

A.Rajasekaran vs The State Of Tamil Nadu on 7 November, 2022

Author: S.M.Subramaniam

Bench: S.M. Subramaniam

WP No.

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.1162 of 2023

And

WMP No.1183 of 2023

A.Rajasekaran

.. Petitioner

- vs -

1.The State of Tamil Nadu,
Represented by Chief Secretary to Government,
Public (Special-A) Department,
Secretariat,
Chennai-600 009.

Page 1 of 41

<https://www.mhc.tn.gov.in/judis>

2.The Registrar-General,
Madras High Court,
Madras.

.. Respondent

Writ Petition is filed under Article 226 of the Constitution, praying for the issuance of a Writ of Certiorari and Mandamus, calling for the records pertaining to the G.O.No.742, Public (Special-A) Department, dated 07.11.2022 passed by the first respondent, quash the same and consequently direct the respondents to pay salary and all benefits due to the petitioner, which the petitioner would have been entitled to, had he retired from service on 30.06.2023 in the normal course with 12% per annum.

For Petitioner : Mr.V.Prakash, Senior Counsel
Mr.M.Palanivel.

For Respondent-1 : Ms.M.Jayanthi,
Additional Government Counsel

For Respondent-2 : Mr.V.Ayyadurai,
Senior Counsel for
Mr.A.Durai Eswar.

Page 2 of 41

<https://www.mhc.tn.gov.in/judis>

WP No.

ORDER

S.M.SUBRAMANIAM, J.

FACTS IN BRIEF:

The writ petitioner was appointed as Civil Judge (Junior Division) in the Tamil Nadu State Judicial Service on 11.11.1988. He was promoted as Civil Judge (Senior Division) on 09.03.1998 and thereafter promoted as Additional District Judge on ad hoc basis on 01.11.2006. The petitioner was reverted back to the cadre of Civil Judge (Senior Division) vide High Court's proceedings dated 09.02.2009. Again he was promoted as Additional District Judge on 11.03.2010 and served as IV Additional District Judge, Erode at Bhavani from 01.04.2010 to 13.03.2013.

2. The petitioner was placed under suspension on 14.03.2013 in contemplation of enquiry into grave charges vide High Court's proceedings dated 13.03.2013. The petitioner was not permitted to retire <https://www.mhc.tn.gov.in/judis> from service on the date of his superannuation on 30.06.2013 and kept under suspension.

3. A letter dated 05.08.2011 had been received from one Mr.S.Doraisamy, Advocate addressed to the Registrar (Vigilance) by enclosing a compact disk, requesting 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.Sankaracharya Jayendra Saraswathi of Kanchi Mutt, Mr.T.Ramasamy, the then Sessions Judge, Puducherry and Ms.B.Gowri Kamatchi related to Mr.Sankaracharya Jayendra Saraswathi. Subsequently on 18.08.2011, a complaint has been received from one Mr.P.Sundarrajan, Advocate, addressed to the Registrar Vigilance, requesting to register a case and to probe the tapes circulated, with regard to the telephonic conversation purported to be made between viz., Mr.Sankaracharya Jayendra Saraswathi, who was arrayed as the prime accused in Sankar Raman's murder case in SC No.94 of 2005 on the file of the Sessions Court, Puducherry, Mr.T.Ramasamy, the then Sessions Judge, Puducherry, devotee and another person, discussing monetary payments and promised payments. <https://www.mhc.tn.gov.in/judis>

4. The complaint was placed before the Hon'ble Administrative Committee. On 24.08.2011, Mr.N.Authinathan, formerly Administrator General and Official Trustee, Chennai, was nominated as Enquiry Officer to conduct preliminary enquiry into the complaint. Mr.N.Authinathan submitted his report on 19.09.2011 and it was placed before the Hon'ble Administrative Committee.

5. The enquiry report contained the Expert's opinion of the Deputy Director, Forensic Sciences Department dated 15.09.2011. 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 <https://www.mhc.tn.gov.in/judis> materials gathered during the enquiry do not contain even the materials relating the facts in issue which merit any further action.

6 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.

7. 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, before the Division Bench, which was hearing the Writ Petition No.19894 of 2011 filed by Mr.P. Sundarrajan.

<https://www.mhc.tn.gov.in/judis>

8. 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.

9. 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 <https://www.mhc.tn.gov.in/judis> 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 the 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 Kumar, 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.

10. In compliance of the directions issued by the Hon'ble <https://www.mhc.tn.gov.in/judis> 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 Kumar 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 Kumaar, Section Officer. The petitioner submitted his interim reply dated 11.05.2016 and requested to furnish details of SIM Cards and call details. As directed by the Hon'ble Administrative Committee, the petitioner was directed to submit his explanation by providing the extract of the compact disk vide High Court's Official Memorandum dated 29.07.2016. The petitioner submitted his explanations on 11.08.2016.

11. 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 <https://www.mhc.tn.gov.in/judis> 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.

12. 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 Kumaar, Section Officer and rejected the same as not being satisfactory. Accordingly, it was ordered to frame charges.

13. Pertinently, all the above procedures were followed to ascertain the prima facie case, if any, made available 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 Kumaar, 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 <https://www.mhc.tn.gov.in/judis> 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.

14. The Hon'ble Enquiring Judge had rendered his findings on 05.01.2022, holding that out of five charges, charge Nos.1 and 4 are proved against the writ petitioner. Charge No.1 relates to the petitioner is close proximity with Thiru N.Ramesh Kumaar, Section Officer, High Court, Madras, knowing fully well that he has close contacts with Advocate <https://www.mhc.tn.gov.in/judis> Mr.C.Antony Selvaraj, Mr.N.Arun Raj, close acquaintance with Mr.Jayendra Saraswathi, who was

the prime accused in Crime bearing SC No.94 of 2005. Charge No.4 relates to the petitioner having attended the Conference Call which was organised by Thiru N.Ramesh Kumaar, while he was working as Section Officer in Madurai Bench of Madras High Court, on the directions of Advocate Thiru Antony Selvaraj and the audio files bring out the assurance given by Thiru Jayendra Saraswathi to settle the balance amount within a period of one week to 10 days. The copy of the enquiry report was furnished to the petitioner, seeking further objections on the findings on the proved charges. The petitioner submitted his further representation on 16.02.2022. In the meeting held on 21.06.2022, the Hon'ble Administrative Committee resolved to impose the punishment on the petitioner. The Hon'ble Full Court in the meeting held on 07.07.2022 approved the decision of the Hon'ble Administrative Committee. Accordingly, the Registry addressed the Government for orders of the Appointing authority. The Government initially passed G.O.Ms.No.688, Public Department, dated 20.10.2022 imposing the punishment of removal from service, since certain errors crept in the said order passed by the Government, the High Court addressed the Government to correct the errors and issue a fresh Government Order and <https://www.mhc.tn.gov.in/judis> consequently, the Government cancelled G.O.MsNo.688, dated 20.10.2022 and issued revised Government Order in G.O.Ms.No.742, Public (Special A) Department, dated 07.11.2022, imposing the punishment of removal from service. The said order came to be challenged in the present writ proceedings.

ARGUMENTS ON BEHALF OF THE PETITIONER:

15. Mr.V.Prakash, learned Senior Counsel appearing on behalf of the writ petitioner made a submission that the petitioner has been denied right of appeal, since he was holding the post of District Judge. Though the Rule contemplates an appeal to the Government, the order impugned was passed by the Government and therefore, the right of appeal has been denied.

16. this Court pointed out that the Rule contemplating an appeal to the Government is inapplicable to the State Cadre Officials, including the District Judges, since the provision for appeal provided is inapplicable to the State Cadre Services and District Judges, the writ <https://www.mhc.tn.gov.in/judis> petitions are entertained against the original impugned order passed by the Government. There is no Higher Authority than that of the Government and the Government, being the Appointing Authority competent, to pass final orders in the departmental disciplinary proceedings. Since the writ petition has been entertained, the petitioner was permitted to canvass all the grounds raised in the writ proceedings regarding the discrepancies or otherwise in the deposition of witnesses, documents and the findings of the Enquiry Officer.

17. Thereafter, Mr.V.Prakash, learned Senior Counsel, proceeded with his arguments on merits. The prime contention of the learned Senior Counsel Mr.V.Prakash would be that the crux and the findings in the report of Mr.N.Authinathan had not been considered by the respondents. In Authinathan's report, the opinion of the Experts were crystallised. The Expert opined about the contextual discontinuity and abrupt ending of the conversation found in the audio files forwarded for examination. The

possibility of editing of the source audio files, are mentioned. It was opined that the content of the audio can be authenticated only after examining the actual recording devices, which were used to record the original conversation. Even before the Preliminary Enquiry Officer <https://www.mhc.tn.gov.in/judis> Mr.N.Authinathan, the complainant had not cooperated. Therefore, the respondents ought to have dropped all further proceedings at that stage.

Proceeding thereafter without any material evidences is perverse and therefore, the entire process of further enquiry conducted is vitiated and consequently, the punishment of removal from service is to be set aside.

18. Mr.V.Prakash, learned Senior Counsel, is of an opinion that deposition of witnesses and certain conversations, which could have happened casually cannot be the basis for imposing the major penalty of removal from service. The proximity with the Advocates or the staff members of the High Court, cannot be a ground to frame charges against the Judicial Officers. It would be a dangerous proposition that such conversation between the Judges and the Advocates or the staff members, are considered as source for initiation of departmental disciplinary proceedings, then the Judicial Officers may not be in a position to perform their duties peacefully.

19. Contextually, Mr.V.Prakash, learned Senior Counsel, drew the attention of this Court with reference to the observations made by the Division Bench of this Court, vide its order dated 27.02.2012 in WP <https://www.mhc.tn.gov.in/judis> No.19894 of 2011, filed by Mr.P.Sundarrajan, Advocate. Even before conclusion of the preliminary enquiry by Mr.N.Authinathan, Enquiry Officer, the writ petition was filed before the High Court. The Division Bench further observed about the reference made by the Director of Forensic Sciences Department, Mylapore, Chennai, wherein the Experts 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. When such a categorical finding is given by the preliminary Enquiry Officer Mr.N.Authinathan, which was considered by the Division Bench of this Court, further actions ought to have been dropped by the Competent Authorities, but a charge memorandum was issued against the writ petitioner under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

20. The learned Senior Counsel solicit the attention of this Court with reference to certain contradictions in the statements of the witnesses and the cross-examinations. Pertinently, Forensic Sciences Department's Report indicates that the authenticity of recording of the alleged conversation with certainty is possible only after examining the <https://www.mhc.tn.gov.in/judis> original recording device, which were used during the alleged conversation. Admittedly, the original recording device was not examined. In the absence of examining of the original recording device, the statements made by the witnesses cannot be considered for the purpose of imposing the major penalty of removal from service on the petitioner. Despite the fact that the original audio files were not even examined and based on unauthenticated audio files, a decision taken by the Enquiry Officer, which was erroneously accepted by the Disciplinary Authority. Thus the writ petition is to be allowed.

21. In support of the contention, Mr.V.Prakash, learned Senior Counsel, relied on the judgment of the Supreme Court in the case of Delhi Cloth and General Mills Company vs. Ludh Budh Singh [(1972) 1 SCC 595], wherein in paragraph-38, the following observations are made:-

"38. The Industrial Tribunal had to consider whether the appellant has made out a prima face case for permission being granted for the action proposed to be taken against the workman. For that purpose the Tribunal was justified in considering the nature of the <https://www.mhc.tn.gov.in/judis> allegations made against the workman, the findings recorded by the Enquiry Officer and the materials that were available before the Enquiry Officer, on the basis of which such findings had been recorded. Accepting the contention of Mr Anand that it was within the jurisdiction of the Enquiry Officer to accept the evidence of Sujan Singh and Rampal will be over-simplifying the matter and denying the legitimate jurisdiction of the Tribunal in such matters to consider whether the findings are such as no reasonable person could have arrived at on the basis of the materials before the Enquiry Officer. If the materials before the Enquiry Officer are such, from which the conclusion arrived at by the Enquiry Officer could not have been arrived at by a reasonable person, then it is needless to state as laid down by this Court in Central Bank of India Ltd., New Delhi v. Prakash Chand Jain that the finding has to be characterised as perverse. If so the Industrial Tribunal had ample jurisdiction to interfere with such a finding."
<https://www.mhc.tn.gov.in/judis> ARGUMENTS OF THE SECOND RESPONDENT:

22. Mr.V.Ayyadurai, learned Senior Counsel, appearing on behalf of the second respondent, would strenuously oppose the contentions of the petitioner by stating that the procedures as contemplated under the Discipline and Appeal Rules were scrupulously followed in the case on hand. Sufficient opportunities were provided to the delinquent Officials even while conducting the preliminary enquiry and during the domestic enquiry, conducted after issuance of charge memorandum under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Admittedly, the charge Nos.1 and 4 are proved before the Enquiry Officer. Proved charges are grave in nature and the writ petitioner acted unbecomingly of a Judicial Officer. The proved charges are touching upon his integrity and therefore, no exception can be drawn. Thus the penalty of removal from service is just and deserves no interference from the hands of this Court.

23. Though the original audio records were not available, the Enquiry Officer appointed by the Hon'ble Division Bench of this Court vide its order dated 27.02.2012 in WP No.19894 of 2011 viz., Dr.M.Sudhakar, <https://www.mhc.tn.gov.in/judis> former Assistant Commissioner of Police, Cyber Crime Cell, conducted a detailed enquiry. Dr.M.Sudhakar, former Assistant Commissioner of Police, Cyber Crime Cell, was appointed by the High Court in judicial proceedings, who in turn conducted a detailed enquiry by examining the witnesses and scrutinising the documents in a scientific manner. Dr.M.Sudhakar, in his report, had given a specific findings that the utterances in the alleged conversations were made by Thiru Jayendra Saraswathi Sankaracharya of Kanchi Mutt and Ms.B.Gowri Kamatchi, CEO, 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 IV Additional District Judge, Erode at Bhavani.

24. Since the voice of Thiru T.Ramasamy, the then Trial Judge, Sessions Court, Puducherry was not found, all further actions against him were dropped by the Hon'ble Administrative Committee. The Report of Dr.M.Sudhakar was considered by the Hon'ble Administrative Committee and found a prima facie case is made out for further enquiry against the writ petitioner and Mr.N.Ramesh Kumar, Section Officer of Madras High Court.

<https://www.mhc.tn.gov.in/judis>

25. Mr.V.Ayyadurai, Learned Senior Counsel, reiterated that the preliminary enquiry was conducted at several stages to ascertain the truth behind the genuinity of the audio files and the conversation between the petitioner Mr.N.Ramesh Kumar and others. The Conference Call details and its genuinity are also ascertained by conducting the preliminary enquiry. During the conduct of preliminary enquiry, the departmental disciplinary proceedings were not initiated. Thus, the arguments on behalf of the petitioner that two enquiries are conducted in departmental disciplinary proceedings, is incorrect. The departmental disciplinary proceedings enquiry commences only after issuance of charges under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The preliminary enquiries conducted prior to framing of charges cannot be construed as departmental disciplinary proceedings and thus, it is not a case of two different enquiries on the same set of charges. Even for framing of charges, efforts were taken by the High Court to ascertain the truth behind the complaint. Since merely based on certain complaint, charges cannot be framed against the Judicial Officer. The High Court took utmost care to cull out the truth before framing of charges under the Discipline and Appeal <https://www.mhc.tn.gov.in/judis> Rules.

26. In this context, Mr.V.Ayyadurai, learned Senior Counsel, would rely on the judgment in the case of Union of India and Others vs. Anil Kumar Sarkar [(2013) 4 SCC 161], wherein in paragraphs 19 to 21, the Supreme Court held as under:-

“19. In Coal India Ltd. v. Saroj Kumar Mishra [(2007) 9 SCC 625 : (2008) 2 SCC (L&S) 321 : AIR 2007 SC 1706] this Court, in AIR para 22, has held that: (SCC p. 632, para 18) “18. A departmental proceeding is ordinarily said to be initiated only when a charge-sheet is issued.”

20. In Coal India Ltd. v. Ananta Saha [(2011) 5 SCC 142 : (2011) 1 SCC (L&S) 750] this Court held as under: (SCC p. 155, para

27) “27. There can be no quarrel with the settled legal proposition that the disciplinary proceedings commence only when a charge-sheet is issued to the delinquent employee. (Vide Union of India v. K.V. Jankiraman [(1991) 4 SCC 109 :

1993 SCC (L&S) 387 : (1993) 23 ATC 322] <https://www.mhc.tn.gov.in/judis> and UCO Bank v. Rajinder Lal Capoor [(2007) 6 SCC 694 : (2007) 2 SCC (L&S) 550] .)”

21. We also reiterate that the disciplinary proceedings commence only when a charge-sheet is issued. Departmental proceeding is normally said to be initiated only

when a charge-sheet is issued.”

27. Ms.M.Jayanthi, learned Additional Government Pleader, appearing on behalf of the first respondent, would also adopt the arguments made by Mr.V.Ayyadurai, learned Senior Counsel, appearing on behalf of the second respondent. The learned Additional Government Pleader would contend that the Government considered the seriousness of the charges proved against the writ petitioner and further considered the decision taken by the Hon'ble Administrative Committee and the Hon'ble Full Court and accordingly decided to implement the resolutions passed by the Full Court to remove the petitioner from service. Since the decisions are supported with the materials available on record, the Government issued the order impugned and there is no infirmity. Consequently, the present writ petition is to be rejected.

<https://www.mhc.tn.gov.in/judis> DISCUSSIONS:

28. The preliminary arguments as advanced on behalf of the petitioner that two enquiries are conducted in departmental disciplinary proceedings, is incorrect. The preliminary enquiry conducted by the Competent Authority to ascertain the truth behind the allegations in the complaint, cannot be equated with the domestic enquiry conducted after framing of the charges under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Thus no two enquiries are conducted in departmental disciplinary proceedings. As rightly pointed out by the second respondent, the departmental disciplinary proceedings commences only when charges are framed under the Discipline and Appeal Rules.

29. 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 <https://www.mhc.tn.gov.in/judis> 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.

30. 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.

31. 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 <https://www.mhc.tn.gov.in/judis> 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. <https://www.mhc.tn.gov.in/judis>

32. 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.

33. 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.

Item	Disputed Utterances
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<https://www.mhc.tn.gov.in/judis>

speech
samples
showed
similarity
with the

		utterances listed against each in column (2) of this table
Audio files in the CDs/DVD items 1, 2, 3 and 11 [excluding the audio files 'Arunraj.a mr' in items 3 and	i) Marked as 'A' in the verbatim transcripti on furnished in Annexure I, II, III and V.	Tr. N. Ramesh [Items 12 and 13]
11]	ii) Marked as 'B' in the verbatim transcripti on furnished in Annexure I, II, III and V. iii)	Tr. A. Rajasekara n [Items 14 and 15]
	Marked as	Tr.

<https://www.mhc.tn.gov.in/judis>

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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) <https://www.mhc.tn.gov.in/judis> 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 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."

34. 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 <https://www.mhc.tn.gov.in/judis> 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 and 4 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 voices 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.

35. Only when the financial deal has not fructified, there arose some dispute between the parties, the conversation recorded during the deal <https://www.mhc.tn.gov.in/judis> 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.

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

..

It is also submitted by the Department that the Delinquent No.2 Section Officer had frequent contact with Delinquent No.1 Judicial Officer. There were 189 calls made by the D2 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 P.W.7 and P.W.8 advocates finalised the illegal deal for claiming, amount <https://www.mhc.tn.gov.in/judis> more than a Crore to some how or other to get the A1 released from the Sessions case.

..

Voice samples have been identified and admitted by them which have been compared by the experts. The report of the P.W.10 and his evidence clearly show that the voice found in the audio tape belongs to them along with P.W.6 and Jeyendra Saraswathi. There was no reason as to why Delinquent No.1 Judicial Officer, who was working in Erode to be implicated unnecessarily for the case pending in Pondicherry. That itself clearly indicate that the delinquents have hand in glove and made an attempt to extract money from the main accused in a sensational murder case which was pending against him. Therefore, submitted that prosecution established the charges against the delinquent officer and staff.

..

The evidence of P.W.9, the Investigating Officer, Specially appointed by this Court, who is Cyber Crime Expert, clearly show that there were frequent phone calls from P.W.7 and

<https://www.mhc.tn.gov.in/judis> P.W.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 P.W.7 and 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 P.W.9 clearly shows that the entire scheme is orchestrated with the help of P.W.7 and P.W.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.

.. .. .

It is admitted by P.W.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 <https://www.mhc.tn.gov.in/judis> has spoken. What was stated by P.W.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 who actually spoke in that, I am of the view that the entire report of the forensic cannot be ignored altogether.

.. .. .

When enquiry officer also in his findings recorded that after demand of huge money in this regard there arose dispute between Delinquent No.2 and P.W.6, as P.W.6 insisted for return of money, the audio clip has been published in order to prevent her claiming money further. Though one of the witnesses examined by the Investigating Officer, one Venkatesh spoken about the receipt of money, however, he died. Therefore, he could not be examined. Therefore, possibility of releasing the audio as found by the Enquiry Officer cannot be ruled out. From the above <https://www.mhc.tn.gov.in/judis> circumstances, particularly, close proximity Delinquents No.1 and 2. Charges No.1 against the Delinquent No.1 is proved.”

37. 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 and 4 against the writ petitioner, are serious in nature, touching upon his integrity as a Judge.

38. 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

<https://www.mhc.tn.gov.in/judis> unacceptable. More specifically, departmental disciplinary proceedings are initiated under the Discipline and Appeal Rules.

39. 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 and 4 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, categorically made a finding 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 and 4 are proved, are based on some evidence, which is sufficient for the purpose of punishing a public servant under the Discipline and Appeal Rules. <https://www.mhc.tn.gov.in/judis>

40. 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 <https://www.mhc.tn.gov.in/judis> proceedings.

41. Finally, regarding the quantum of punishment, we are of the opinion that the Judicial Officers are expected to maintain high level of integrity and in the present case, the charge Nos.1 and 4 against the writ petitioner, were held proved. The proved charges, viz., charge Nos.1 and 4 are grave in nature, touching upon the integrity and honesty of the Judicial Officer. Therefore, the punishment of removal from service, cannot be construed as disproportionate to the gravity of the proved charges. Thus, we are not inclined to interfere with the quantum of punishment. Consequently, the present writ petition stands dismissed. However, there shall be no order as to costs. The connected miscellaneous 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 <https://www.mhc.tn.gov.in/judis>

1.The Chief Secretary to Government, State of Tamil Nadu, Public (Special-A) Department, Secretariat, Chennai-600 009.

2.The Registrar-General, Madras High Court, Madras.

S.M.SUBRAMANIAM, J.

AND K.RAJASEKAR, J.

Svn Order in WP 1162 of 2023 <https://www.mhc.tn.gov.in/judis> 18-03-2024
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