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W.P.No.25910 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	05.02.2025
Pronounced on	25.04.2025

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.25910 of 2019 and
W.M.P.Nos.25371 & 25373 of 2019

Abdul Hakim

... Petitioner

Vs.

1.The Principal Secretary to Government,
Public Department,
Secretariat, St.George Fort,
Chennai - 600 023.

2.The Commissioner,
Greater Chennai Corporation,
Ribbon Building,
Chennai 600 003.

3.The Central Regional Deputy Commissioner,
Corporation of Chennai,
No.62, Basin Bridge Road,
Old Washermenpet,
Chennai 600 021.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the order passed by the second respondent in



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Po.Thu.N.K.No.E.6/36252/2015 dated 10.05.2019 confirming the order passed by the first respondent made in G.O.No.422, Municipal Administration and Water Supply Department (M.N.3) dated 13.10.2016, confirming the order passed by the first respondent in Po.Thu.Na.Ka.No.E.6/36252/2015 dated 20.10.2015 and order passed by the third respondent made in M.V.A.Na.Ka.No.A.5/002236/2015 dated 09.06.2015 and quash the same as illegal, arbitrary and nonest in law and consequently, direct the third respondent to grant all attendant service benefits such as notional promotion with continuity of service and all other monetary service benefits with effect from 02.10.2008 to the petitioner with reasonable rate of interest.

(Prayer amended as per order dated 06.01.2020 made in WMP.No.30126 of 2019 in W.P.No.25910 of 2019)

For Petitioner : Mrs.R.Dakshayini Reddy, Senior Counsel
for Mr.A.R.Balaji
For Respondents : Mr.S.Rajesh, GA for R1
Mr.G.T.Subramanian, Standing Counsel
for R2 & R3

ORDER

The petitioner has filed this Writ Petition to call for the records of the order passed by the second respondent in Po.Thu.N.K.No.E.6/36252/2015 dated 10.05.2019 confirming the order passed by the first respondent made in G.O.No.422, Municipal



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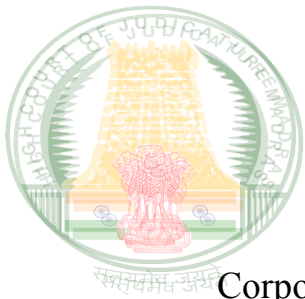
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Administration and Water Supply Department (M.N.3) dated 13.10.2016, confirming the order passed by the first respondent in Po.Thu.Na.Ka.No.E.6/36252/2015 dated 20.10.2015 and order passed by the third respondent made in M.V.A.Na.Ka.No.A.5/002236/2015 dated 09.06.2015 and quash the same as illegal, arbitrary and nonest in law and consequently, direct the third respondent to grant all attendant service benefits such as notional promotion with continuity of service and all other monetary service benefits with effect from 02.10.2008 to the petitioner with reasonable rate of interest.

2. Heard Mrs.R.Dakshayini Reddy, learned Senior Counsel for the petitioner, Mr.S.Rajesh, learned Government Advocate for R1 and Mr.G.T.Subramanian, learned Standing Counsel for R2 and R3 and perused the materials available on record.

3. The brief facts of the case are as follows:

The petitioner was appointed as Casual Labour in the year 1969 and he was promoted as Bill / Tax Collector in the year 1986. Thereafter, he was posted as Tax Collector in Division No.51, Zonal No.IV, in the



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Corporation of Chennai. On 19.08.2008 a complaint has been given by one Kumar alleging that the petitioner had demanded an illegal gratification of Rs.1500/- for effecting name transfer of the property. Subsequently, he was arrested under Section 7 of the Prevention of Corruption Act and later, he was suspended on 02.10.2008. Both criminal proceedings and disciplinary proceedings have been initiated against the petitioner. During the pendency of these proceedings, the petitioner had reached the age of superannuation on 30.06.2010. But he was not permitted to retire.

3.1. In the criminal proceedings, the petitioner was convicted and immediately after the conviction, the petitioner was issued with the second show cause notice and a finding of guilty was recorded by the Enquiry Officer and thereafter, the petitioner was imposed with the major punishment of dismissal from service on 09.06.2015. He preferred an appeal and the same was also dismissed on 20.10.2015. The petitioner has filed a revision and the same was also rejected on 13.10.2016. Aggrieved over that, the petitioner has preferred this Writ Petition challenging the impugned orders passed by the respondents 1 to 3.



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4. Mrs.R.Dakshayini Reddy, learned Senior Counsel for the petitioner submitted that both the criminal proceedings and the disciplinary proceedings have been initiated on the same set of facts and evidence; in the criminal case, the petitioner has filed an appeal before the High Court in CrI.A.No.581 of 2014 and the appeal was allowed on 28.03.2018 and he was acquitted in the criminal case; the third respondent is not an appropriate authority to impose the capital punishment of dismissal from service; a proper procedure has not been followed while conducting the departmental enquiry; no oral witness was examined and the report of the Enquiry Officer does not speak about the material evidence, if any; though the departmental proceedings have been initiated in the year 2010, the proceedings were kept pending for four years and immediately after the petitioner was convicted, he was served with an order of dismissal without even conducting any exhaustive enquiry; the petitioner has rendered 35 years of service from 1975 to 2010 and his past service records were not considered before imposing the major punishment of dismissal from service.



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5. Mr.G.T.Subramanian, learned Standing Counsel for R2 and R3 submitted that the enquiry against the petitioner and the departmental proceedings have been conducted by following due procedure and the Enquiry Officer has recorded a finding that the charges against the petitioner were proved. The petitioner had not chosen to cross examine the witnesses during the enquiry. After giving adequate opportunity to the petitioner by way of serving him the second show cause notice, the disciplinary authority has passed the order of dismissal by considering the gravity of charges and by considering the materials on record. The Appellate Authority has also rejected the appeal since no acceptable grounds have been raised by the petitioner. The review petition was also rejected because no fresh grounds were raised. Even if the employee was acquitted in a criminal case, he could be punished in the departmental proceedings.

6. No doubt, it is a well settled principle of law that the standard of proof required to prove the criminal charges are different from proving the charges given under the disciplinary proceedings. While the former

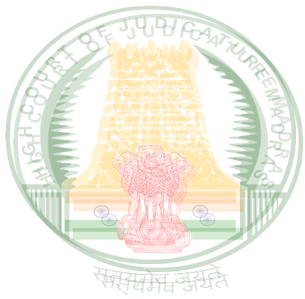


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has to be proved beyond reasonable doubt, it is sufficient for the later to be proved through preponderance of probabilities. But the contention of the petitioner is that when both departmental and criminal proceedings have been initiated on the same set of facts and evidence and in the event of employee getting acquittal in the criminal case, the same shall have an impact on the disciplinary action as well. Apart from the above contention, it is also the grievance of the petitioner that the enquiry proceedings has not been conducted in compliance of the rules governing the same.

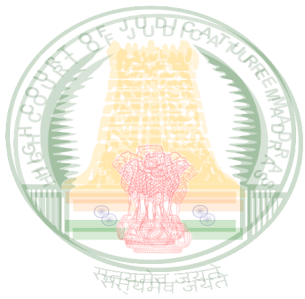
7. The enquiry report attached with the second show cause notice issued to the petitioner would show that the Enquiry Officer has recorded the findings in a summary manner. Even the respondents did not produce any other enquiry report to show that the Enquiry Officer has recorded exhaustive evidence or atleast marked documents during the enquiry proceedings before he arrives at a conclusion about the guilt of the petitioner.



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8. The petitioner has been punished on the allegation that he was caught red-handed while accepting Rs.1500/- as bribe and thereby, he abused his official capacity and failed to maintain absolute integrity and devotion to duty. In the annexure attached to the charges, there are some list of documents and it does not contain any list of witnesses proposed to be examined during the enquiry. The petitioner has submitted an exhaustive explanation and the Enquiry Officer's report does not show anything about how the explanation was considered and found to be unfit for acceptance. As the petitioner was imposed with the punishment of dismissal from service which is the major penalty as found under Rule 5 of the Chennai Corporation Class III and IV Service (Discipline and Appeal) by-laws published *vide* notification No.S.R.O. C-21/83, the procedure for imposing such penalty contemplated under Rule 9 has to be followed. By-law 9(2) would stipulate that *where it is proposed to impose any of the major penalties specified in Clauses (iv), (viii), (ix) (x) and (xi) of by-law 5, after furnishing the charge sheet and getting the written statement of defence from the delinquent, an oral enquiry shall be held if the delinquent wishes to have an oral enquiry.*



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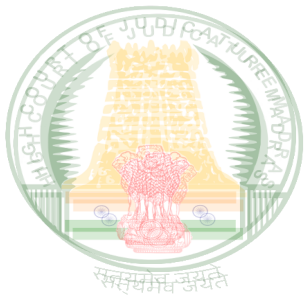
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9. The learned Senior Counsel for the petitioner further submitted that despite the petitioner had desired to have an oral enquiry, the same was not held.

10. However, it is submitted by the learned Standing Counsel for the respondents 2 and 3 that it is the petitioner who did not come forward to cross examine the witnesses and hence, the petitioner cannot blame the enquiry proceedings that it was not proper.

11. Even the enquiry report as I found from the records does not reveal anything about the examination of witnesses. In fact, the summary entry has been made by the Enquiry Officer and in that, there is no details about the evidence. It appears that the registration of the criminal case itself has been considered as a material evidence to record the finding as to the guilt of the accused in the departmental proceedings.

12. The learned Senior Counsel for the petitioner also submitted that mere registration of FIR cannot be considered as proof of charges.

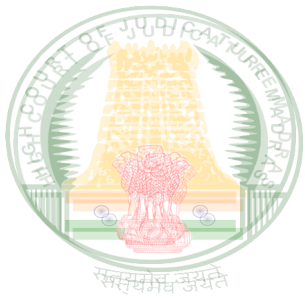


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13. As the petitioner has been imposed with the charges in view of the alleged red-handed arrest while he was receiving bribe, the witnesses and the materials that can be relied on for the criminal case and the departmental proceedings can be one and the same. The collection of evidence is a part of the investigation and proof of evidence can be done only during the course of the trial.

14. There cannot be any disagreement on the above said fundamental fact. The Hon'ble Supreme Court has also held in the case of ***Roop Singh Negi Vs. Punjab National Bank and Others, reported in (2009) 2 SCC 570*** that tending of the documents by the witnesses cannot amount to production of evidence unless they have spoken about the same in their evidence. The judgment of the Hon'ble Supreme Court in ***Narinder Mohan Arya Vs. United India Insurance Company Ltd., reported in (2006) 4 SCC 713*** also makes a clear distinction between "some evidence" and "no evidence". Even in case of production of some evidence, the purpose of producing the same should be for the purpose of proving the charges.



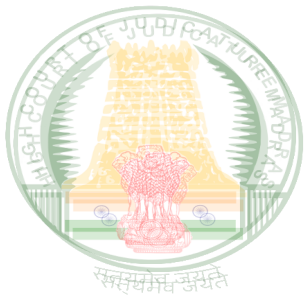
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15. In *M.V.Bijlani Vs. Union of India*, reported in (2006) 5 SCC

88, the Hon'ble Supreme Court has held that though the standard of proof for departmental proceedings is not beyond the reasonable doubt, the enquiry being quasi judicial proceedings, the conclusion should be arrived basing upon the preponderance of probability. While considering the preponderance of probability, the Enquiry Officer cannot ignore the relevant facts and consider the irrelevant facts and the burden of proof cannot be shifted on the employee and the conclusions cannot be arrived out of mere surmises and conjunctures. For a better clarity, the relevant paragraph of the above judgment is extracted hereunder:

"25.....Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e., beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of



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surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with."

16. In the instant case, even though the petitioner had narrated several facts which demand oral enquiry, the records does not reveal that the oral enquiry has been conducted. Even the annexures attached to the charges also did not disclose the list of witnesses proposed to be examined during the enquiry. All that relied was only the registration of a criminal case. No doubt mere registration of the criminal case itself will not amount to proof of charges unless put to exhaustive test basing on the materials and evidence produced during the enquiry. It appears from the record that the charges against the petitioner have been proved on the basis of no evidence.

17. So far as the scope of Writ jurisdiction to interfere with the order of the disciplinary authority is very limited, one of the grounds for review can be to examine whether the decision making process is legitimate. The Hon'ble Supreme Court has reiterated the legal position



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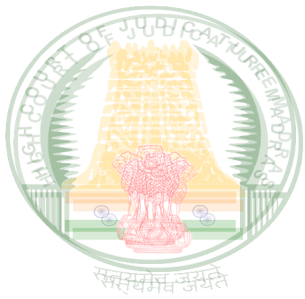
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of review in ***Ram Lal Vs. State of Rajasthan and Others, reported in (2024) 1 SCC 175, which are extracted hereunder:***

"10. We have examined both the questions independently. We are conscious of the fact that a Writ Court's power to review the order of the disciplinary authority is very limited. The scope of enquiry is only to examine whether the decision-making process is legitimate. As part of that exercise, the Courts exercising power of judicial review are entitled to consider whether the findings of the disciplinary authority have ignored material evidence and if it so finds, the Courts are not powerless to interfere.

11. We are also conscious of the fact that mere acquittal by a criminal court will not confer on the employee a right to claim any benefit, including reinstatement.

12. However, if the charges in the departmental enquiry and the criminal court are identical or similar, and if the evidence, witnesses and circumstances are one and the same, then the matter acquires a different dimension. If the Court in judicial review concludes that the acquittal in the criminal proceeding was after full consideration of the prosecution evidence and that the prosecution miserably failed to prove the charge, the Court in judicial review can grant redress in certain circumstances. The Court will be entitled to exercise its discretion and grant relief, if it concludes that allowing the



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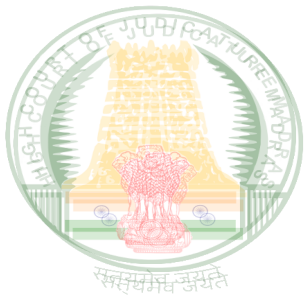


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findings in the disciplinary proceedings to stand will be unjust, unfair and oppressive. Each case will turn on its own facts."

18. In the above said case, the Hon'ble Supreme Court has also dealt about the effect of acquittal in the criminal proceedings. In this aspect, the relevant paragraphs of the above judgment (***Ram Lal Vs. State of Rajasthan and Others, reported in (2024) 1 SCC 175***) are extracted hereunder:

"28. Expressions like “benefit of doubt” and “honorably acquitted”, used in judgments are not to be understood as magic incantations. A court of law will not be carried away by the mere use of such terminology. In the present case, the Appellate Judge has recorded that Exh. P-3, the original marksheet carries the date of birth as 21.04.1972 and the same has also been proved by the witnesses examined on behalf of the prosecution. The conclusion that the acquittal in the criminal proceeding was after full consideration of the prosecution evidence and that the prosecution miserably failed to prove the charge can only be arrived at after a reading of the judgment in its entirety. The court in judicial review is obliged to examine the substance of the judgment and not go by the form of expression used.



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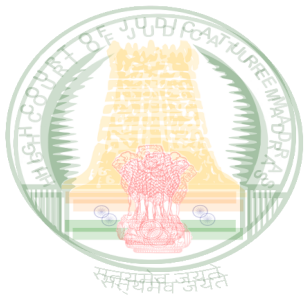


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29. *We are satisfied that the findings of the appellate judge in the criminal case clearly indicate that the charge against the appellant was not just, “not proved” - in fact the charge even stood “disproved” by the very prosecution evidence. As held by this Court, a fact is said to be “disproved” when, after considering the matters before it, the court either believes that it does not exist or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist. A fact is said to be “not proved” when it is neither “proved” nor “disproved” [See [Vijayee Singh and Others v. State of U.P. \(1990\) 3 SCC 190](#)].*

30. *We are additionally satisfied that in the teeth of the finding of the appellate Judge, the disciplinary proceedings and the orders passed thereon cannot be allowed to stand."*

19. On perusal of the judgment of acquittal made in C.A.No.581 of 2014 which set aside the order of conviction of the Trial Court, would show that the acquittal was on merits and not on mere benefit of doubt. On this aspect, it is worthwhile to reproduce paragraph Nos. 21 to 23 of the judgment made in Criminal Appeal No.581 of 2014 filed by the petitioner as below:



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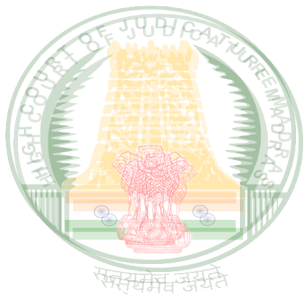


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"21.No doubt, by phenolphthalein test, the prosecution has proved the fact that the accused / appellant had contacted phenolphthalein. Whether it was due to handling the tainted currency or by contacting the hands of P.W.2 is not sure. While so, when the money was recovered from the folder concealed in between the bill book and the photocopy of the tile documents, whether it was kept with the knowledge of the appellant or without his knowledge is also not sure.

22. While the prosecution has not proved its case beyond reasonable doubt in respect of the demand and acceptance, the presumption under Section 20 of the Prevention of Corruption Act cannot be drawn. Proof of demand and acceptance beyond reasonable doubt is sine qua non to draw the presumption under Section 20 of the Prevention of Corruption Act. When the prosecution is unable to discharge the primary burden of demand and acceptance beyond doubt, the case of the prosecution is bound to fail.

23. Further, the specific case of the prosecution centres on demand of illegal gratification by the accused/appellant for effecting name transfer. It is also the case of P.W.2 in his complaint marked as Ex.P2 that when he met the accused / appellant on 11.08.2008, the accused obtained signature in the name transfer form and kept it with him. P.W.8, the trap laying officer has deposed that during the search of the accused table, he has recovered the records including the application



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for name transfer given by P.W.2 which is marked as Ex.P14.

Perusal of Ex.P14 we find except the ward number, division number and signature of the defacto complainant, the other columns in the application is blank and unfilled. More particularly, the name of the transferee is neither filled up nor his signature is obtained. Without the consent or signature of his father, P.W.2 contends that he made a request for name transfer to the bill collector who is not the person competent to do so and for the said purpose, the bill collector demanded Rs.1500/-. Further, the learned counsel for the appellant would submit that till date the property tax assessment stands in the name of Ramamurthy, the father of P.W.2. This improbablise the prosecution case. Since the contradiction and the explanation given by the accused not been properly considered by the trial court, it requires interference. Accordingly, appeal is allowed."

20. So the acquittal of the petitioner in the criminal case is completely based upon the consideration of the materials. As pointed out earlier, the facts and materials involved in both the criminal case and the disciplinary proceedings are one and the same and hence, the acquittal of the petitioner on appreciation of the merits of the criminal case would certainly have the bearing on the result of the disciplinary proceedings.

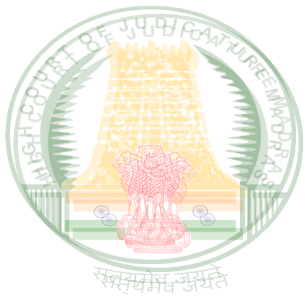


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In this aspect, it is appropriate to refer the ratio *decidendi* laid down by the Hon'ble Supreme Court in the case of ***G.M. Tank Vs. State of Gujarat and Others, reported in (2006) 5 SCC 446***. In the said case, it is held as under:

"30. The judgments relied on by the learned counsel appearing for the respondents are not distinguishable on facts and on law. In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a Departmental case against the appellant and the charge before the Criminal Court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer, Mr. V.B. Raval and other departmental witnesses were the only witnesses examined by the Enquiry Officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same

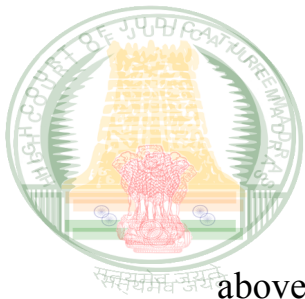


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witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by his judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand."

21. In the disciplinary proceedings conducted against the petitioner, same set of documents and evidence of witness have been produced and the enquiry authority has given a summary disposal to the enquiry merely on the basis of the registration of the criminal case. Though the punishment of dismissal is the major penalty which can only be imposed by the second respondent, the third respondent has issued an order of dismissal. Even though the petitioner has raised the ground of no evidence in the grounds of appeal filed before the Appellate Authority, the same was not considered and the order of dismissal was confirmed. The first respondent revisional authority also did not advert into the



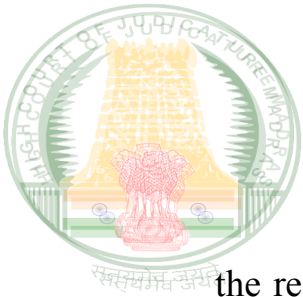
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above grounds and he had confirmed the order of punishment in the revision petition filed before him.

22. As the order of dismissal has been passed by the authority who is not competent to pass the order and the charge against the petitioner has not been proved basing upon the acceptable evidence and the fact that the petitioner has been acquitted in the criminal case on the same set of evidence and materials produced before the criminal case, I feel the impugned orders are liable to be set aside.

23. In the result, this **Writ Petition is allowed** and the impugned orders passed by the second respondent in Po.Thu.N.K.No.E.6/36252/2015 dated 10.05.2019, the order passed by the first respondent in G.O.No.422, Municipal Administration and Water Supply Department (M.N.3) dated 13.10.2016, the order passed by the first respondent in Po.Thu.Na.Ka.No.E.6/36252/2015 dated 20.10.2015 and the order passed by the third respondent made in M.V.A.Na.Ka.No.A.5/002236/2015 dated 09.06.2015 are set aside and



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the respondents are directed to grant all attendant, service and monetary benefits with effect from 02.10.2008 to the petitioner and pass appropriate orders in this regard within a period six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes/No

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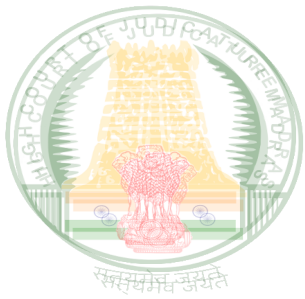
Speaking / Non-speaking

Neutral Citation : Yes / No

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To

- 1.The Principal Secretary to Government,
Public Department,
Secretariat, St.George Fort,
Chennai - 600 023.
- 2.The Commissioner,
Greater Chennai Corporation,
Ribbon Building,
Chennai 600 003.
- 3.The Central Regional Deputy Commissioner,
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R.N.MANJULA, J.

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