



W.A(MD)No.1579 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 16.06.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

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1.The Director General of Police,
Tamil Nadu Police Department,
Santhom High Road,
Mylapore,
Chennai.

2.The Inspector General of Police,
Armed Police,
Trichy I/c. of Deputy Inspector
General of Police,
Armed Police,
Trichy.

3.The Commandant,
Tamil Nadu Special Police IX Battalion,
Manimuthar,
Tirunelveli District.

... Appellants /
Respondents

Vs.

M.Mariselvam

... Respondent /
Writ Petitioner



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Prayer: Writ Appeal filed under Clause 15 of the Letters Patent to set aside the orders dated 16.12.2022 made in W.P(MD)No.9733 of 2019 and thereby allow the Writ Appeal.

For Appellants : Mr.N.Sathesh Kumar
Additional Government Pleader

For Respondent : Mr.G.Thalaimutharasu

JUDGMENT

(Judgment of the Court was made by **G.R.Swaminathan J.**)

Heard both sides.

2.Even before commencement of arguments, the learned counsel appearing for the writ petitioner, on instructions from his client, categorically submitted that in the event of this Court upholding the order of the learned single Judge, the writ petitioner would not press his claim for backwages and that he would be satisfied if the intervening service is counted for all other purposes such as seniority and fixation of pay. This submission is placed on record.

3.The writ petitioner was appointed as Police Constable Grade – II in the year 2013. He was implicated in Crime No.639 of 2016 on the file of Inspector



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of Police, Thalamuthunagar Police Station, Tuticorin District. The writ petitioner was shown as A1 in the said case. The Police conducted investigation and charge sheeted the same. It was taken on file in PRC.No.34 of 2017 on the file of the learned Judicial Magistrate No.2, Tuticorin. The case was committed to the Session Court and taken up for trial by the learned Assistant Sessions Judge, Tuticorin in S.C.No.95 of 2018.

4.In the meanwhile, the disciplinary authority issued a charge memo dated 13.12.2016. The writ petitioner was charged with involvement in a criminal case and thus brought disrepute to the uniformed force. An Enquiry Officer was appointed and the enquiry Officer returned a finding of guilt. The writ petitioner was put on notice and his further representation was also obtained. The disciplinary authority (Commandant, TSP IX Batallion Manimuthar) passed an order of removal of service on 17.02.2017. Aggrieved by the same, the petitioner filed an appeal before the appellate authority. The appellate authority vide order dated 15.11.2017 dismissed the appeal. The writ petitioner filed a mercy petition before DCP, Chennai but it was also dismissed. Challenging the orders, the writ petitioner filed W.P(MD)No.9733 of 2019. The learned single Judge disposed of the Writ Petition vide order dated 16.12.2022 in the following terms:



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“10. Accordingly, this Court is passing the following order:

(i). The impugned proceedings, dated 24.11.2018 in RC.No.11806/AP3(1)/2018, passed by the 1st respondent, by confirming the order of the 2nd respondent, dated 15.11.2017 in C.No.A2/ Appeal-16/2017, by confirming the order of removing the petitioner from service passed in No.A4/P.R.No.30/2016, B.O.64/2017, dated 17.02.2017 by the 3rd respondent, are hereby quashed.

(ii). The respondents are directed to impose minor punishment of stoppage of increment of two years without cumulative effect.

(iii). The respondents are further directed to reinstate the petitioner back into service with continuity of service, within a period of four weeks from the date of receipt of a copy of the order.

(iv). The period from 2017 to till the date of order, the petitioner is not entitled any back wages for the non-employment period.”

Aggrieved by the same, the department has filed this Appeal.

5.The learned Additional Government Pleader appearing for the appellants reiterated all the contentions set out in the grounds of Appeal. He pointed out that the learned single Judge had not allowed the writ petition in *toto*. On the other hand, modification in the punishment alone was made. This



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according to the learned Additional Government Pleader is clearly incorrect.

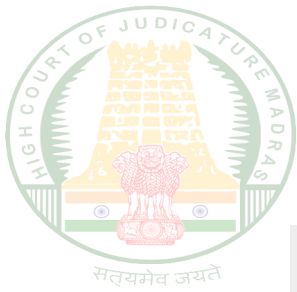
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He relied on the decision reported in **2022 LiveLaw (SC) 998 (Union of India & Others Vs Subrata Nath)**. Paragraph 19 of the said decision reads as follows:

“19. Laying down the broad parameters within which the High Court ought to exercise its powers under Article 226/227 of the Constitution of India and matters relating to disciplinary proceedings, a two Judge Bench of this Court in Union of India and Others v. P. Gunasekaran held thus :

“12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;*
- (b) the enquiry is held according to the procedure prescribed in that behalf;*
- (c) there is violation of the principles of natural justice in conducting the proceedings;*
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*



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(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence.

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

(i) reappreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law; (iii) go into the adequacy of the evidence;

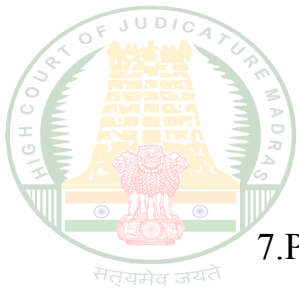
(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience.””

6.The stand of the appellant is that the decision of the learned single Judge is not in consonance with the parameters / dos and don'ts laid down by the Hon'ble Supreme Court.



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7.Per contra, the learned counsel for the writ petitioner submitted that the order of the learned single Judge does not call for interference.

8.We carefully considered the rival contentions and went through the materials on record.

9.We would have unhesitatingly endorsed the stand of appellants if the learned single Judge had given a clear finding that the writ petitioner's guilt was proved and thereafter proceeded to effect modification in the matter of punishment. On a careful reading of the learned single Judge's order, we notice that the learned single Judge has given a finding that the allegation made against the writ petitioner was not proved. In fact, having made such an observation, the learned Judge could have allowed the writ petition in *toto* without effecting modification.

10.The charge against the petitioner is that he was involved in a criminal case. It appears that during a temple festival, a group clash had erupted and the petitioner also in an inebriated condition and suffered injury. He is said to have also attacked the victim also named Mariselvam.

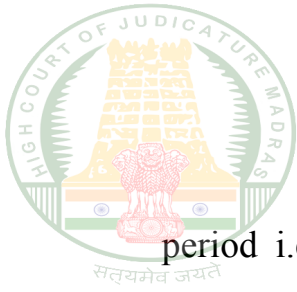


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11.As already observed, the criminal case registered against the petitioner ended in acquittal. The victim turned hostile and there was not even a shred of evidence adduced against the writ petitioner in the criminal case.

12.We ask the learned Additional Government Pleader to clarify whether the victim was examined in the departmental enquiry. If the victim had been examined in the departmental enquiry and had deposed in support of the charge, then notwithstanding the writ petitioner's acquittal in the criminal case, we would have still sustained the eventual punishment imposed on him. We notice that victim was not examined in the enquiry. Except marking the FIR, the charge sheet and examining the official witnesses, there is no legally acceptable evidence against the writ petitioner. We are therefore of the view that the case against the writ petition stands on zero evidence.

13.Secondly, as rightly observed by the learned single Judge, both the orders of the disciplinary authority as well as the appellate authority are virtually non-speaking. The appellate authority has not at all considered the various contentions advanced by the writ petitioner. Therefore, we uphold both the contentions urged by the learned counsel for the petitioner. Since the writ petitioner himself has said that he will forgo the backwages for the intervening



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period i.e., from the date of dismissal till the date of disposal of this Writ

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Appeal, this Writ Appeal is partly allowed. The punishment imposed on the writ petitioner is set aside. He shall be reinstated in service forthwith. Since the petitioner had forgone the claims of backwages for intervening period, this would meet the ends of justice. There shall be no order as to costs.

[G.R.S., J.] [K.R.S., J.]
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NCC : Yes / No
Internet : Yes / No
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