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IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 01-03-2024

ORDERS PRONOUNCED ON: 07-03-2024

CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

And

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

WP No.5327 of 2021

And

WMP Nos.5906 and 5907 of 2021

P.C.Savithiri

.. Petitioner

-VS-

1.State of Tamil Nadu,
Represented by its Secretary to Government,
Home (Courts-1) Department,
Fort St. George,
Chennai-600 009.

2.The Registrar (General),
High Court,
Madras-600 104.

.. Respondents

Writ Petition is filed under Article 226 of the Constitution of India,
praying for the issuance of a Writ of Certiorarified Mandamus, calling for
the records relating to order dated 05.10.2020 in G.O.2(D) No.239 of the



first respondent herein and quash the same and consequently direct the respondents to reinstate the petitioner as Civil Judge, Junior Division with effect from 05.10.2020 with all attendant benefits.

For Petitioner : Ms.AL.Ganthimathi,
Senior Counsel for
Mr.AR.Karthik Lakshmanan.

For Respondent-1 : Mr.P.Anandakumar,
Government Advocate.

For Respondent-2 : Mr.M.Santhanaraman

ORDER

S.M.SUBRAMANIAM, J.

The punishment of dismissal from service issued vide G.O.(2D) No.239, Home (Courts-I) Department, dated 05.10.2020, is under challenge in the present writ petition.

2. The petitioner was appointed as Civil Judge (Junior Division) in Tamil Nadu Judicial Service on 12.02.2009. She was serving as District Munsif-cum-Judicial Magistrate at Thenganikottai during the year



2015. A charge memorandum was issued under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules on 02.06.2017 framing 13 charges against the petitioner. They are:-

“CHARGE No.1

That you, Tmt. Savithiri, Civil Judge of Tamil Nadu State Judicial Services, (now under suspension) while functioning as District Munsif cum Judicial Magistrate, Denkanikottai, though on 09.10.2015 remanded the two accused by name Balamurugan son of Raji and Krishnamoorthy son of Raji in CrI.No. 194/2015 of Anchetty Police Station, had allowed them to go scot free without remand and that having very well known that those accused were not at all in judicial custody, you ordered bail on 12.10.2015 in CrI.M.P.No.2382 of 2015, as if those accused were in Judicial custody, thereby you violated the mandatory provisions of Law, Rules and Procedure and failed to maintain absolute integrity and devotion to duty and have acted in a manner which is unbecoming of a judicial Officer, violating Rule 20 of the Tamil Nadu Government servants ' conduct Rules, 1973” thereby you rendered yourself liable to be



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proceeded with under Rule 17B of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

CHARGE No II:

That you, Tmt. Savithiri, Civil Judge of Tamil Nadu State Judicial Services, (now under suspension) while functioning as District Munsif cum Judicial Magistrate, Denkanikottai, though on 12.10.2015 remanded the two accused by name Thiru Naveen Kumar, Son of Kaveriappan in Crime NO. 479/2015 of Thally Police Station till 26.10.2015, and having very well known that the said accused not all sent to judicial custody, you ordered bail on 13.10.2015 in CrI.M.P. No. 2379 of 2015, as if the said accused were in Judicial custody, thereby you manipulated the records. Thus, you have committed the acts of violation of mandatory provisions of Law, Rules and Procedure and failed to maintain absolute integrity and devotion to duty and have acted in a manner which is unbecoming of a Judicial Officer, violating Rule 20 of the Tamil Nadu Government servants 'conduct Rules, 1973" thereby you rendered yourself liable to be proceeded with under Rule



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17B of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

CHARGE No.III

That you, Tmt. Savithiri, Civil Judge of Tamil Nadu State Judicial Services, (now under suspension) while functioning as District Munsif cum Judicial Magistrate, Denkanikottai, has passed order on 03.10.2015 to remand the accused by name Tmt. Sujatha, Wife of Thirumalesh in Crime No.501/2015 of Kelamangalam Police Station, in spite of the remand order, you have not taken any steps to send the accused to prison and allowed her to move freely which is evident from the petition for surrender in CrI.M.P.No.2332 of 2015 wherein on 05.10.2015 you accepted the surrender of A1 to A9 which includes the accused one Tmt. Sujatha, Wife of Thirumalesh and enlarged all the accused on bail in CrI. M.P.No. 2329/2015 and thereby you made the judicial proceedings as a mockery. Thus, you have committed the acts of violation of mandatory



provisions of Law, Rules and Procedure and failed to maintain absolute integrity and devotion to duty and have acted in a manner which is unbecoming of a Judicial Officer, violating Rule 20 of the Tamil Nadu Government servants ' conduct Rules, 1973” thereby you rendered yourself liable to be proceeded with under Rule 17B of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

CHARGE No IV:

That you, Tmt. Savithiri, Civil Judge of Tamil Nadu State Judicial Services, (now under suspension) while functioning as District Munsif cum Judicial Magistrate, Denkanikottai, having no jurisdiction, you took cognizance of inappropriate cases in Lok Adalat as mentioned in Annexure V such as cases registered under various laws which are non compoundable under any statute and have passed the Lok Adalat award against all cannons of law. Thus, you have exceeding your powers and jurisdiction violating proviso to Clause (ii) of Sub Section 19 of the Legal services Authorities Act,1987 and manner which is unbecoming of a Judicial Officer, violating Rule 20 of the Tamil



Nadu Government servants ' conduct Rules, 1973” thereby you rendered yourself liable to be proceeded with under Rule 17B of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

CHARGE No.V:

That you, Tmt. Savithiri, Civil Judge of Tamil Nadu State Judicial Services, (now under suspension) while functioning as District Munsif cum Judicial Magistrate, Denkanikottai, you have exceeded your powers and passed order in contravention to statutory provisions by disposing criminal cases shown in Annexure VI (of the charge memo) by merely imposing fine alone without imposing compulsory imprisonment. Thus, you have committed the acts of violation of mandatory provisions of Law, Rules and Procedure and failed to maintain absolute integrity and devotion to duty and have acted in a manner which is unbecoming of a Judicial Officer, violating Rule 20 of the Tamil Nadu Government servants ' conduct Rules, 1973” thereby you rendered yourself liable to be proceeded with under Rule 17B of the Tamil Nadu Civil Services (Discipline



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and Appeal) Rules.

CHARGE No. VI:

That you, Tmt. Savithiri, Civil Judge of Tamil Nadu State Judicial Services, (now under suspension) while functioning as District Munsif cum Judicial Magistrate, Denkanikottai, as enumerated in the Report of the Principal district Judge, Krishnagiri, in the Annual Inspection of the court of District Munsif cum Judicial Magistrate, Denkanikottai, for the year 2015, conducted on 29.10.2015 have found lot of entries missing in the Fine Register as shown in Annexure VII (of the Charge memo). You have committed the acts of dereliction of duty and have acted in a manner which is unbecoming of a judicial officer, violating Rule 20 of the Tamil Nadu Government servants 'conduct Rules, 1973" thereby you rendered yourself liable to be proceeded with under Rule 17B of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

CHARGE No.VII:



That you, Tmt. Savithiri, Civil Judge of Tamil Nadu State Judicial Services, (now under suspension) while functioning as District Munsif cum Judicial Magistrate, Denkanikottai, as enumerated in the Report of the Principal District Judge, Krishnagiri, in the Annual Inspection of the Court of District Munsif cum Judicial Magistrate, Denkanikottai, for the year 2015, conducted on 29.10.2015 have found lot of entries missing in the Fine Register as shown in Annexure VII, when the inspection staff asked you to make arrangement to rectify it during inspection you refused to rectify it and even on the date of inspection, the defects noted were not rectified and thereby you have not exercised required supervision and command over your subordinates. Thus, you have committed the acts in manner which is unbecoming of a judicial officer, violating Rule 20 of the Tamil Nadu Government servants 'conduct Rules, 1973" thereby you rendered yourself liable to be proceeded with under Rule 17B of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

CHARGE No VIII :



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That you, Tmt. Savithiri, Civil Judge of Tamil Nadu State Judicial Services, (now under suspension) while functioning as District Munsif cum Judicial Magistrate, Denkanikottai, as enumerated in the Report of the Principal district Judge, Krishnagiri, in the Annual Inspection of the court of District Munsif cum Judicial Magistrate, Denkanikottai, for the year 2015, conducted on 29.10.2015 have not at all verified whether signature of the accused obtained in the fine receipts and even after repeated instructions, you have not complied with thereby you have not exercised required supervision and command over your subordinates, Thus, you have committed the acts of dereliction of duty, insubordination and willful disobedience and have acted in a manner which is unbecoming of a judicial officer, violating Rule 20 of the Tamil Nadu Government servants 'conduct Rules, 1973" thereby you rendered yourself liable to be proceeded with under Rule 17B of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

CHARGE No IX:



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That you, Tmt. Savithiri, Civil Judge of Tamil Nadu State Judicial Services, (now under suspension) while functioning as District Munsif cum Judicial Magistrate, Denkanikottai, as enumerated in the Report of the Principal district Judge, Krishnagiri, in the Annual Inspection of the court of District Munsif cum Judicial Magistrate, Denkanikottai, for the year 2015, conducted on 29.10.2015 having found that 135 PR Cases)as shown in Annexure VIII) are pending for committal and that nearly 35 PR cases which were committed were returned for rectification of defects you have not taken any steps to resubmit those cases after rectification, even after six months, thereby you have not exercised required supervision and command over you subordinates. Thus, you have committed the acts of dereliction of duty, insubordination and willful disobedience and have acted in a manner which is unbecoming of a judicial officer, violating Rule 20 of the Tamil Nadu Government servants ' conduct Rules, 1973” thereby you rendered yourself liable to be proceeded with under Rule 17B of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.



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CHARGE No X:

That you, Tmt. Savithiri, Civil Judge of Tamil Nadu State Judicial Services, (now under suspension) while functioning as District Munsif cum Judicial Magistrate, Denkanikottai, as enumerated in the Report of the Principal district Judge, Krishnagiri, in the Annual Inspection of the court of District Munsif cum Judicial Magistrate, Denkanikottai, for the year 2015, conducted on 29.10.2015 in calendar cases (as shown in Annexure IX), you have not examined the relevant witnesses and but closed the evidence without the knowledge of Assistant Public Prosecutor and have also not mentioned in the result portion whether the accused is guilty or not. Thus, you have committed the acts of serious misconduct, dereliction of duty, not followed the mandatory provisions of law, Rules and Procedures and have also failed to maintain absolute integrity and devotion to duty and have acted in a manner which is unbecoming of a judicial officer, violating Rule 20 of the Tamil Nadu Government servants 'conduct Rules, 1973"



thereby you rendered yourself liable to be proceeded with under Rule 17B of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

CHARGE No. XI:

That you, Tmt. Savithiri, Civil Judge of Tamil Nadu State Judicial Services, (now under suspension) while functioning as District Munsif cum Judicial Magistrate, Denkanikottai, as enumerated in the Report of the Principal district Judge, Krishnagiri, in the Annual Inspection of the court of District Munsif cum Judicial Magistrate, Denkanikottai, for the year 2015, conducted on 29.10.2015 having accepted the surrender of Thiru Suresh @ Suresh Baby, Son of Munireddy , Mugaloor Village, in CrI.M.P.No. 2950 of 2015 on 17.12.2015 at 16.00 hrs in connection with PRC No. 22/2014 in Cr.No.69/2013 of Kelamangalam Police station, you passed an order to remand him till 31.12.2015. yielding to undue influence and pressure from Advocates and Police , you allowed him to go scot free within few hours of his surrender without passing of any necessary orders, thereby you made



the Judicial Proceedings a mockery. Thus, you have committed the acts of violation of Criminal Procedure Code and other mandatory and established provisions of Law, rules and Procedures and have also failed to maintain absolute integrity and devotion to duty and have acted in a manner which is unbecoming of a judicial officer, violating Rule 20 of the Tamil Nadu Government servants ' conduct Rules, 1973” thereby you rendered yourself liable to be proceeded with under Rule 17B of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

CHARGE No XII:

That you, Tmt. Savithiri, Civil Judge of Tamil Nadu State Judicial Services, (now under suspension) while functioning as District Munsif cum Judicial Magistrate, Denkanikottai, have suo moto remanded Thiru Suresh son of Veerappa Kobanapplli Village to Judicial Custody in connection with PRC No.22/2014 in Cr. No.69 of 2013 of Kelamangalam Police Station, when he was not arrayed as an accused in the charge sheet and in the absence of his name anywhere in the



FIR, Final Report, Arrest Memo and other mandatory and established Provisions of Law, rules and Procedures and have also failed to maintain absolute integrity and devotion to duty and have acted in a manner which is unbecoming of a judicial officer, violating Rule 20 of the Tamil Nadu Government servants ' conduct Rules, 1973” thereby you rendered yourself liable to be proceeded with under Rule 17B of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

CHARGE No. XIII:

That you, Tmt. Savithiri, Civil Judge of Tamil Nadu State Judicial Services, (now under suspension) while functioning as District Munsif cum Judicial Magistrate, Denkanikottai, have tampered the Court records viz. Final Report in PRC NO.22 of 2014 on the file of the District Munsif cum Judicial Magistrate, Denkanikottai by mutating at later point of time the Father's name of A4 Suresh and insrted the name of Munireddy and also inserted the name “Muniappa” against A6 Akkaiamma's husband's name which is evident from the Draft final report available in the Case



Diary of Police where Father's name of A4 and Husband's name of A6 is missing. The address of the accused, the place of arrest and the time of arrest has been tampered with in the Arrest Memo. The Surrender Petition and Warrant Recall Petition have also been purposely tampered with Mutation of the above records to suit your convenience is a mockery of law. Thus, you have have committed the acts of violation of Criminal Procedure Code and other mandatory and established Provisions of Law, rules and Procedures and have also failed to maintain absolute integrity and devotion to duty and have acted in a manner which is unbecoming of a judicial officer, violating Rule 20 of the Tamil Nadu Government servants ' conduct Rules, 1973” thereby you rendered yourself liable to be proceeded with under Rule 17B of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.”

3. The petitioner submitted her explanations denying the charges. Not satisfied with the explanations, the Disciplinary Authority decided to conduct departmental enquiry. An Enquiry Officer was



appointed. The Enquiry Officer conducted an enquiry by affording opportunity to the delinquent Officer. The petitioner participated in the process of enquiry and defended her case. She has submitted her written submissions also. The Enquiry Officer submitted his final enquiry report on 29.07.2019, holding that charge Nos.1 to 9 and 11 to 13 are proved and charge No.10 is not proved by the Presenting Officer. Enclosing the copy of the enquiry report, second show cause notice was issued to the writ petitioner, seeking her explanations/objections on the findings of the Enquiry Officer. The petitioner submitted her explanations on the findings of the Enquiry Officer on 17.03.2020.

4. Considering the materials available on record, the Disciplinary Authority passed final orders, imposing penalty of dismissal from service for the proved charges against her in the departmental enquiry.

5. Ms.AL.Ganthimathi, learned Senior Counsel, appearing on behalf of the writ petitioner, would submit that the petitioner has not committed any dereliction of duty. The charges are relating to the day-to-day duties attached to the post of Judicial Officer and the procedural defects



had been committed by the staff working in the Court. The petitioner considered the bail application on surrender of the accused. Thus there is no dereliction of duty on the part of the petitioner. It is the duty of the staff to ensure that the accused on remand have been sent to judicial custody. It is the duty of the Police Officer to keep the accused under judicial custody. If the bail application is filed, the Judicial Officer has to consider the same. Thus the petitioner had acted in her capacity as a Judicial Officer and not committed any negligence or dereliction of duty. The petitioner had then and there instructed the staff to carryout rectifications and omissions. However, the lapses identified and occurred at the instance of the staff members for which the petitioner cannot be penalized. The petitioner has given necessary instructions to the Head Clerk and the staff members. Due to pressure of work and passage of time, the petitioner had not supervised the Head Clerk in respect of committal of PRC cases and therefore, the petitioner has not committed any dereliction of duty. The petitioner, in her capacity as Judicial Officer, had violated the procedure as contemplated and the lapses occurred beyond her control, cannot be a ground to impose major penalty of dismissal from service. It is contended that the Enquiry Officer also had not considered the evidences available and the documents. The



application of mind on the part of the Enquiry Officer is lacking. Thus the order impugned is to be set aside.

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6. Mr.M.Sandhanaraman, learned counsel appearing on behalf of the second respondent, would oppose the contentions raised on behalf of the petitioner and based on the counter affidavit by stating that the Principal District Judge, Krishnagiri on 29.10.2015 conducted annual inspection of the Court of District Munsif-cum-Judicial Magistrate, Dhenkanikottai. During inspection, the Principal District Judge noticed certain defects/illegalities committed by the writ petitioner during her tenure as District Munsif-cum-Judicial Magistrate, Dhenkanikottai. The learned Principal District Judge forwarded two reports to the High Court with regard to the inspection conducted. Minutes passed by the Hon'ble Administrative Judge and the entire papers connected thereto, were placed before the Hon'ble Chief Justice and a direction was issued to the Registry to place the matter before the Hon'ble Administrative Committee. The Hon'ble Administrative Committee in the meeting held on 10.02.2016, resolved to place the Judicial Officer/writ petitioner under suspension in contemplation of departmental disciplinary proceedings. Accordingly, the



petitioner was placed under suspension. A charge memorandum dated 31.03.2016 was issued. Not satisfied with the explanations submitted by the petitioner, the Enquiry Officer was appointed, who in turn submitted his Final Enquiry Report after conducting the enquiry and thereafter second show cause notice was issued and finally, the penalty of dismissal from service was imposed. Thus procedures as contemplated were scrupulously followed. The charges against the petitioner are serious in nature. The findings of the Enquiry Officer in his Final Report were accepted by the Disciplinary Authority. Except charge No.10, charges 1 to 9, 11 to 13 are held proved. The proved charges are also grave in nature. Thus major penalty of removal from service is justifiable.

7. Mr.M.Sandhanaraman, learned counsel for the second respondent, would state that the proved charges are heinous in nature, which is not supposed to be committed by a Judicial Officer, who is expected to maintain absolute integrity. The petitioner had shirked her responsibility and attempting to take shelter that the dereliction of duty committed by her, are pertaining to judicial functions and on account of the failure on the part of staff members working in the Court. Therefore, the writ petition is to be



rejected.

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8. The learned Government Pleader appearing on behalf of the first respondent also reiterated the grounds argued on behalf of the second respondent. As far as the first respondent is concerned, the decision taken by the High Court was implemented and the Government also considered the seriousness of the proved charges against the writ petitioner and accepted the decision and issued orders in G.O.(2D) No.239, dated 03.10.2020, imposing the penalty of dismissal from service.

9. The arguments as advanced between the parties are considered by us.

10. Undoubtedly, perusal of the charges framed against the writ petitioner would reveal that those charges are serious in nature. Due process of law has been followed. The petitioner defended her case before the Enquiry Officer. Opportunities as contemplated under Discipline and Appeal Rules were provided. The petitioner submitted her written submissions before the Enquiry Officer. Copy of the Enquiry Report was



served on the petitioner and her objections were received. Thus, the procedures as contemplated were completely observed, including the rules of natural justice. Therefore, there is no infirmity in respect of the departmental disciplinary proceedings conducted by the respondents.

11. The findings of the Enquiry Officer are as under:-

“CHARGE I FINDINGS:

PW1 Tmt.K.A.Jeevarani has worked as Head Clerk in District Munsif cum Judicial Magistrate, Denkanikottai while the delinquent officer was Magistrate.

Nowhere in the sections, staff was not authorized for doing Judicial Magistrate alone is fully responsible for any mistake done in the Court. From the evidence of PW1, and from the explanation submitted by the delinquent officer to the Principal District Judge, Krishnagiri to prove that the delinquent officer, even though she remanded the accused to Judicial custody, the court staff had not taken further steps to confine the accused to Judicial custody. The learned counsel for the delinquent officer has argued that it is not the duty of the Magistrate to send the accused to Judicial custody and it is the duty of the



*court staff to take steps to send the accused to Judicial custody. In the present case, on 09.10.2015 the Judicial Officer/delinquent officer has alone remanded the accused to Judicial custody, but not taken further steps to send the accused to prison by signing the remand warrant. It is the duty of the Magistrate to see whether the remand warrant has been signed by her. It is duty of the Magistrate to see that the police should give in writing in the remand report that “
எதிரியையும் வாரண்டையும்
பெற்றுக்கொண்டேன் “ in our case, the delinquent officer has given an explanation to the Principal District Judge, Krishnagiri, that the accused was found ill and hence she has not sent them to judicial custody. If the accused not found to be a fit condition, it is the duty of the Magistrate to direct the police to give treatment in the nearest hospital. But, the delinquent officer failed to do so. On perusal of Ex.P1_Ex.P15 accused was remanded on 09.10.2015. But not sent to the accused to prison and a Bail application was filed on 12.10.2015. So, it is very clear that the delinquent officer, even though remanded the accused to judicial custody, upon colluding with the accused,*



had not sent the accused to judicial custody, and on the next working day, she considered the bail application and granted them bail as if they were in the Judicial Custody. The delinquent officer herself has admitted in her written explanation about not sending the accused to Judicial Custody. In view of the above, the Inquiry officer has concluded that the “Charge I “ is PROVED against the delinquent officer.

CHARGE II FINDINGS:

The SI of Police, Thally Police Station produced the accused on Tr. Navin Kumar, S/o, Kaveriyappa , in Crime No. 479/2015, u/s. 294(b), 324 and 506(ii) of IPC, on 12.10.2015 through remand report. The delinquent officer remanded the accused on that day and remand warrant was also issued at the time remand. The counsel for accused filed bail application on 12.10.2015. the Head Clerk of that Court made endorsement in the bail application that the offences are non bailable. The delinquent officer ordered issue of notice to APP and Police and to call on 13.10.2015.



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On 13.10.2015 the delinquent officer in the bail order stated that accused was in custody for 9 days form 09.10.2015, bail granted with condition that on 12.10.2015. The Judicial officer ordered the accused to execute bond for Rs. 10,000/- with condition that the accused should sign before court at 10.00 AM for 30 days. In this regard remarks were called for from the delinquent officer by the Principal District Judge, Krishnagiri in Official Memorandum on 25.11.2015. The delinquent officer in her explanation dated 28.06.2017 stated that, whenever the Police produced the accused she used to remand the accused after perusing the case records and after preparing the remand warrant. She handed over the accused and warrant to the Police, the Escort Police used to take charge of the remanded accused.

In the written explanation dated 07.01.2019, the delinquent officer has stated that “the Assistant Public Prosecutor was used to come to the Court only two days in a week and so it was very had to get replay form the Assistant Public Prosecutor for passing orders in bail applications filed by the



Advocates. As the Assistant Public Prosecutor was not attending the court daily, the police not attended the court properly i.e., in the absence of Assistant Public Prosecutor and Police, it was very difficult to get replay form the representation of the Advocates, by considering the situation of accused health condition, passed orders on the bail applications and not for any other reasons and discharged her duties without any bias and at her level of conscious, not manipulated any office records she relied upon and trusted the staffs of the Court and on their endorsement”.

From the explanation given by the delinquent officer, it is evident that the delinquent officer accepted the fact that without verifying whether the accused was in prison, she ordered bail. In the written arguments, the delinquent officer has stated that, once she has ordered judicial remand of the accused, the concerned Head Clerk or the clerk in charge on that day has to get the acknowledgment form Escort Police and the accused has to be taken custody by the police to remand them in the prison. Therefore it is the duty of the concerned clerk to get the



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acknowledgment from the police.

The delinquent officer in her written explanation dated 07.01.2019 has accepted the mistake on her part and pleaded that she has passed orders upon trusting the Advocates and staffs and that she will not repeat such mistake in future and prayed to condone the mistakes done by her. But, during the Course of arguments she has shifted the burden on the staff and advocates and pleaded that she has not committed any mistake, which cannot be accepted all. Once the delinquent officer admitted her mistake and pleaded excuse, the subsequent explanation given by the delinquent officer is not acceptable. Further, the delinquent officer has given an explanation to the Principal District Judge stating that since the accused is not feeling well, she has not sent him to custody. So, the delinquent officer has every knowledge that the accused was not sent to prison, but she received the bail application on 12.10.2015 and passed bail orders on 13.10.2015 which shows that the delinquent officer has committed the acts of violation of mandatory provisions of Law, Rules



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and Procedures and failed to maintain absolute integrity and devotion to duty and have acted in a manner which is unbecoming of a Judicial Officer, violating Rule 20 of “The Tamil Nadu Government Servants” Conduct Rules,1973 and hence the Inquiry Officer has concluded that Charge II is also PROVED by the Prosecution.

CHARGE III FINDINGS:

Form the case records it is evident that, that one Tmt. Sujatha W/o Thirumalesh in Crime No. 501/2015 of Kelamangalam police station surrendered before the delinquent officer/ Judicial Magistrate. Even though remand was ordered, the delinquent officer had not taken any steps to send the accused to prison. Further, the said sujatha along with other 8 accused filed a surrender petition in Cr.M.P. No.2332/2015 on 05.10.2015. the delinquent officer accepted the surrender of A1 to A9 which includes the accused Tmt. Sujatha, W/o Thirumalesh, and enlarged all the accused on bail in Cr. M.P.No.2329/2015.

It is evident that the accused namely Sujatha was remanded to Judicial Custody and she was not



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sent to prison on 03.10.2015. But the same accused again surrendered before the court along with other 8 accused and the said surrender was also accepted on 05.10.2015. The delinquent officer has submitted that, she has remanded the accused and released on bail on the day itself. But by mistake the above said accused has surrendered before the court and that the concerned Head Clerk/ Magisterial Clerk without verifying the records has put the surrender petition with endorsement, and that since the delinquent officer was loaded with heavy work, she was not able to verify each and every bundle to find out the actual position of the case.

It is true that a Judicial Officer cannot verify each and every case bundle. But, the staff cannot be held responsible for the mistakes committed by the Judicial Officer, Passing a remand order is a Judicial order and it is the duty of the Judicial officer to verify all the facts before accepting surrender and granting bail. Further, in the written explanation and reply, the delinquent officer has accepted the mistake and asked for apology before the Principal District Judge. Now, she cannot throw the burden over the staff and she



cannot blame the staff for the mistake committed by her. It is admitted that the delinquent officer even though remanded the accused, had not sent her to judicial custody, and granted bail without verifying sureties and only on the next working day i.e., after 2 days, she has verified the sureties and granted bail. The same accused Sujatha & 8 others surrender before the court on 05.10.2015 and the said surrender was accepted and released on bail on the day itself. This is a serious error committed by the delinquent officer and she herself has admitted the fact in her written explanation. Since the delinquent officer herself has admitted the mistakes, Charge III also stands PROVED by the Prosecution.

CHARGE IV FINDINGS

As per the Annual Inspection Notes of the District Munsif-sum- Magistrate Court, Denkanikottai held on 29.10.2015, about 45 criminal cases which come under the warrant Procedures were disposed before Lok Adalat and 36 Criminal cases were disposed of before Lok Adalat and for the Grievous offences, without



imposing punishment, merely fine alone was imposed. In the written explanation dated 07.01.2019, the delinquent officer has admitted the mistake and pleaded to excuse her. In the arguments, it is stated that since the accused have admitted the offences, by considering the nature and gravity of the offences and also considering the status of the accused, the cases were taken up before Lok Adalat and disposed of according to law without any mala fide intention. The argument put forth by the delinquent officer is not correct as, as per the Sub-Section (5) of the Section 19 of the Legal Services Authorities Act, 1987, the delinquent officer exceeded her powers and jurisdiction violating Proviso to Clause(ii) of the Act. As per the Cr.P.C., compulsory imprisonment has to be made in warrant cases. But, knowing well about the law, the delinquent officer, without realizing the consequences had acted in favor of the accused, which proves the allegations leveled against her. Hence the explanation offered by the delinquent officer is not satisfactory. It is clearly seen that the delinquent officer disposed off in warrant cases (Non compoundable). Warrant cases Grievous offences disposed before the Lok Adalat, are



simply imposed with fine only without sentence. From the above evidence, it is evident that the delinquent officer has not exercised her judicial work and acted on her own and hence the explanation submitted by the delinquent officer is not satisfactory and hence it is concluded that the prosecution has PROVED the Charge IV.

CHARGE V FINDINGS

As per the Annual Inspection Notes of the District Munsif- cum- Judicial Magistrate Court, Denkanikottai held on 29.10.2015, about 45 criminal cases which come under the Warrant Procedures were disposed before Lok Adalat and 36 Criminal Cases were without imposing punishment, merely fine alone was imposed. In the written explanation dated 07.01.2019, the delinquent officer has admitted the mistake and pleaded to excuse her. In the arguments, it is stated that since the accused have admitted the offences, by considering the nature and gravity of the offences and also considering the status of the accused, the cases were taken up before Lok Adalat and disposed of according to law without



any malafide intention. The argument put forth by the delinquent officer is not correct as, as per the Sub Section (5) of Section 19 of the Legal Services Authorities Act, 1987, the delinquent officer exceeded her powers and jurisdiction violating Proviso to clause (II) of the Act. As per Cr.P.C., compulsory imprisonment has to be made in warrant cases. But, knowing well about the law, the delinquent officer, without realizing the consequences had acted in favor of the accused which proves the allegations leveled against her. Hence the explanation offered by the delinquent officer disposed off in warrant cases (Non compoundable) warrant cases Grievous offences disposed before the Lok Adalat, are simply imposed with fine only without sentence. From the above evidence, it is evident that the delinquent officer has not exercised her judicial work and acted on her own and hence the explanation submitted by the delinquent officer is not satisfactory and hence it is concluded that the prosecution has PROVED the Charge V also.

CHARGE VI FINDINGS:



The delinquent officer in her written submission has stated that “ after imposing fines in admission cases, the entire case bundles were used to hand over to the Record Clerk to issue receipts to the concerned accused. Further, since the delinquent officer loaded with heavy work, she used to write in the fine Register after the Court working hours at home and since the Record Clerk has not handed over the Fine Register as well as the case bundles, the delinquent officer was not able to made entire in the fine Register in time. Further in spite of repeated instructions to the staff they have not carried out the missing entries in Fine Register. There are three major discrepancies found by the Inspection Staff in the Fine Register. The first is, there are so many corrections and omissions made in Fine Register. Further, many noted in the Fine Register. On 13.06.2015 itself, nearly 35CC cases were disposed, fine amounts are entered in the fine register two times.

In general, even though Fine Register is maintained by the head Clerk, the entries in the Fine Register should be made only be the Magistrate. No one is permitted to make entries in



the Fine Register. Further, the fine imposed on the bundle should be reflected in the Fine Register and the entries should be personally made by the Judicial Magistrate after verifying the Fine Receipt issued by the Record Clerk. The accused should pay fine before the Record Clerk and after receiving the amount, the Record Clerk should prepare receipts and he should submit all the Fine Receipts to the Judicial Magistrate. In each and every receipt, the signature of the accused should be obtained on the back side and the counter foil has to be retained by the Court. But, all the above procedures are violated by the Court in the cases covered by the Charges VI to VIII relating to the delinquent officer. It is surprising to note that the delinquent officer has given a reply that she will write the Fine Register after Court hours, which has to be viewed seriously. Whatever may be the time, the Magistrate should write the Fine Register immediately when the accused pay fine and the Magisterial Clerk or Record Clerk will not be held responsible for the omissions, wrong entries in the Fine register and not rectifying the entries missing in the Fine receipts. So, from the admissions of the delinquent officer in her explanation and available



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evidence, Charges VI to VIII are also PROVED by the Prosecution side.

CHARGE VII FINDINGS:

the delinquent officer in her written submission has stated that” after imposing fines in admission cases, the entire case bundles were used to hand over to the Record Clerk to issue receipts to the concerned accused. Further, since the delinquent officer loaded with heavy work, she used to write in the Fine Register after the Court working hours at home and since the Record Clerk has not handed over the fine Register as well as the case bundles, the delinquent officer was not able to made entire in the Fine Register in time. Further in spite of repeated instructions to the staff they have not carried out the missing entries in Fine Register. There are three major discrepancies found by the inspection Staff in the Fine Register. The first is, there are so many corrections and omissions made in Fine Register. Further, many other cases are disposed and imposed fine, but the entries are not noted in the Fine Register. On 13.06.2015 itself, nearly 35 CC cases were



disposed, fine amount imposed is not entered in the Fine Register. In three cases, fine amounts are entered in the Fine Register two times.

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CHARGE VIII FINDINGS:

The delinquent officer in her written submission has state that” after imposing fines in admission cases, the entire case bundles were used to hand over to the Record Clerk to issue receipts to the concerned accused. Further, since the delinquent officer loaded with heavy work, she used to write in the Fine Register after the Court working hours at home and since the Record Clerk has not handed over the Fine Register as well as



the case bundles, the delinquent officer was not able to made entire in the Fine Register in time. Further in spite of repeated instructions to the staff they have not carried out the missing entries in Fine Register. Further it is the duty of the Record Clerk who receive the fine amounts form the accused and to get signatures in the counter foil of the Receipt and that the mistake was committed by the Record Clerk and not by the delinquent officer. There are three major discrepancies found by the Inspection Staff in the Fine Register. The First i, there are so many corrections and omissions made in Fine Register. Further, many other cases are disposed, fine amount imposed is not entered in the Fine Register. In three cases, fine amounts are entered in the Fine Register two times.

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the Prosecution side.

CHARGE IX FINDINGS:

The delinquent officer in her reply given in the month of February 2018 has stated that she instructed the concerned Clerk and head Clerk to rectify the defects and to submit the returned PRC bundles to the Principal District Court. But, due to heavy work, she was not able to monitor the Head Clerk in this aspect. She has further stated in her replay that, only at the time of annual inspection alone, she was aware of the pendency of 135 PRC cases and that she has not committed any mistake or violated any service condition.

No doubt, it is the duty of the head Clerk and Magisterial Clerk to rectify the defects pointed out by the Principal Sessions Judge. But it is also the duty of the Judicial Magistrate to supervise the whether the staff are doing their part of work. The explanation of the delinquent officer stating that she was not aware of the pendency of her court is not acceptable one. The Judicial Magistrate is also the controlling officer of that Court. Each and



every month, she was aware of the pendency by way of sending statements to District Court and Hon'ble High Courts. So, the delinquent officer cannot escape from the liability by simply stating that she was not aware of the pendency of the cases in her Court. Hence, it is proved that the delinquent officer has not exercised required supervision and commanded over her subordinates. Thus, she had committed the acts of dereliction of duty, insubordination and willful disobedience and also failed to maintain devotion to duty and have acted in a manner which is unbecoming of a Judicial Officer and hence the Charge IX is also "PROVED" by the Prosecution.

CHARGE X FINDINGS:

It is routine procedure in Criminal Courts, whenever prosecution closes the evidence, the Assistant Public Prosecutor alone use to endorse in the Charge sheets as Prosecution evidence closed. Then only, the court has to go to further stage of 313(1)(b) Questioning of the accused. Whenever the police bring the witnesses, in the absence of Assistant Public Prosecutor, the Court



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is having power to record evidence on its own motion. When the Assistant Public Prosecutor is absent, the Judicial Magistrate cannot wait for the Assistant Public Prosecutor's endorsement to close the case. In many Courts across Tamil Nadu, Assistant Public Prosecutors used to attend Criminal Courts once or twice in a week. Such being the case, the court cannot wait for APP's endorsement to proceed with the case, if the police, witness and accused are present. Even though it is mandatory to close the prosecution by the Assistant Public prosecutors, in the absence of Assistant Public Prosecutors, Court can close the evidence suo moto considering the nature and circumstance of the case. So, from the evidence of the Assistant Public Prosecutor will be issued to the police. So, closing the prosecution side by Court is not a major offences. Further is no evidence on record, in which cases results were pronounced without mentioning the facts whether the accused was found guilty or not. From the evidence of Assistant Public Prosecutor, it seems there is a misunderstanding between the Assistant Public Prosecutor and the Judicial Magistrate in day to day Court proceedings. Since the Assistant



Public Prosecutor has not attended the Lok Adalat Work and not co-operated with court, the Judicial Magistrate, in the interest of justice and for speedy disposal of cases, has closed the Prosecution on her own and it cannot be seen as a major mistake done by the Judicial Magistrate. Hence, concluded that Charge X is “NOT PROVED” by the prosecution.

CHARGE XI FINDINGS:

The delinquent officer has stated that the warrant recall petition U/S 70(2) of Cr.P.C was filed and the same was returned in CMP NO.2951/2015 dt:17.12.2015 with an endorsement made thereon as “the accused is absconding accused. Nor appeared before that Court from 1st hearing to till today. Hence this recall petition not maintainable. Hence returned”. The delinquent officer further stated that after asking the name and address from the accused, she has remanded the accused and stated that she has corrected any name in the Remand Warrant, Arrest Card etc. it is stated in her written arguments that the officer has handed over the accused to the concerned escort



police and obtained the acknowledgment for handing over the accused and that delinquent officer has no knowledge, whether the above accused the above accused was sent to prison or not by the concerned escort police. It is the duty if the Court to see that the remanded accused was handed over to the concerned escort police. The delinquent officer has no authority to recall the remanded accused even the charges are not made out in the FIR or Charge report. There is no specific document to show that the delinquent officer has recalled the remand order. Therefore the charge against the delinquent officer to show that the delinquent officer has ordered releasing the remanded accused or ordered by recalling remand order. Hence the allegations that the delinquent officer has allowed the accused to go escort free by yielding to undue influence and pressure from the advocates and police prove the same was done by malafide intention of the delinquent officer have been proved. Therefore the Charge XI is PROVED.

CHARGE XII FINDINGS:



The delinquent officer has remanded one accused Suresh, S/o Veerappa , Kobanapaili village in connection with case PRC.No.22/2014 in Cr.No.62/2013 of Kelamangalam Police station, when he was not arrayed as an accused in charge sheet etc. to prove the same, the Prosecution has examined PW1 ,(Head Clark attached to that Court) and Thiru. Shanmugam, Inspector of Police,Kelamangalam Police Station as PW6. But the evidence of PW1 and PW6 is confusing and contradictory to each other. The police have arrested and produced the above said accused on NBW issued by the District Musif-cum-Judicial Court, Denkanikottai. Normally the non bailable warrant used to be written by the concerned Record Clerk and not by the officer and without the NBW the Court will not entertain the remand of the accused. Further on perusing the evidence of above said two witnesses, it is clear that without any order of the delinquent officer. Therefore allegation that the delinquent officer without any arrest card and remand request has remanded accused. Without any order of the delinquent officer already surrendered accused Suresh, @Suresh Babu, S/o Munireddy is not sent to



Judicial Custody. Further it is submitted that the court has taken the final report in Cr. No.69/2013 of Kelamangalam Police on file in PRC.No.22/2014 only after verifying each and every page. Normally the Court will not take the final report on file if the identity of the accused is not fully mentioned in the final report. The delinquent officer has no intention to insert or correct the names of the persons in the final report in which the case has been taken on file in the year 2014 itself. If the final report is not in proper manner, the court would have returned the final report or would have intimated to the concerned investigation officer to correct the final report. Therefore the Charge XII is not correct, and the officer has no mala fide intention to correct or fill up the gaps in the final report as submitted in the written arguments of the delinquent officer. Therefore Charge XII is not correct and has to be rejected.

Further once the accused surrenders before the Court the normal procedure is that the Head Clark or the concerned Magisterial Clark who is having custody of the case bundles has to put up



the surrender petition after verifying the description of the accused and the person surrendered before the Court. If the description of the accused in the case bundle and the surrender petition differs, the concerned clerk has to put up a note to that effect before the Judicial officer. But in this case, the person who put up the surrender petition of accused Suresh @ Suresh Babu in CMP.No.2950/205 has verified the particulars of the accused and put up the petition for orders.

From the evidence available on record, one Suresh @ Suresh Babu, S/o. Munireddy has surrendered before the delinquent officer and filed surrender petition in CMP 2950/2015 on 17.04.2015 in PRC 22/2014 in Cr.No.69/2013 of Kelamangalam PS through his advocate namely Thiru. R.Sivajayam. The surrender was accepted by the delinquent officer and the accused was remanded till 31.12.2015. the accused was also handed over to the concerned escort police. As per the evidence, the said Advocate argued with the delinquent officer to release the said accused and not to send him to Judicial Custody. It was further informed by the Advocate itself, that the said



Suresh is not the accused in the criminal case, immediately, the Judicial Officer directed the Sub Inspector of Police, Kelamangalam PS and he went to the spot, enquired the complainant and came to know that the accused surrendered in the case was not the original accused and he is another person. After coming to know these facts and after coming to know that the original accused was not remanded, one Suresh S/o Munireddy has surrendered before the Court. But the actual accused was one Suresh @Suresh Babu , S/o Veerappa. As per the evidence of PW6, Thiru. Shanmugam, Inspector of Police, Kelamangalam Police Station, the delinquent officer after coming to know that the surrendered accused was not arrayed as accused in the case, she has let him free without any Judicial order.

From the available evidence on record, it is evident that Advocate Sivajayam has played fraud by surrendering a person namely Suresh S/o.Munnireddy instead of Suresh S/o Veerappa. It is admitted fact that the delinquent officer has worked in a heavy loaded court. But it cannot be an excuse to condone the mistake as already



discussed, the delinquent officer, being the Judicial officer is held responsible for the mistakes done in her Court. The contention of the Judicial Officer/Delinquent officer that she believed the staff members and advocate and signed in records is not a correct procedure. The Judicial Magistrate/delinquent officer should have been very much vigilant in attending the court work. She cannot simply blame the staff that based on the endorsement she signed in the records. Since the evidence is self explanatory which describes the facts, the explanation offered by the delinquent officer is not acceptable.

Hence, hereby concluded that Charges XII & XIII are also PROVED by the Prosecution.

In view of the above, charges I to IX and XI to XIII are Proved, and that Charge X is Not Proved by the Prosecution, leveled against the delinquent officer under rule 17(b) of Tamil Nadu Civil Services (discipline & Appeal) Rules.

CHARGE XIII FINDINGS:



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The delinquent officer has remanded one accused Suresh, S/o Veerappa , Kobanapaili village in connection with case PRC.No.22/2014 in Cr.No.62/2013 of Kelamangalam Police station, when he was not arrayed as an accused in charge sheet etc. to prove the same, the Prosecution has examined PW1 ,(Head Clark attached to that Court) and Thiru. Shanmugam, Inspector of Police,Kekamangalam Police Station as PW6. But the evidence of PW1 and PW6 is confusing and contradictory to each other. The police have arrested and produced the above said accused on NBW issued by the District Musif-cum-Judicial Court, Denkanikottai. Normally the non bailable warrant used to be written by the concerned Record Clerk and not by the officer and without the NBW the Court will not entertain the remand of the accused. Further on perusing the evidence of above said two witnesses, it is clear that without any order of the delinquent officer. Therefore allegation that the delinquent officer without any arrest card and remand request has remanded accused. Without any order of the delinquent officer already surrendered accused Suresh, @Suresh Babu, S/o Munireddy is not sent to



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From the available evidence on record, it is evident that Advocate Sivajayam has played fraud by surrendering a person namely Suresh S/o.Munnireddy instead of Suresh S/o Veerappa. It is admitted fact that the delinquent officer has worked in a heavy loaded court. But it cannot be an excuse to condone the mistake as already



discussed, the delinquent officer, being the Judicial officer is held responsible for the mistakes done in her Court. The contention of the Judicial Officer/Delinquent officer that she believed the staff members and advocate and signed in records is not a correct procedure. The Judicial Magistrate/delinquent officer should have been very much vigilant in attending the court work. She cannot simply blame the staff that based on the endorsement she signed in the records. Since the evidence is self explanatory which describes the facts, the explanation offered by the delinquent officer is not acceptable.

Hence, hereby concluded that Charges XII & XIII are also PROVED by the Prosecution.

in view of the above, charges I to IX and XI to XIII are Proved, and that Charge X is Not Proved by the Prosecution, leveled against the delinquent officer under rule 17(b) of Tamil Nadu Civil Services (discipline & Appeal) Rules.

12. We have carefully gone through the findings of the Enquiry



Officer. The proved charges against the petitioner would be sufficient for imposing the major penalty of dismissal from service. The petitioner acted unbecoming of a Judicial Officer. The proved charges cannot be construed as routine lapses committed during the course of judicial functions. The nature of charges proved would indicate that many factual inferences can be drawn and preponderance of probabilities established in this case, would be enough to form a final opinion to impose the major penalty of dismissal from service.

13. With reference to the first charge, the delinquent Officer herself has admitted in her written explanations about not sending the accused to judicial custody. It is a serious lapse on the part of the Judicial Officer. Regarding the second charge, the Enquiry Officer found that the delinquent Officer has given an explanation to the Principal District Judge stating that since the accused is not feeling well, she has not sent him to custody. Therefore, the delinquent Officer has got every knowledge that the accused was not sent to prison, but she had received bail application and passed bail orders, which would show that the delinquent Officer has committed the act of violation of mandatory provisions of rules and



procedures and failed to maintain absolute integrity and devotion to duty.

14. In Charge No.3, the Enquiry Officer found that the accused one Sujatha was surrendered on 03.10.2019 and order of judicial remand also passed. But the accused was not sent to jail and accused Sujatha once again surrendered along with 8 other accused on 05.10.2019 and the said surrender was accepted and released on bail on the same day itself. The Judicial Officer committed serious error and she herself has admitted the fact in her written explanations.

15. Relating to charge Nos.4 and No.5, the Enquiry Officer found that it is evident that the delinquent Officer has not exercised her judicial power and acted on her own and consequently held the charges are proved.

16. Regarding charge No.6, the delinquent Officer's admission in her explanations and based on the available evidence, it was held proved. Thus, charge Nos.6 to 8 are held proved.

17. The findings of the Enquiry Officer in respect of all charges



are categorical and we do not find any infirmity or perversity as such. PWs-1 to 6 were examined as prosecution side witnesses. The deposition of prosecution side witnesses were considered by the Enquiry Officer and the Disciplinary Authority for the purpose of forming final opinion to impose the major penalty. Exhibits P-1 to P-64 are the prosecution side exhibits. All the documents relating to serious lapses and dereliction of duty were examined by the Enquiry Officer, which would reflect in the findings and the Disciplinary Authority also considered the same. No witness was examined on the delinquent side. Exhibit D-1 was filed on the side of the delinquent.

18. Considering the facts and circumstances in entirety and as a whole, we do not find any reason or material to interfere with the findings of the Enquiry Officer, which was accepted by the Disciplinary Authority and imposition of major penalty of dismissal from service.

19. 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 the Competent Authority in consonance



with the Statues and the Rules in force, but not the decision itself.

20. In the present case, due process of law had been scrupulously followed. Rules of natural justice has been complied with. Charges are held proved based on the material documents and evidences available on record. The findings of the Enquiry Officer is undoubtedly based on documents and deposition of witnesses. Finally the proportionality of punishment is concerned, we have no hesitation in arriving a conclusion that the petitioner was guilty of serious lapses and dereliction of duty. Therefore, the punishment of dismissal from service, cannot be construed as disproportionate to the gravity of proved charges. Thus we are not inclined to interfere with the quantum of punishment. Consequently, the present writ petition stands dismissed. However, there shall be no order as to costs. The connected miscellaneous petitions are also dismissed.

(S.M.SUBRAMANIAM,J.) (K.RAJASEKAR,J.)
07-03-2024

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
Svn



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To

1.The Secretary to Government,
State of Tamil Nadu,
Home (Courts-1) Department,
Fort St. George,
Chennai-600 009.

2.The Registrar (General),
High Court,
Madras-600 104.



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

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Order in
WP 5327 of 2021



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07-03-2024