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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.03.2024

PRONOUNCED ON : 27.03.2024

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.P.No.29122 of 2022

and

W.M.P.No.28411 of 2022

M.Suresh Viswanath

... Petitioner

Vs.

The Registrar General,
Hon'ble High Court of Madras,
Post Box No.79,
Chennai – 600 104.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order issued by the respondent in R.O.C.No.46774-A/2019/ Complaint Cell/ B2, dated 16.08.2021 and to quash the same and consequently directing the respondent to grant all attendant carrier benefits of Super Time Scale to the petitioner with all consequential and other attendant monetary benefits.



For Petitioner : Mr.S.R.Rajagopal
Senior Counsel
For Mrs.Selvi George

For Respondent : Mr.Karthick Ranganathan

ORDER

[Order of the Court was made by **S.M.SUBRAMANIAM, J.**]

The order of punishment dated 16.08.2021 imposing the punishment of stoppage of increment for 5 years with cumulative effect is under challenge in the present writ proceeding.

PETITIONER'S CASE:

2. The writ petitioner joined as Directly recruited District Judge on 18.02.2011 and compulsorily retired from service in public interest vide G.O.Ms.No.299, Public (Special – A) Department 20.04.2022. The petitioner was relieved from service on 07.05.2022. A charge memorandum was issued against the writ petitioner in proceedings dated 29.06.2020 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 2016. The statement of charge framed against the petitioner is as under:



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“Charge:

That you, Thiru. M.Suresh Viswanath, District Judge (now under suspension), while functioning as Principal District Judge, Thoothukudi and holding Full Additional Charge of the post of Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Thoothukudi, inspite of the specific direction of the Hon'ble Supreme Court in SLP Appeal (Crl.) No.1784 of 2019 vide order dated 21.02.2019, directing the accused to first surrender before the trial Court (concerned court) and thereafter file regular bail application, and the specific direction to the trial court that if regular bail application is moved, after giving 48 hours notice to the Public Prosecutor, it shall decide the same preferably on the same day, have passed an order dated 02.03.2019 in Cr.M.P. No.1023/2019, contrary to the said order of the Hon'ble Supreme Court, by entertaining the bail application prior to the surrender of accused, without perusing the statement of the victim girls recorded u/s 164 Cr.P.C, the case diary and relevant materials, and granted bail to the accused on the same day on 02.03.2019 in the case of heinous offence under POCSO Act, and thereby you have not only wilfully



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disobeyed the order of the Hon'ble Supreme Court but also failed to apply your judicial mind for the reasons best known to you.

Thus, you have committed the acts of serious misconduct of favouritism, wilful disobedience and dereliction of duty which are unbecoming of a Judicial Officer and have also failed to maintain absolute integrity and devotion to duty and thereby violated Rule 20 of the Tamil Nadu Government Servants' Conduct Rules, 1973. Hence, you rendered yourself liable to be proceeded with under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.”

3. Annexure – II to the charge memo provides statement of imputations in support of the charge framed against the petitioner. Annexure – III provides list of documents. Annexure – IV is list of witnesses to examine. There is no infirmity as such regarding the procedures followed for issuance of charge memo under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rule, 2016. The petitioner submitted his explanation denying the charges on 14.07.2020.



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4. Not satisfied with the explanation, the Disciplinary Authority appointed an Enquiring Judge. Enquiry was conducted by affording opportunity to the delinquent officer. He defended his case by participating in the process of enquiry. The Enquiring Judge has submitted his enquiry report on 25.03.2021. The findings of the Enquiring Judge was accepted by the Disciplinary Authority and a second show cause notice was issued seeking objections from the delinquent officer on the findings of the Enquiring Judge. The delinquent officer submitted his further objections, which was considered and a final order in the departmental disciplinary proceeding was issued on 16.08.2021 imposing punishment of stoppage of increment with cumulative effect for a period of 5 years. Challenging the punishment, the present writ petition came to be instituted.

SUBMISSIONS MADE ON BEHALF OF THE PETITIONER:

5. Mr.S.R.Rajagopal, learned Senior Counsel appearing on behalf of the writ petitioner would submit that the basis of the charges are untenable. The Criminal Case under Section 11(5) read with Section 12 of the Protection of Children from Sexual Offences (POCSO) Act, 2012 and Section 506 (1) of the Indian Penal Code (I.P.C) was registered against the



accused one Rajavel Subramanian. He moved a petition before the Madurai Bench of the Madras High Court, Madurai in CrI.O.P.(MD).No.22889 of 2018 for grant of Anticipatory Bail, initially interim bail was granted and subsequently it was dismissed on 11.02.2019. The accused person approached the Hon'ble Supreme Court of India. By order dated 21.02.2019, the Apex Court dismissed the Special Leave Petition with the following observations:

“We are not inclined to interfere with this special leave petition. The special leave petition is dismissed accordingly. However, we grant two weeks time to the petitioner to surrender before the concerned Court and apply for regular bail. If regular bail application is moved, after giving 48 hours advance notice to the concerned Public Prosecutor, the concerned Court shall decide the same preferably on the same day on its own merits and in accordance with law uninfluenced by any of the observation in the impugned orders.”

6. The writ petitioner in compliance with the order of the Hon'ble Supreme Court accepted the surrender application made by the accused and ordered the bail application. When the order of the Hon'ble Supreme Court



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can be interpreted in two ways, the petitioner understood in a particular manner and ordered the bail petition. Even presuming that the interpretation adopted by the writ petitioner is erroneous, the same cannot constitute a charge warranting disciplinary action. The very charge framed against the petitioner reveals that the petitioner has acted contrary to the order passed by the Hon'ble Supreme Court by entertaining the bail application prior to the surrender of the accused. The charge framed against the petitioner that he has acted contrary to the judgment is untenable, since the order of the Hon'ble Supreme Court can be interpreted in two ways. Judicial understanding of an Officer, while considering the bail application or exercise of his discretion cannot be a ground to institute disciplinary proceedings.

7. Mr.S.R.Rajagopal, learned Senior Counsel would further submit that the said Criminal Case itself was quashed by the High Court subsequently. There was no allegation of corruption or extraneous consideration or specific complaint of misconduct against the petitioner. In the absence of any one of such instances, initiation of departmental disciplinary proceedings itself is untenable.



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8. The findings in the enquiry report are improbable and perverse. The Hon'ble Supreme Court directed to consider the bail application on the same day. The petitioner considered the bail application in exercise of his judicial power. Therefore, the findings of the Enquiring Judge and the consequential punishment are perverse and to be set aside. In the absence of any complaint by any aggrieved parties about any illegal gratification or extraneous consideration the actions initiated are beyond the scope of the Discipline and Appeal Rules.

REPLY BY THE RESPONDENTS:

9. Mr.Karthick Ranganadhan, learned counsel appearing on behalf of the respondent would oppose the contentions of the petitioner by stating that the petitioner joined as District Judge by Direct Recruitment on 18.02.2011. While the petitioner was discharging his duties as the Principal District Judge, Thoothukudi, holding Full Additional Charge of the post of Sessions Judge, Mahalir Neethimandram, (Fast Track Mahila Court), Thoothukudi had granted bail to one Mr. Rajavel Subramanian the petitioner/accused in Cr.M.P.No.1023 of 2019 on 02.03.2019, who has been charged under Section



11(5) read with Section 12 of POCSO Act, 2012 and Under Section 506(1) of IPC for an allegation that the accused had committed sexual harassment on the minor victim girls and threatened them.

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10. The learned counsel appearing on behalf of the respondent would further submit that earlier the accused Mr.Rajavel Subramanian was granted Interim Bail on the Anticipatory Bail petition filed by him before the Madurai Bench of this Court in CrI.O.P.(MD) No.22889 of 2018 on 10.01.2019 and the same was extended till 11.02.2019. Subsequently, on 11.02.2019, the Court dismissed the above said CrI.O.P., against which the accused filed petition before the Hon'ble Supreme Court of India in S.L.P(CrI) No.1784 of 2019. The said S.L.P. was dismissed by the Hon'ble Supreme Court of India by observing as follows:

“However, we grant two weeks' time to the petitioner to surrender before the concerned Court and apply for regular bail. If regular bail application is moved, after giving 48 hours advance notice to the concerned Public Prosecutor, the concerned court shall decide the same preferably on the same day on its own merits and in accordance with law uninfluenced by any



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observation in the impugned orders.”

11. Thereafter, the accused again filed petition for bail in Cr.M.P.No.1023 of 2019 on 28.02.2019 under Section 438 of Cr.P.C. instead of surrendering and filing petition for regular bail under Section 439 of Cr.P.C., which is contrary to the directions issued by the Hon'ble Supreme Court of India. Even then, the petitioner herein on 02.03.2019, entertained the petition for bail and the petition for bail filed under Section 438 of Cr.P.C. on 28.02.2019 was converted as filed under Section 439 of Cr.P.C. and granted regular bail to the accused on the same day of his surrender. Since the defacto complainant viz., K.Umayavel was aggrieved over by the grant of bail, had filed a petition before the Madurai Bench of this Hon'ble Court to cancel the same. The Hon'ble Court vide Order dated 27.04.2019, cancelled the bail granted to the accused and held that the petitioner herein while granting bail. did not follow the directions of the Hon'ble Supreme Court in its letter and spirit and the petitioner entertained the bail application after accepting the surrender of the accused and granted bail to the accused on the same day of his surrender. The Hon'ble Judge by separate order dated 27.04.2019 observed that the matter needs for in-house proceedings and



directed the Registry to place the matter before the Hon'ble the Chief Justice for appropriate orders.

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12. Based on the above facts, the Administrative Committee resolved to immediately suspend the petitioner and initiate disciplinary proceedings against the petitioner. Charges were framed and an enquiry was conducted.

13. The learned counsel for the respondent contended that the petitioner, who was serving as a District Judge knows the difference between anticipatory bail where one applies for enlargement of bail even when he is at large and bail where one applies for enlargement when he is in judicial custody and the import of the Order of the Hon'ble Supreme Court of India rejecting the anticipatory bail with liberty to apply for bail. Therefore, the act of the petitioner is the high of ingenuity whereby he virtually has granted anticipatory bail thus elevating himself to be an authority over and above the Order of the higher judicial fora. The action of the petitioner thus amounted to rank indiscipline and contumacious and hence amounted to gross misconduct and therefore charge memo was framed and issued to the petitioner vide High Court's Charge Memorandum in R.O.C.No.46774-



A/2019/Complaint Cell/B2, dated 29.06.2020 stating that the petitioner had wilfully disobeyed the order of the Hon'ble Supreme Court by entertaining the petition for bail which was filed prior to the surrender of the accused, without perusing the statement of the victim girls recorded u/s 164 of Cr.P.C, the case diary and relevant materials, and granted bail to the accused on the same day of surrender on 02.03.2019 in the case of heinous offence under the POCSO Act, thereby violated Rule 20 of the Tamil Nadu Government Servant's Conduct Rules, 1973 by committing the acts of serious misconduct of favoritism, wilful disobedience and dereliction of duty and failed to maintain absolute integrity and devotion to duty.

14. The petitioner participated in the process of enquiry and defended his case. The Enquiring Judge vide report dated 25.03.2021 held that the charge framed against the petitioner is proved. The Administrative Committee unanimously accepted the enquiry report and thereafter, the copy of the report was furnished to the petitioner seeking his further objections. Considering the materials available on record, the Administrative Committee resolved to impose the punishment of stoppage of increment with cumulative effect for 5 years against the petitioner subject to the approval of the Full



Court. The Full Court on 05.08.2021 unanimously approved the decision of the Administrative Committee. Accordingly, the order of punishment was issued vide proceedings dated 16.08.2021.

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15. Mr.Karthick Ranganadhan, learned counsel for the respondent would further submit that the accused person in the Criminal Case filed a petition for Anticipatory Bail under Section 438 of Criminal Procedure Code. Perusal of the petition would reveal that it is an Anticipatory Bail Petition. In the context of the filing of the said petition, the Enquiring Judge in his report has stated that the “Anticipatory Bail” was struck off in green ink by the delinquent officer. The Enquiring Judge considered the materials available on record and found that the petitioner has violated the directions issued by the Hon’ble Supreme Court of India. Based on the proved charges, the punishment was imposed. Thus, there is no infirmity and the writ petition is to be dismissed.

DISCUSSIONS:

16. We have considered the rival submissions made between the parties to the *lis* on hand.



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17. The departmental disciplinary proceedings were initiated by following the procedures as contemplated and there is no infirmity. The contentions of the petitioner are that the charge *per se* is untenable and unacceptable. With reference to the charges, enquiry was conducted to cull out the truth behind the allegations. As far as the disciplinary proceedings are concerned, preponderance of probabilities are sufficient to punish a public servant. No strict proof is required. The departmental disciplinary proceedings and criminal trial cannot be equated. Therefore, the yardstick adopted for departmental disciplinary proceedings cannot be compared with the procedures to be followed in the criminal trial, wherein, strict proof is required.

18. No doubt the charge is serious in nature. The charge issued against the petitioner cannot be confined within the judicial exercise of power. Certain allegations are made regarding the manner in which the bail petition was ordered. Since it raised serious doubt, an enquiry was ordered. Therefore, the charge issued cannot be held as perverse and allegations are enquired into by following the procedures as contemplated.

**FINDINGS OF THE ENQUIRING JUDGE:**

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19. The important findings of the Enquiring Judge would throw light regarding the seriousness of the allegations raised against the delinquent officer and the manner in which charge has been held proved. Some of the findings are as under:

“5. The word 'anticipatory' was struck off in green ink by the Delinquent Officer. A detailed order was thereafter passed granting bail and the operative portion of the said order is follows:

“In the result the petitioner/accused is ordered to be released on bail on his executing a bond for Rs. 10,000/- with two sureties each for the like sum to the satisfaction of this Court within two weeks and with further condition that the petitioner/accused after release on bail, he should appear before the respondent police station daily at 10.00 a.m., for a period of one month from the date of his release.”

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.....

25. It is the contention of the Delinquent Officer that he acted in accordance with the directions of the Hon'ble Supreme Court by



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hearing the surrender petition first and then hearing the application for bail next.

26. At this juncture, it would be again appropriate to refer to the order of the Hon'ble Supreme Court as to what actually was directed. The order is again extracted below:-

“We are not inclined to interfere with this Special Leave Petition. The Special Leave Petition is dismissed accordingly.

However, we grant two weeks time to the petitioner to surrender before the concerned Court and apply for regular bail. If regular bail application is moved, after giving 48 hours advance notice to the concerned Public Prosecutor, the concerned Court shall decide the same preferably on the same day on its own merits and in accordance with law uninfluenced by any observation in the impugned orders.

Pending applications, if any, stand disposed of.”

27. This order directs as follows:-

(i)the Hon'ble Supreme Court is not inclined to interfere with the order passed by the Madurai Bench of Madras High Court;

(ii)The Special Leave Petition was dismissed accordingly,



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(iii) The Hon'ble Supreme Court granted two weeks time to the petitioner to

(a) surrender before the concerned Court, and

(b) apply for regular bail;

(iv) If regular bail application is applied, after giving 48 hours' advance notice to the Public Prosecutor, the concerned Court shall decide the same preferably on the same day.

28. The above would naturally mean that the accused will have to

(1) Surrender within a period of two weeks before the concerned Court;

(2) Then apply for regular bail; and

(3) If regular bail is applied, then the matter is to be heard and after giving 48 hours advance notice to the Public Prosecutor.

29. Further analysis would mean that the accused will first have to surrender. If he surrenders then he comes into the custody of the Court. Only when he is under custody of the Court, can regular bail be granted. If regular bail is to be granted then he must be remanded to judicial custody or at least his surrender must be accepted which would also effectively mean that he is under



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the custody of the Court. Only then he can apply for regular bail.

30. This analysis also means that only after he surrenders can the accused file an application for regular bail.

31. It must be kept in mind that the Hon'ble Supreme Court had stated that he must apply for regular bail and not anticipatory bail. If he is to apply for regular bail, then he must be under the custody of the Court. He can be under the custody of the Court only when he surrenders before the Court prior to applying for regular bail. If regular bail is applied then 48 hours' advance notice must be given to the Public Prosecutor. Thereafter, the Court must hear the case on the very same day on merits. This would mean that the first hearing of the bail application would be 48 hours after it is filed. The bail application can be filed only after an application for surrender had been filed.

32. It has to be now examined what happened in this case.

33. On Saturday, 28.02.2019, an application under Section 438 Cr.P.C., was filed by the accused in the Centralised Filing Section.

34. A Petition under Section 438 Cr.P.C.,



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seeks a direction for grant of bail to a person apprehending arrest. On 28.02.2019, the petitioner was not under the custody of the Court. The very first paragraph of the said application was as follows:-

“1. The petitioner submits that he is apprehending arrest at the hands of the respondent police for having committed the alleged offences punishable under Sections 506(i) of IPC and Section 11(5) and 12 of the Protection of Child from Sexual Offences Act, 2012.....”

35. The relief sought in the said petition was "Hence, it is humbly prayed that this Hon'ble Court may be pleased to pass an order directing the petitioner to be released on bail in the event of his arrest in connection with crime No. 19 of 2018 on the file of the Inspector of Police, All Women Police Station, Thoothukudi, Thoothukudi District and thus render justice."

36. Thus, the petitioner had taken the Court of the Delinquent Officer for granted by filing this particular application on 28.02.2019 terming it as a petition under Section 438 Cr.P.C., and claiming the relief of anticipatory bail in the event of arrest.”



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37. *It is the statement of PW-1 on oath that this petition was brought to the notice of the Delinquent Officer on 28.02.2019 itself and the Delinquent Officer asked her to keep it on the records. It did not strike the conscience of the Delinquent Officer that the petition itself was not maintainable. As a matter of fact, along with the petition, the order of the Hon'ble Supreme Court was also annexed and a duty was cast on the Delinquent Officer to scrupulously follow the dictum and directions of the Hon'ble Supreme Court. He had no authority to follow a different procedure, than what was directed. What was directed was for the accused to first surrender and then apply for regular bail. It must also have struck the conscience of the Delinquent Officer that he can never entertain an anticipatory bail application of the accused when grant of such relief had been rejected by the Hon'ble Supreme Court.*

38. *In the instant case, the accused filed the petition under Section 438 Cr.P.C., seeking anticipatory bail. This petition had been filed in the Centralised Filing Section on 28.02.2019. This petition can be used in any manner. It could be*



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used as an anticipatory bail application. It was used as a bail application by changing the provision of law to Section 439 Cr.P.C. The relief sought was not changed. This should not have been encouraged by the Delinquent Officer. On this one ground alone, I hold the Delinquent Officer has failed to follow the dictum of the Hon'ble Supreme Court.

39. Later, on 02.03.2019 the accused, filed his surrender application. The Hon'ble Supreme Court had stated that the accused should first surrender and then apply for regular bail. The Delinquent Officer violated the orders of the Hon'ble Supreme Court by accepting a petition which was filed earlier to the actual date of surrender and granting reliefs therein. There has been a direct violation of the directions of the Hon'ble Supreme Court.

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48. My attention has also been drawn to the evidence of PW-4, the Special Public Prosecutor, Mahila Court, Thoothukudi. The learned Senior Counsel for the Delinquent Officer lamented that when the Special Public Prosecutor had not raised



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any objection for grant of bail, there was no other option available to the Delinquent Officer but to release the accused on bail.

49. I would like to repeat that the enquiry is not focused on the aspect whether a correct judicial order was passed or not. The enquiry is aimed at determining whether the Delinquent Officer followed the directions of the Hon'ble Supreme Court or violated them.

50. It is as clear as day light that the Hon'ble Supreme Court had directed that the accused should first surrender and then apply for regular bail. When an application was filed in the Section on 28.02.2019 and this was also brought to the knowledge of the Delinquent Officer, he should not have entertained the same. He cannot justify his action by stating that he passed a judicial order after passing an order in the application seeking surrender. As a matter of fact, both the orders were passed simultaneously.

51. The very fact that the surrender application though filed later was given an earlier number as Cri.M.P.No. 1021 of 2019 and the bail application which was filed earlier was given a later number as Crl.M.P.No. 1023 of 2019 cannot



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be used as a screen by the Delinquent Officer to hide his deliberate act of violating the directions of the Hon'ble Supreme Court. This actually compounds the charge against the Delinquent Officer in that he has camouflaged his act by assigning a subsequent number to the bail petition which was filed earlier and an earlier number to the surrender petition which was filed later.

52. Whether a Judicial Officer will necessarily have to grant an order of bail or anticipatory bail whenever the Public Prosecutor states no objection is an issue which I am not examining. I am not called upon to examine that aspect also.

53. One further significant fact is Ex.R-1 which was marked during the cross examination of PW-1. This is a letter said to have been issued by PW-1 addressed to the Delinquent Officer. It is dated 20.06.2019, nearly more than three months after the entire sequence of incidents took place. Obtaining such a letter after more than three months has been justified by the Delinquent Officer stating that he had necessity to seek, this letter only when he received the Official Memorandum from the High Court. This letter itself shows the undue



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influence exercised by the Delinquent Officer against his own staff. This letter clearly states that the bail application was filed on 28.02.2019 and after two days on 02.03.2019, the accused surrendered. The direction of the Hon'ble Supreme Court however was that the accused should first surrender and then apply for regular bail. As a matter of fact on 28.02.2019, the accused was a free person. There was no occasion for him to file a petition seeking bail. The said application was not maintainable as on that date. The Delinquent Officer had also no right to grant anticipatory bail which application had been dismissed by the Hon'ble Supreme Court.

54. Viewed from any angle, I hold that the charge against the Delinquent Officer stands proved.”

20. Importantly, the Enquiring Judge found that the word anticipatory was struck off in green ink by the delinquent officer. The explanation of the delinquent officer that he had acted in consonance with the order of the Hon'ble Supreme Court was examined with reference to the documents and evidences available on record. The Enquiring Judge had gone into the facts



regarding the filing of the bail petition initially under Section 438 Cr.P.C., which was subsequently converted as regular bail petition under Section 439 Cr.P.C. The evidence of PW-4, the Special Public Prosecutor was also considered by the Enquiring Judge. It is found that the Ex.R-1, which was marked during the cross examination of PW-1. The said document revealed that undue influence exercised by the delinquent officer against his own staff. The said letter states that the bail application was filed on 28.02.2019 and after two days on 02.03.2019, the accused surrendered. The direction of the Hon'ble Supreme Court however was that the accused should first surrender and then apply for regular bail. As a matter of fact on 28.02.2019, the accused was a free person. The bail application was not maintainable as on that date. Therefore, the Enquiring Judge considered that the delinquent officer cannot grant Anticipatory Bail which application had been dismissed by the Hon'ble Supreme Court. The proved charges are grave in nature. Considering the gravity of proved charges, the punishment of stoppage of increment for 5 years with cumulative effect was imposed.

21. The power of judicial review in disciplinary matters are considered by the Hon'ble Supreme Court in the case of *State of Rajasthan Vs. Heem*



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Singh reported in (2020) SCC Online SC 886 and held as follows:

“In exercising judicial review in disciplinary matters, there are two ends of the spectrum. 1. Rule of restraint 2. When interference is permissible. The rule of restraint constricts the ambit of judicial review. The determination of whether misconduct has been committed lies within the domain of the disciplinary authority. The judge does not assume the mantle of the disciplinary authority. Nor does the judge wear the hat of an employer. The first end of the spectrum is founded on deference and autonomy - deference to the position of the disciplinary authority as a fact finding authority and autonomy of the employer in maintaining discipline and efficiency of the service. At the other end of the spectrum is the principle that the court has the jurisdiction to interfere when the findings in the enquiry are based on no evidence or when they suffer from perversity. Proportionality is an entrenched feature of our jurisprudence. Service jurisprudence has recognized it for long years in allowing for the authority of the court to interfere when the finding or the penalty are disproportionate to the weight of the evidence or misconduct. Judicial craft lies in maintaining a



steady sail between the banks of these two shores which have been termed as the two ends of the spectrum. Judges do not rest with a mere recitation of the hands-off mantra when they exercise judicial review. To determine whether the finding in a disciplinary enquiry is based on some evidence an initial or threshold level of scrutiny is undertaken. That is to satisfy the conscience of the court that there is some evidence to support the charge of misconduct and to guard against perversity. But this does not allow the court to re-appreciate evidentiary findings in a disciplinary enquiry or to substitute a view which appears to the judge to be more appropriate.”

22. In the case of ***Deputy General Manager (Appellate Authority) and Others Vs. Ajai Kumar Srivatsava*** reported in ***(2021) 2 SCC 621***, held as follows:

“The power of judicial review in the matters of disciplinary inquiries, exercised by the departmental/appellate authorities discharged by Constitutional Courts under Article 226 or Article 32 or Article 136 of the Constitution of India is



limited to correcting errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice and it does not extend to adjudication of the case on merits or reappreciation of evidence as an appellate authority.”

23. In the case of ***Union of India and Others Vs. Managobinda Samantaray*** reported in ***2022 Live Law (SC) 244***, held as follows:

“The Courts would not interfere unless the exercise of discretion in awarding punishment is perverse in the sense the punishment imposed is grossly disproportionate. While exercising the power of judicial review, the Court do not assume the role of the appellate authority. Writ jurisdiction is circumscribed by limits of correcting errors of law, procedural error leading to manifest injustice or violation of principles of natural justice. The decision are also disturbed when it is found to be ailing with perversity.”

24. The Hon'ble Supreme Court in the ***State of Rajasthan Vs. Heem Singh*** case (cited *supra*) held that the disciplinary enquiries have to abide by



the rules of natural justice. But they are not governed by strict rules of evidence, which apply to judicial proceedings.

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25. In the case of ***State Bank of India Vs. K.S.Vishwanath*** reported in ***2022 SCC Online SC 667***, held as follows:

“The High Court in exercise of powers under Articles 226/227 of the Constitution of India has reappreciated the evidence on record which otherwise is not permissible. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to reappreciate the evidence or the nature of punishment. The standard of proof which is required in a criminal case and that of the disciplinary proceedings is different. Acquittal under the benefit of doubt, will not in any way render a completed disciplinary proceedings invalid nor affect the validity of the finding of guilt or consequential punishment. The standard of proof required in both being different, the same charges and evidence may lead to different results in the two proceedings, i.e finding of guilt in departmental proceedings and an acquittal by giving benefit of doubt in the criminal case.”



CONCLUSION:

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26. The Court in exercise of judicial review must restrict its review to determine whether;

- (1) The rules of natural justice have been complied with.
- (2) The findings of misconduct is based on some evidence.
- (3) The Statutory Rules governing the conduct of the disciplinary enquiry have been observed.
- (4) The findings of the disciplinary authority suffer from perversity.
- (5) The penalty is disproportionate to the proven misconduct.

27. In the present case, the rules of natural justice have been complied with and the petitioner has not raised any compliant. The findings of the Enquiring Judge extracted would be sufficient to form an opinion that the finding of misconduct is based on some evidence. It is not in dispute that the Statutory Rules governing conduct of the disciplinary enquiry have been absorbed.



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28. The findings of the Enquiring Judge are candid and the acceptance of the findings by the Disciplinary Authority cannot be construed as perverse. Thus, the findings of the Disciplinary Authority do not suffer from any perversity.

29. Preponderance of probabilities in the present case would be sufficient to form an opinion that suspicious circumstances exist. Such suspicion is undoubtedly touching upon the integrity of the Delinquent Judicial Officer. Certain remote discrepancies pointed out on behalf of the delinquent officer in the evidence will not make a case of no evidence in a departmental disciplinary proceedings.

30. Regarding the proportionality of punishment imposed, we do not find any infirmity. Punishment of stoppage of increment for 5 years with cumulative effect is in commensuration with the gravity of the proved charges. Thus, we are not inclined to interfere with the quantum of punishment.



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31. Consequently, this Writ Petition stands dismissed. Consequently, connected Miscellaneous Petition stands closed. However, there shall be no order as to costs.

[S.M.S., J.] [K.R.S., J.]
27.03.2024

Jeni
Index : Yes
Speaking order
Neutral Citation : Yes

To

The Registrar General,
Hon'ble High Court of Madras,
Post Box No.79,
Chennai – 600 104.



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