouting and insulting her in the open Court.



WEB COPY



W.P.No.27729 of 2023

P.W.5 Additional Public Prosecutor had deposed, that the Advocates had boycotted the J.M.6 Court, when the delinquent was serving there, as the Judicial Magistrate. He was transferred from this Court at the time of boycott. He further deposed that the delinquent was strict with the Officials of the Police Department. In his further examination by the presenting Officer, he has deposed that he had heard that the two police constables viz., ... and ... were very close to the delinquent, and found to accompany him wherever he went.

P.W.6 ... in his narration has deposed that it was his daily practice to report at the delinquent's house at 9.00a.m., clean the car, carry a bag given by the delinquent, and return to the court. On one such occasion, he had seen ... the Office Assistant attending the work at the delinquent's house. While cleaning the car, he heard the delinquent shouting aggressively. When he went inside the house, he witnessed the delinquent clothed in his informal dress the lungi, but without wearing a shirt and handed over the bag to him. Taking the bag, he had returned to the Court. Later, he was informed by the delinquent that, the Office Assistant ... had filed a complaint against the delinquent before the Chief Judicial Magistrate. At the same point of time, one ..., from Periyanaickenpalayam Police Station attending the court duty had also expressed to P.W.6, she was not willing work in the J.M.No.VI Court and was in the idea of getting transfer to



WEB COPY



W.P.No.27729 of 2023

some other work place. In his narration, pertaining to the acquaintance of the police constables, P.W.6 clearly revealed that the two police constables ... and ... were close to the delinquent, that accompanied the delinquent whenever he went out, and arranged car for the delinquent for his personal travel. To throw light on their acquaintance with the Judicial Magistrate, he also quoted that it was an usual practice of the delinquent, to get down from the dais at 11.30 a.m. for a tea break. Even during this tea break, the police constables(B6 P.S.Crime) and ...(L & O) could be seen accompanying and talking with the delinquent in his chamber for 10 minutes, although he could not make a fair guess on what matters they would discuss.

P.W.7, has deposed that he was allotted court duty, while working at B6 Peelamedu Police Station. During that time, Thiru Rajavelu, who was the then Judicial Magistrate No.Vi, Coimbatore, suffered from Dengue Fever. In order to improve his red blood cell count, Thiru. Rajavelu, the delinquent had asked him for goat spleen and hand it over in his house. Later on, from time to time, the delinquent would ask him for items such as chicken, fish etc., and he regularly got used to buying these non-vegetarian items and handing it over in his house. The cost incurred for these items were met out by the delinquent. He also enumerated that, on one occasion, when the delinquent was sick, he had accompanied him to Karur in car with ... as the acting driver. After



WEB COPY



W.P.No.27729 of 2023

dropping the delinquent at Karur, they both had returned back to Coimbatore by bus.

P.W.8 has deposed that when she was working as a Steno-Typist in Judicial Magistrate Court No.V, Coimbatore, the delinquent was the Judicial Officer of that Court. In her deposition, she shared her bad and bitter experiences encountered with him on account of his verbal and physical misconduct.”

The statement given by her was considered by the Disciplinary Authority.

10.5 Perusal of the entire evidence and findings of the Enquiry Officer in his report and careful reading of the deposition of the witnesses examined during the course of domestic enquiry, we could able to form an opinion that the writ petitioner in his capacity as a Judge exceeded his limits and committed serious misconduct warranting major penalty.

10.6 To satisfy the requirements for imposing major penalty, we found that the rules of natural justice had been scrupulously followed in the present case. The petitioner participated in the enquiry proceedings and



W.P.No.27729 of 2023

effectively defended his case. The Enquiry Officer recorded the statements of the witnesses and allowed the Delinquent Officer to cross-examine the witnesses. The copy of the enquiry report was communicated and opportunity was provided to submit objections on the findings. Thus, the rules of natural justice have not been violated.

10.7 The findings of misconduct in the present case is undoubtedly based on the evidences. The statement of the deposition of the witnesses would be sufficient enough to form an opinion that the writ petitioner as a Judge has misbehaved with the Staff members and few women Advocates. The allegations are undoubtedly serious in nature. The Statutory Rules governing the conduct of the disciplinary enquiry have been adhered to by the Competent Authorities. The findings of the Enquiry Officer in his report are crystal clear and not suffer any perversity.

10.8 Finally, regarding the quantum of penalty, we do not find any disproportionality. The charges proved against the writ petitioner are serious warranting major penalty. Thus, the penalty of removal from service cannot



W.P.No.27729 of 2023

be said to be disproportionate to the gravity of the proved charges. For all these reasons, we have arrived at an inevitable conclusion that the petitioner is guilty of the misconduct which all are serious and the punishment of removal from service is apt and justified.

11. Accordingly, the Writ Petition stands dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

[S.M.S.J.] [K.R.S.J.]
16.02.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No

veda

To

1.The Registrar General,
High Court, Madras,
High Court Buildings,
Chennai – 600 104.

2.The Additional Registrar (Vigilance),
High Court Madras,
High Court Buildings,
Chennai – 600 104.

3.The Government Of Tamilnadu,
Represented by its Additional Chief Secretary,
Home (Courts-I) Department,
Secretariat, Chennai – 600 009.

Page No.24 of 25



WEB COPY



W.P.No.27729 of 2023

S.M.SUBRAMANIAM,J.
AND
K.RAJASEKAR,J.

veda

Order in
W.P.No.27729 of 2023

16.02.2024