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WP No.1170 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 07-03-2024

ORDERS PRONOUNCED ON: 18-03-2024

CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

And

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

WP No.1170 of 2023

And

WMP No.1192 of 2023

N.Ramesh Kumaar

.. Petitioner

-VS-

The Registrar-General,
Madras High Court,
Madras.

.. Respondent



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 pertaining to the order passed by the respondent in his proceedings in Roc.No.10/2022-Con-Estt-II dated 05.08.2022 confirming the order of dismissal passed by him in his proceeding in Roc.No.10/2022/Con-Estt.II, dated 13.04.2022 and quash the same as is against all canons of law and consequently directing the respondent to reinstate the petitioner into service in the post of CO/SO/AE, High Court, Madurai Bench of Madras High Court, Madurai and pay all the attendant service and monetary benefits.

For Petitioner : Mr.V.Raghavachari,
Senior Counsel for
Ms.V.Srimathi.

For Respondent : Mr.V.Ayyadurai,
Senior Counsel for
Mr.A.Durai Eswar.

ORDER

S.M.SUBRAMANIAM, J.

FACTS IN BRIEF:

The writ petitioner was appointed as Copyist on 25.07.1996. Thereafter, he was promoted as Assistant on 15.06.1998 and as Assistant Section Officer on 06.01.2000. Finally, he was promoted as Section Officer



on 23.07.2009.

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2. The High Court Registrar (Vigilance) received a letter dated 05.08.2011 from Mr.S.Doraisamy, Advocate, wherein a compact disk was enclosed. Request is made for certain information under the Right to Information Act with regard to the identification of voices in the compact disk, which contained the alleged telephonic conversation among three persons, viz., Mr.Jayendra Saraswathi Sankaracharya, Kanchi Mutt, Mr.T.Ramasamy, then then Sessions Judge, Puducherry and Ms.B.Gowri Kamatchi related to Mr.Jayendra Saraswathi Sankaracharya. Subsequently on 18.08.2011, a complaint has been received from Mr.P.Sundarrajan, Advocate addressed to the Registrar (Vigilance), requesting to register a case and to probe the tapes circulated with regard to the telephone conversation purported to be made between viz., Mr.Jayendra Saraswathi Sankaracharya, who was arrayed as the prime accused in Sankar Raman murder case in SC No.94 of 2005 on the file of the Sessions Court at Puducherry, Mr.T.Ramasamy, the then Sessions Judge, Puducherry, devotee and another person, discussing the monetary payments and promised payments.



3. The requisition letter and the complaint, were placed before the Hon'ble Administrative Committee. In the meeting held on 24.08.2022, Mr.K.Authinathan, formerly Administrator General and Official Trustee, was appointed as Preliminary Enquiry Officer to enquire into the complaint. The enquiry report was submitted on 19.09.2011. The enquiry report contained the Expert's opinion of Deputy Director of Forensic Sciences Department dated 15.09.2011.

4. The Expert has opined that contextual discontinuity and abrupt ending of the conversation found in the audio files forwarded for examination indicate the possibility of editing of the source audio files. The Expert has further opined that the content of the audio can be authenticated only after examining the actual recording devices (carrying the source audio files), which were used to record the original conversation. The Expert has further stated that the complainant had not cooperated with the enquiry and concluded that the materials gathered during the enquiry do not contain even the materials relating the facts in issue which merit any further action.

5. In the meantime, Mr.P.Sundarrajan, Advocate filed WP



No.19894 of 2011 before the High Court of Madras on 22.08.2011 praying for Writ of Mandamus, directing the Registrar (Vigilance), High Court of Madras to commence statutory investigation by registering the FIR on his complaint dated 18.08.2011 and to submit a preliminary report about the alleged bribe tapes and financial transactions discussed in the tapes and if the report confirms payment of bribes paid to the Trial Court Judge by the accused, then to order for re-trial of SC No.94 of 2005 on the file of the Sessions Court, Puducherry by any other Judge in Puducherry.

6. The Hon'ble Administrative Committee in the meeting held on 14.10.2011, directed the Registry to place the enquiry report dated 19.09.2011 submitted by Mr.N.Authinathan.

7. The Hon'ble Division Bench in WP No.19894 of 2011 vide order dated 27.02.2012, observed that to ascertain the truth and genuineness of the alleged conversation contained in the compact disk produced by Mr.S.Doraisamy, Advocate and the compact disk said to have been in possession of Mr.P.Sundarrajan, the petitioner in WP No.19894 of 2011, which was not produced before the Preliminary Enquiry Officer, are to be



subjected to further enquiry by a skilled and specialised person in the field of Cyber Crime and directed the Director General of Police, Tamil Nadu, to nominate Dr.M.Sudhakar, Former Assistant Commissioner of Police, Cyber Crime Cell or any other Competent Police Official, who is having experience in dealing with Cyber Crime, not below the rank of Assistant Commissioner and disposed of the said writ petition with a direction to the nominated Enquiry Officer to hold a detailed enquiry and submit report to the Registrar-General, High Court of Madras for further action by the High Court.

8. Pursuant to the directions of the Division Bench, Dr.M.Sudhakar, former Assistant Commissioner of Police, Cyber Crime Cell was appointed as Enquiry Officer, to conduct a detailed enquiry to ascertain the truth. Dr.M.Sudhakar seized all the materials and conducted a detailed enquiry and submitted his report, wherein, inter alia, the Enquiry Officer had given a specific finding that the utterances in the alleged conversation were made by Thiru Jayendra Saraswathi Sankaracharya of Kanchi Mutt, Ms.B.Gowri Kamatchi, CEO of Sree Uthradom Thirunal Academy of Medical Sciences, Thiruvananthapuram and Mr.N.Ramesh Kumar, Section



Officer, High Court of Madras and Mr.A.Rajasekaran, the then V Additional District Judge of Erode at Bhavani. The said report established the fact that the alleged conversation did not contain the voice of Thiru T.Ramasamy, the then Trial Judge of the Sessions Court, Puducherry. Thus, the Hon'ble Administrative Committee resolved to drop all further proceedings against Mr.T.Ramasamy, the then Sessions Judge, Puducherry and resolved that *prima facie* case is made out for further enquiry against the writ petitioner viz., Mr.A.Rajasekaran, the then IV Additional District Judge, Erode at Bhavani and Mr.N.Ramesh Kumaar, then working as Section Officer in the Madurai Bench of Madras High Court, Madurai and directed the Registry to conduct further enquiry against both of them and to submit a report.

9. In compliance of the directions issued by the Hon'ble Administrative Committee, enquiry was conducted by the then Registrar (Vigilance) and a report was submitted on 10.03.2016 stating that the petitioner and Mr.N.Ramesh Kumaar Section Officer had involved in the conference call conversation with Mr.Sankaracharya Jayendra Saraswathi, the prime accused in SC No.94 of 2005 on the file of the Sessions Court, Puducherry and Ms.B.Gowri Kamatchi, CEO of Sree Uthradom Thirunal



Academy of Medical Sciences, Thiruvananthapuram. Consequently, the Hon'ble Administrative Committee directed the Registry to call for explanation from the petitioner and Mr.N.Ramesh Kumar, Section Officer.

The petitioner submitted his interim reply dated 06.05.2016 and submitted explanation on 08.08.2016. The Hon'ble Administrative Committee, in the meeting held on 30.08.2016, perused the explanation submitted by the petitioner as well as the then Judicial Officer and rejected the same as not being satisfactory. As ordered, seven charges were framed against the petitioner and the same was issued to him vide proceedings in Roc.No.247/2015/VC dated 22.11.2017. The petitioner submitted his written statement of defence on 21.12.2017. After considering the same, the Hon'ble Administrative Committee resolved to nominate Mr. Justice T.Ravindran, then sitting Judge, as Enquiry Judge and Mr.V.Thangamariappan, then Registrar (District Judiciary), High Court, Madras, as Presenting Officer to conduct the departmental enquiry against him. The enquiry Judge recused from conducting the enquiry. In the meantime, the then Judicial Officer, Thiru A.Rajasekaran filed WP No.21521 of 2017 praying to issue a Writ of Certiorarified Mandamus to quash the proceedings dated 13.03.2013 and consequently, direct the



respondent viz., the Registrar-General, High Court, Madras to permit the petitioner viz., Thiru A.Rajasekaran, the then Judicial Officer to retire with all retiral benefits. Subsequently, this Court vide its order dated 18.03.2019 directed the Registry to appoint Enquiry Judge within a period of four weeks from the date of receipt of the order and the Enquiry Judge to complete the enquiry and to submit the report within a period of three months thereafter. The Minutes of the Enquiry Judge and this Court's order dated 18.03.2019 in WP No.21521 of 2017 were placed before the Hon'ble the then Chief Justice and His Lordship directed to place the same before the Hon'ble Administrative Committee. On 25.06.2019, the Hon'ble Administrative Committee resolved to nominate Mr. Justice N.Sathish Kumar, Judge, Madras High Court as Enquiring Judge.

10. Meanwhile, the writ petitioner filed WP No.29198 of 2015 before the High Court of Madras on 10.09.2015 for issuance of Writ of Certiorarified Mandamus to call for the entire records and to quash the same and consequently direct the Registry to permit the petitioner to retire peacefully from service with all attendant benefits. The writ petition was dismissed as withdrawn on 09.08.2016.



11. The Hon'ble Administrative Committee in its meeting held on 30.08.2016, considered the materials available on record and the explanations submitted by the writ petitioner as well as Mr.N.Ramesh Kumar, Section Officer and rejected the same as not being satisfactory. Accordingly, it was ordered to frame charges.

12. Pertinently, all the above procedures were followed to ascertain the *prima facie* case, if any, made, for initiation of departmental disciplinary proceedings. Only after considering all the materials available on record, the Hon'ble Administrative Committee took decision to frame charges against the writ petitioner and Mr.N.Ramesh Kumar, Section Officer. Accordingly, five charges were framed against the petitioner and issued in proceedings dated 07.09.2017. The petitioner submitted his written statement of defence on 10.11.2017. Initially, Hon'ble Thiru Justice T.Ravindran, the then Sitting Judge was appointed as Enquiring Judge and Mr.V.Thanga Mariyappan, the then Registrar (District Judiciary) was appointed as Presenting Officer to conduct the departmental enquiry, Mr. Justice T.Ravindran recused from conducting the enquiry. In the meantime



WP No.21521 of 2017 filed by the petitioner, this Court vide order dated 18.03.2019, directed the Registry to appoint the Enquiring Judge, within a period of four weeks from the date of receipt of a copy of the order and further direction was issued to complete the enquiry, within a period of three months. Accordingly, on 28.06.2019, the Hon'ble Administrative Committee resolved to nominate Hon'ble Mr. Justice N.Sathishkumar of Madras High Court as the Enquiring Judge. The departmental enquiry commenced on 27.08.2019. The enquiry was delayed due to the outbreak of Corona pandemic, closure of Courts and non-appearance of certain witnesses, delinquents etc.

13. The Hon'ble Enquiring Judge had rendered his findings on 05.01.2022, holding that out of seven charges, charge Nos.1, 3, 5 and 7 are proved against the writ petitioner. Charge No.1 relates to the petitioner being in close contact with Thiru Antony Selvaraj, a practising Advocate of the High Court due to which developed contact with Trustees of Educational Institutions and one Thiru Arun Raj and Ms.B.Gowri Kamatchi, who were the close acquaintances of Thiru Jeyandra Saraswathi and the prime accused in a Criminal Case bearing SC No.94 of 2005, which was pending before the



Court of Puducherry, Charge No.3 relates to the petitioner has been approached by the Judicial Officer Thiru A.Rajasekaran, the then IV Additional District Judge, Erode at Bhavani, to find out the status of the proceedings on the Administrative side, after the disposal of the writ petition filed by the Judicial Officer, challenging the punishment of reduction of rank in service, Charge No.5 relates to the petitioner having acted as the henchman of Thiru Antony Selvaraj, Advocate and his accomplices and went to Palani to collect money. Further, the charge is that the petitioner organised a conference call in which Ms.B.Gowri Kamatchi, Thiru Jeyendra Saraswathi Sankaracharya of Kanchi Mutt, who was the prime accused in the Criminal Case bearing SC No.94 of 2005 and Thiru A.Rajasekaran took part and the conversations were recorded in two audio files and charge No.7 relates to the petitioner having purposefully abandoned the Nokia Mobile phone, used to organise the aforesaid conference call after removing the SIM Card, at the barren land adjacent to the canal opposite to the Madurai Bench of Madras High Court, Madurai. The findings of the Enquiry Judge were placed before the Hon'ble Administrative Committee. In the meeting held on 11.01.2022, the Hon'ble Administrative Committee resolved to furnish a copy of the Enquiry Report to the petitioner and call for further



representation.

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14. As resolved, the copy of the Enquiry Report as submitted by the Enquiry Judge on 05.01.2022, was furnished to the petitioner seeking his further representation vide Official Memorandum dated 03.02.2022. The petitioner has submitted his further representation on 15.02.2022. All the records were considered by the Hon'ble Administrative Committee and the Hon'ble Administrative Committee resolved to impose a punishment of dismissal from service on the petitioner under Rule 8 (viii) of Tamil Nadu Civil Services (Discipline and Appeal) Rules.

15. Aggrieved against the order of dismissal from service in Roc.No.10/2022/Con-Estt-II dated 13.04.2022, the petitioner submitted an appeal petition on 25.05.2022 before the respondent viz., Registrar-General, High Court of Madras, who is the Appellate Authority. The said appeal petition has been considered by the Hon'ble the then Chief Justice and ordered that the appeal petition is devoid of merits and accordingly dismissed the appeal petition vide High Court's proceedings in Roc.No.10/2022/Con-Estt-II dated 05.08.2022. Further, review petition has



been preferred by the petitioner viz., Thiru N.Ramesh Kumaar against the order passed by the Appellate Authority. While considering the said review petition, the Hon'ble the then Acting Chief Justice/Review Authority found that the averments made in the representation of the petitioner were reiterated and that no ground was made out to interfere with the well reasoned order passed by the Appellate Authority and hence confirmed the order of dismissal passed by the Disciplinary Authority, which was served to the petitioner vide High Court's proceedings in Roc.No.10/2022/Con-Estt-II dated 05.01.2023.

ARGUMENTS ON BEHALF OF THE PETITIONER:

16. Mr.V.Raghavachari, learned Senior Counsel appearing on behalf of the petitioner, would mainly contend that out of seven charges framed against the writ petitioner, only charge Nos.1, 3, 5 and 7 are held proved. The other charge Nos.2, 4 and 6 are not proved against the petitioner. The proved charges are also not based on the conclusive evidence and the major penalty of dismissal from service was imposed relying on certain presumptive circumstances and the evidences, which all are



untenable.

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17. Mr.V.Raghavachari, learned Senior Counsel, contended that the order dated 27.02.2012 passed in WP No.19894 of 2011 would be sufficient to drop all further proceedings. The preliminary enquiry report submitted by Mr.N.Authinathan, clearly states that, the Expert has opined that contextual discontinuity and abrupt ending of the conversation found in the audio files forwarded for examination indicate the possibility of editing of the source audio files. The content of the audio can be authenticated only after examining the actual recording devices (carrying the source of audio files, which were used to record the original conversation). The complainant had not cooperated with the enquiry and concluded that the materials gathered during the enquiry, do not contain any material relating to the facts in issue, which merit any further action. Therefore, it would be sufficient to drop the proceedings based on the report of Mr.K.Authinathan. Even the findings of the Division Bench of this Court, would reveal that *prima facie* case had not been made out against the writ petitioner. That being so, the decision taken by the respondent for initiation of departmental disciplinary proceedings itself is perverse. The entire departmental disciplinary



proceedings are initiated based on no evidence and thus the order impugned is to be set aside.

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18. The conversation between the petitioner and other persons, would be insufficient to form an opinion that there is an involvement of bribe giving or acceptance. Mere conference call, would be insufficient to arrive a conclusion that the petitioner has involved in a misconduct. Even the mobile phone of the complainant Mr.S.Doraisamy, Advocate, cannot be construed as conclusive evidence, since it was not examined. He himself has stated that he received recorded conversation through blue tooth claimed to have been recorded by sender of the SMS, who remains invisible. Therefore, the remote allegations raised without any conclusive evidence, cannot be a ground to initiation departmental disciplinary proceedings and thus the penalty of dismissal from service is infirm.

19. Mr.V.Raghavachari, learned Senior Counsel, further contended that the Enquiring Judge in his findings erroneously relied on



certain presumptive evidences without considering the fact that there are no conclusive evidence to form final opinion regarding the charges framed. Such presumptive evidences, if accepted for imposing the major penalty, it would be difficult for the public servants to discharge their duties in a free manner. The findings of the Enquiry Officer has been referred for the purpose of stating that the findings made based on certain inadmissible documents, are perverse. Therefore, acceptance of enquiry report itself is improper. Consequently, the punishment of dismissal from service is to be set aside.

ARGUMENTS OF THE RESPONDENT:

20. Mr.V.Ayyadurari, learned Senior Counsel appearing on behalf of the respondent would oppose the contentions raised on behalf of the petitioner by stating that charge Nos.1, 3, 5 and 7 are held proved against the writ petitioner. All the proved charges are grievous in nature. The procedures as contemplated were followed scrupulously. Sufficient opportunities were provided to the delinquent Officer. The proved charges were accepted by the Disciplinary Authority and a decision was taken to inflict the penalty of dismissal from service. The appeal filed by the writ petitioner was also considered and rejected. Thus, there is no infirmity in



respect of the order impugned and therefore, the present writ petition is to be rejected.

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21. The proved charge Nos.1, 3, 5 and 7 against the writ petitioner, are as under:-

“Charge No.1:

Thiru N.Ramesh Kumaar, working as CO/SO/AE/, High Court, Madras was in close association with Antony Selvaraj, a practising Advocate of the High Court and have been frequenting the office of the said Advocate at Thambuchetty Street, Chennai-1, contrary to your official position as a responsible official of the High Court and through him, he had also developed and established his contacts with the accomplices of the said Advocate, viz., Thiru Arun Raj, Chairman, and Managing Trustee for Vinayaka Educational and Charitable Trust and one Gori Kamakshi, CEO, Sri Uthradam Thirunal Academy of Medical Sciences, a close acquaintance of Thiru Jayendra Saraswathi, who was the prime accused in a criminal case bearing SC No.94 of 2005, which was pending before the



Court of Pondicherry, which reveals his improper motive of achieving an illegal object of unravelling the criminal case bearing SC No.94 of 2005, which was pending before the Court of Pondicherry.

Charge No.3:

N.Ramesh Kumaar, working as CO/SO/AE, High Court, Madras, had been approached by the Judicial Officer, Thiru A.Rajasekaran, then IV Additional District Judge, Erode @ Bhavani (now under suspension), to find out the status of the proceedings on the administrative side after the disposal of writ petition filed by the Officer, while functioning as Sub Judge, Harur, challenging the punishment of reduction of rank in service and he, being a responsible official of the High Court, Madras, knowing pretty well that the said Judicial Officer could obtain the required information from the Hon'ble High Court, through proper channel, in the pretext of discussing about the status of the said writ petition, have been continuously in contact with the said officer and acted as his tout to have the secrecy of the High Court leaked out and assisted



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him in overstepping his official position thereby intruding into the functioning of High Court on administrative side.

Charge No.5:

N.Ramesh Kumaar, while he was working as Section Officer, Madurai Bench of Madras High Court, Madurai, acted as the henchman of Advocate Antony Selvaraj and his accomplices and went to Palani to collect money from Ms.Gowri Kamakshi, a close acquaintance of Thiru Jayendra Saraswathi on the directions of the Advocate Antony Selvaraj and also, he had organised a conference call and initiated the call at Palani, as per the directions of Advocate Antony Selvaraj among (1) himself (2) Tmt.Gowri Kamakshi, CEO, SUT Academy of Medical Sciences, Tiruvananthapuram and the close acquaintance of Thiru Jayendra Saraswathi, (3) Thiru Jayendra Saraswathi, Sankara Charya of Kanchi Mutt, who was the prime accused in the criminal case bearing SC No.94 of 2005, which was pending before the Court of Pondicherry and (4) Thiru A.Rajasekaran, IV Additional District Judge, Erode @ Bhavani (under suspension),



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which was recorded in 2 audio files and the conversations (vide Doc.No.3 of Annexure III) visualise/bring out the assurance made by Thiru Jayendra Saraswathi to settle the balance amount within a period of one week to ten days and the aforesaid act of engaging himself as a tout to Advocate Antony Selvaraj and his associates by organising the said conference call and also engaging in the said conspiracy with a prime accused in the famous criminal case SC No.94 of 2005, as per the directions of the Advocate Antony Selvaraj and his associates, who were trying to undo the said criminal case by shaking the credibility of the Court of Law.

Charge No.7:

N.Ramesh Kumaar, working as CO/SO/AE, Madurai Bench of Madras High Court, Madurai, had purposely abandoned the Nokia mobile phone which he had used for the organising the conference call among yourself, Advocate Antony Selvaraj and his accomplices and also for recording the said conversation, after removing the SIM card bearing phone No.9444004985 at the barren land adjacent to a canal opposite to



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the Hon'ble High Court of Madurai. When he was enquired by the Enquiry Officer/Additional Deputy Commissioner of Prison, Cyber Crime Cell, Central Crime Branch, Egmore, Chennai, he had cited a very flimsy reason that he had felt that the above phone was not fit for his good fortunes, which is found to be illogical and not supported by sound reasoning.”

22. The Enquiring Judge conducted an enquiry affording opportunity to the delinquent Officer. The delinquent Officer participated in the enquiry proceedings and defended his case. He was allowed to cross-examine the witnesses and he perused the documents relied on by the Presenting Officer. Therefore, there is no infirmity in respect of the procedures as followed in conducting the domestic enquiry. The Enquiring Judge considered the documents and the statement of witnesses recorded in the presence of the delinquent Officials.

23. Certain portions of the findings of the Enquiry Officer, in his Final Enquiry Report, are as under:-

“... ..



All the documents and voice samples established scientifically show that the complicity of the delinquents in the alleged demand of money for settling the criminal case pending against A-1 viz., Sri Jayendra Saraswathi in SC No.94 of 2005.

... ..

The delinquent No.2 Section Officer had frequent contact with delinquent No.1 Judicial Officer. There were 189 calls made by the D-2 Section Officer to the Judicial Officer, from his two different mobile numbers in the year 2011 alone. Similarly, the delinquent Judicial Officer also made 164 calls. This has been admitted by the delinquent in his written statement and there were several calls made between them. These facts coupled with the voice samples clearly show that they have in connivance with PW-7 and PW-8 Advocates finalised the illegal deal for claiming amount more than a Crore to some how or other to get the A-1 released from the Sessions Case.

... ..

Similarly, delinquent No.2 has concealed the main mobile phone used by him and he has given



statement before the PW-9 that the mobile phone made inactive and failed to hand over the same. In fact, he destroyed the evidence. That itself indicate that he withheld the evidence only in order to escape from the departmental proceedings.

... ..

Voice samples have been identified and admitted by them which have been compared by the Experts.

... ..

In cross-examination, she has also admitted that only Anthony Selvaraj introduced Ramesh/delinquent No.2 to her. It is to be noted that her evidence when carefully scanned which proves one important fact that she had frequent contact with PW-7 Mr.P.Arunraj and PW-8 M.Antony Selvaraj. Through Mr.Antony Selvaraj, delinquent No.2 was also introduced to her.

... ..

The evidence of PW-9, the Investigating Officer, specially appointed by this Court, who is Cyber Crime Expert, clearly show that there were frequent phone calls from PW-7 and PW-8 and



delinquent No.2 did not handover mobile phone and destroyed it. Further, his evidence also indicate that during his enquiry by way of statements recorded from PW-7 and PW-8 and one Venkatesan, it came to light that there were financial dealing to escape from the criminal case pending. As the dispute arose between parties in financial transaction, the conversation recorded by one of the unscrupulous element lead to the release of the audio files outside. The investigation of the PW-9 clearly shows that the entire scheme is orchestrated with the help of PW-7 and PW-8 with the active help of delinquent No.2 Section Officer and delinquent No.1, who was the Sessions Judge, working in Bhavani at the relevant point of time. There was huge demand of money as there were some dispute arose in payment of amount the matter has leaked to the public.

... ..

The complicity of all the persons particularly delinquents 1 and 2, the witnesses PW-7 and PW-8 in entering into such a big transaction has clearly probabilsed by the evidence of PW-9 and



his report Ex.P-12 along with evidence of PW-6. PW-6 herself admitted her voice contained in Ex.P-5. She has not only identified her voice contained in Ex.P-5 but also identified the voice of the main accused Jayendra Saraswathi in the Sessions Case.

... ..

These facts clearly established the fact that there were some meetings between the parties, though the original source could not be found, source file has not been recovered, but finding of the Enquiry Officer PW-9 after thorough investigation, makes it very clear that all the persons involved in the conversation spoke in a conference call, which was emanated from the mobile phone used by delinquent No.2, which he has some more or other concealed and kept away from the investigation and he has never produced the said phone despite best efforts. When the use of such phone is never disputed by the delinquent No.2, merely because such a phone has not been recovered and it has been concealed by the party and destroyed, it cannot be said that the voice in the Ex.P-5 is introduced one. Whereas PW-6



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herself admitted her voice in Ex.P-5.

... ..

It is also relevant to note that voice samples of delinquent Nos.1 and 2 were collected by PW-9 with the permission of the High Court. Thereafter, sent for forensic analysis. PW-10 Forensic Expert clearly admitted that the voice contained in the audio file belonged to the 4 persons, one is PW-6, one is of Jayendra Saraswathi, and other two are delinquent Nos.1 and 2. It is to be noted that voice samples also collected from the Jayendra Saraswathi and PW-6 by the Investigating Officer. The collected voice samples have been compared by the Expert and found that the voices are of the same people. It is admitted by PW-10 that Ex.P-5 CD is edited, but it is not the case that the voice has been tampered by way of mimicry or somebody has spoken. What was stated by PW-10 is only editing of CD. Though the entire conversation has not been released, only few portion of the conversation in the CD file has been released, as long as voice of the persons contained in CD has not been tampered and it tallied with the original voices of the persons,



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who actually spoke in that, I am of the vice that the entire report of the forensic cannot be ignored altogether.

... ..

Collection of the voice samples is not disputed by the delinquents herein. The very written statement filed by the delinquent No.1 shows that he has developed friendship with D-2 in the year 2000 in the Museum of the High Court. When the Officer in the rank of District Judge level, developing a close friendship with the Officer working in the level of Section Officer in High Court itself probablisise the department case that delinquent No.2 has utilised the delinquent No.1 to involve in the conversation to achieve their illegal object of extracting money along with some other Advocates, though they have not supported the case before the enquiry. It is also to be noted that the man arrayed as an accused is very important person in the society only in order to extract huge money to achieve such illegal object delinquent No.1 fell prey to conspiracy hatched by delinquent No.2 with the help of some unscrupulous elements in this regard to achieve



some illegal object. Therefore, merely because original source files the primary evidence of cell phone could not be secured by the Investigating Officer that itself has been withheld or destroyed by main accused delinquent No.2, the same cannot be taken advantage by them.

... ..

As far as the charge No.3 that he has direct contact with PW-7 and PW-8, there are materials established to prove conversation in conference call. Therefore, the charge that there were frequent meeting with PW-7 and PW-8 clearly established. Accordingly, charge No.3 is clearly established against delinquent No.2.

... ..

As far as charge No.5 with reference to the conference call among delinquent No.1, PW-6, Jeyandra Saraswathi and delinquent No.2 has been clearly established not only through the evidence of PW-6, but also the evidence and reports of PW-9 Investigating Officer and PW-10 Forensic Expert. These aspects clearly show that the very conduct of the Officer of the High Court engaging the conversation with a murder case



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accused in a sensational murder case and the manner of conversation that “within 10 days it will be set, it will be over and from the account it will be converted non account and settled and remaining would be given within a week and conversation that after borrowing certain amount entire thing would be settled” and the voice samples of the delinquents and the conversation have been clearly established, as there was no reason for the delinquent No.2 to engage such conversation unless the same is made for pecuniary advantage. Therefore, charge No.5 is clinchingly established against delinquent staff.

... ..

With regard to the charge No.7 use of cellphone, Nokia Cell, which is used for organising conference call has been concealed from the Enquiry Officer and left the phone in the canal opposite to the High Court, Madurai, which has been clearly established by the Investigating Officer. Use of cellphone is clearly established and conversation and voice of the delinquent staff is also clearly established scientifically hence charge No.7 is proved against the delinquent



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No.2.”

24. The above findings of the Enquiring Judge, in his Final Enquiry Report, would be sufficient to form an opinion that the proved charge Nos.1, 3, 5 and 7 against the writ petitioner, are serious in nature, touching upon his integrity as a Section Officer.

DISCUSSIONS:

25. In the present case, Mr.N.Authinathan was appointed as Preliminary Enquiry Officer to verify the truth behind the allegations set out in the complaint filed by Mr.P.Sundarrajan, Advocate and the disk produced by Mr.S.Doraisamy, Advocate. Such preliminary enquiry is conducted to avoid initiation of unnecessary departmental disciplinary proceedings against the Judicial Officers and the staff members. Even during the preliminary enquiry, opportunities were afforded to all the persons to place the facts and the materials.



26. That apart, Dr.M.Sudhakar, the then Assistant Commissioner of Police, Cyber Crime Cell, was appointed as Enquiry Officer by the Division Bench order of this Court in WP No.19894 of 2011.

Dr.M.Sudhakar was appointed as Enquiry Officer to ascertain the genuinity of the conversations contained in the compact disk produced by Mr.S.Doraisamy, Advocate and the allegations set out by Mr.P.Sundarrajan, Advocate and the petitioner in WP No.19894 of 2011. The said enquiry was a fact finding enquiry. Admittedly, no charges were framed under the Discipline and Appeal Rules against the writ petitioner, at the time of appointment of Mr.N.Authinathan or Dr.M.Sudhakar as Preliminary Enquiry Officers.

27. The report submitted by Mr.N.Authinathan was found not sufficient enough to frame charges against the Judicial Officer. The complainant Mr.P.Sundarrajan, Advocate filed WP No.19894 of 2011. The Division Bench passed an order appointing Dr.M.Sudhakar, former Assistant Commissioner of Police, Cyber Crime Cell, for conducting enquiry and submit report to the Registrar-General, High Court of Madras. Dr.M.Sudhakar conducted a detailed enquiry by considering the Forensic



Sciences Department's report and other materials available on record. Based on the said report of Dr.M.Sudhakar, the Hon'ble Administrative Committee of the High Court, resolved that a *prima facie* case is made out for further enquiry against the writ petitioner, the then IV Additional District Judge, Erode at Bhavani and Mr.M.Ramesh Kumaar, Section Officer. Only after taking a decision by the Hon'ble Administrative Committee, to commence the departmental disciplinary proceedings, the charges were framed against the petitioner in proceedings dated 07.09.2017. Thus the contention of the petitioner that two enquiries were conducted is unacceptable. The fact finding enquiries or the preliminary enquiries, conducted to ascertain the truth, cannot be construed as an enquiry as contemplated under the Discipline and Appeal Rules. The departmental disciplinary enquiry commences only on the point from framing of the charges.

28. The contention of the petitioner that the original recording devices were not examined and therefore, the charge itself is vitiated, has to be considered in the context of the departmental disciplinary proceedings.

29. Dr.M.Sudhakar, the then Assistant Commissioner of Police,



Cyber Crime Cell, conducted a detailed enquiry and submitted an elaborate report to the High Court. The Forensic Sciences Department's report reveals that an analysis was made with the control speech samples with the utterances. It is relevant to extract the following findings in the Forensic Sciences Department's report:-

“3.4.2. The above analyses showed that the utterances in the audio files of the CDs/DVD, Items 1, 2, 3 and 11 (excluding the audio file 'Arunraj.amr' in items 3 and 11) are found similar to the control speech samples of the individuals noted against each in the table given below.

<i>Item</i>	<i>Disputed Utterances</i>	<i>Name of the individual whose control speech samples showed similarity with the utterances listed against each in column (2) of this table</i>
<i>Audio files</i>	<i>i) Marked</i>	<i>Tr. N.</i>



<i>in the CDs/DVD items 1, 2, 3 and 11 [excluding the audio files 'Arunraj.a mr' in items 3 and 11]</i>	<i>as 'A' in the verbatim transcripti on furnished in Annexure I, II, III and V. ii) Marked as 'B' in the verbatim transcripti on furnished in Annexure I, II, III and V. iii) Marked as 'C' in the verbatim transcripti on furnished in Annexure I, II, III and V. iv) Marked as 'D' in the verbatim</i>	<i>Ramesh [Items 12 and 13] Tr. A. Rajasekara n [Items 14 and 15] Tr. Jayendrar Saraswathi [Items 4 and 5] Tmt. Gowri Kamakshi [Items 9</i>
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	<i>transcripti on furnished in Annexure I, II, III and V.</i>	<i>and 10]</i>
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3.4.2.1. The above analyses also revealed that the alleged conversation in the CDs/DVD, items 1, 2, 3 and 11 do not contain the voice of Tr. T. Ramasamy [Items 6 and 7].

3.5 Authenticity of the recording

The perceptual and acoustic analyses of the alleged conversation in the audio files of items 1, 2, 3 and 11 (excluding the audio file “Arunraj.amr” in items 3 and 11) and the control speech samples (items 4 to 7, 9, 10, 12 to 15) revealed that the said conversation was made among Tr. Jayendrar Saraswathi, Tmt. Gowri Kamakshi, Tr. A. Rajasekarn and Tr. N. Ramesh. The content of the alleged conversation showed that it was recorded during telephonic conference call. The study of content, back ground noise, wave form and voice spectrum of the alleged conversation did not reveal any conspicuous anomalies or discontinuity in the said conversation. However, establishing the authenticity of recording of the conversation, with certainty, is possible only after examining the original recording device which was used



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during the alleged conversation.

4.3. The disputed utterances indicated as 'A', 'B', 'C' and 'D' in the verbatim transcription of the audio files of items 1, 2, 3 and 11 (Annexure I, II, III and V) are the utterances made by Tr. N. Ramesh, Tr. A. Rajasekaran, Tr. Jayendrar Saraswathi and Tmt. Gown Kamakshi, respectively."

30. Regarding the deposition of witnesses and analysis of the documents produced before the Enquiring Judge, it is relevant to consider the findings of the Enquiring Judge in his Final Enquiry Report filed in Roc.No.247/2015/VC. A detailed enquiry was conducted by the Enquiring Judge by affording sufficient opportunities to all the delinquent officials statement of witnesses were recorded. The Forensic Sciences Department's report was considered. The findings of the Enquiry Officer, in his Final Report, reveals that charge Nos.1, 3, 5 and 7 are held proved against the writ petitioner. PW-9 Dr.M.Sudhakar, in his evidence, clearly spoken about the statement recorded from PW-7 and PW-8. They have not denied the use of mobile phone in the cross-examination. Therefore, the conduct of the delinquents with the witnesses PW-7 and PW-8 (Mr.P.Arun Raj and



Mr.M.Antony Selvaraj) were established. PW-6 (Ms.B.Gowri Kamatchi), in her evidence, has clearly identified the voice of herself and Mr.Jayendra Saraswathi Sankaracharya, who was the main accused in the murder charge.

Therefore, the Enquiring Judge found that the facts established clearly show that there was no reason whatsoever to have a conference call to discuss about the money transactions. All the documents and voice samples established scientifically show that the complexity of the delinquents in the alleged demand of money for settling the criminal case pending against Mr.Jayendra Saraswathi Sankaracharya in SC No.94 of 2005.

31. Only when the financial deal has not fructified, there arose some dispute between the parties, the conversation recorded during the deal has been circulated to the Press by one of the Advocates. Therefore, when the probabilities clearly show the complexity of the delinquents with the crime, that itself is sufficient to prove the charges in the departmental disciplinary proceedings. Thus, the strict rule of evidence cannot be expected in the departmental disciplinary proceedings.

32. The standard of proof required for departmental



disciplinary proceedings and criminal trial, are distinct and different. High standard of proof is essential to convict an accused in a criminal trial. However, no such strict proof is required for punishing a public servant under the Discipline and Appeal Rules. The preponderance of probabilities are sufficient to punish an employee. Therefore examination and deposition of witnesses in the context of the Evidence Act, would not arise at all in departmental disciplinary proceedings. Even the moral turpitude or acting unbecoming of a public servant are misconducts warranting punishment under the Discipline and Appeal Rules. Thus the arguments of the petitioner that there are certain contradictions in the deposition of witnesses, are unacceptable. More specifically, in departmental disciplinary proceedings are initiated under the Discipline and Appeal Rules.

33. In the present case, the preponderance of probabilities are established beyond any pale of doubt. The clear findings of the Enquiring Judge, in his Final Report, would be sufficient to held that the charge Nos.1, 3, 5 and 7 are proved against the delinquent Officer. The non-examination of original recording devices is not a ground to exonerate the writ petitioner in



the presence case, since the Enquiry Officer appointed by the Division Bench, Dr.M.Sudhakar, the then Assistant Commissioner of Police, Cyber Crime Cell, in his report, as well as in his evidence (PW-9) categorically stated that voice samples have been identified and admitted by them, which have been compared by the Experts. Further, the voice of the persons contained in CD has not been tampered and it tallied with the original voices of the persons, who actually spoke in that. When the voice samples have been identified and admitted by the parties, the findings of the Enquiring Judge that charge Nos.1, 3, 5 and 7 are proved, are based on some evidence, which is sufficient for the purpose of punishing a public servant under the Discipline and Appeal Rules.

34. Regarding the compliance of rule of natural justice, it was followed scrupulously by the Disciplinary Authority. A preliminary enquiry was conducted to ascertain the truth with the assistance of the Forensic Sciences Department's report, after finding a *prima facie* case for initiation of departmental disciplinary proceedings, the charges were framed under Rule 17(b) of the Discipline and Appeal Rules. The delinquent Officials submitted their explanations and participated in the process of enquiry. The



documents were produced and witnesses were examined. The delinquent Officials were permitted to cross-examine the witnesses and to peruse the records. The enquiry report submitted by the Enquiring Judge, was served on the delinquent officials, seeking their further objections on the findings. The explanations thereafter submitted were taken into consideration by the Disciplinary Authority. The decision was taken by the Hon'ble Administrative Committee to impose the penalty of removal from service and the said resolution was approved by the Hon'ble Full Court. Therefore, the case of the petitioner was considered at all levels, including the High Level Committee of the High Court. Thus this Court do not find any infirmity in respect of the procedures followed in the departmental disciplinary proceedings.

35. Finally, regarding the quantum of punishment, we are of the opinion that the Section Officers are expected to maintain the high level of integrity and in the present case, the charge Nos.1, 3, 5 and 7 against the writ petitioner, were held proved. The proved charges, viz., charge Nos. 1, 3, 5 and 7 are grave in nature and touching upon the integrity and honesty of



the Section Officer. Therefore, the punishment of removal from service, cannot be construed as disproportionate to the gravity of the proved charge Nos.1, 3, 5 and 7. 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 petition is also dismissed.

(S.M.SUBRAMANIAM,J.)

(K.RAJASEKAR,J.)

18-03-2024

Index : Yes/No

Internet: Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No

Svn

To

The Registrar-General,
Madras High Court,
Madras.



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

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