IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31-03-2006

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE R. SUDHAKAR

WRIT PETITION No.36613 OF 2003

K. Venkatesan .. Petitioner

Vs.

1. State of Tamil Nadu,
   Represented by Secretary to
   Government, Home Department,
   Fort St. George, Chennai 9.

2. Registrar General,
   High Court of Judicature,
   at Madras 104. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of writ of certiorari calling for records of the 1st respondent in G.O.Ms.No.1223 Home Courts (1-A) Department dated 7.9.1998 and quash the same or modify the penalty imposed by the 1st respondent which is excessive punishment for the proven charges against the petitioner.

For Petitioner : Mr.M. Ramamoorthy

For Respondent-1 : Mr.V. Raghupathy
Govt. Pleader

Respondent-2 : Mr.B. Rajendran

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J U D G M E N T

P.K. MISRA, J

The present writ petition has been filed challenging the order of dismissal dated 7.9.1998 passed by Respondent No.1 on the basis of the recommendation made by the High Court.

2. The petitioner was appointed as a Judicial Magistrate in the year 1980. While he was so working at Usilampatti in the year 1996, certain allegations were levelled against him and a departmental proceeding was initiated. Enquiry was conducted by the Principal District Judge, Madurai. Four charges had been framed. The Enquiry Officer as well as the High Court came to the conclusion that Charge Nos.1 and 3 had not been proved, but Charge Nos.2 and 4 had been proved. On the basis of the aforesaid conclusion, which was accepted by the Full Court in its administrative side, recommendation was made to the Government to dismiss the petitioner from service. Such order was passed by the Government on 7.9.1998. Thereafter, the appeal preferred by the petitioner dated 6.10.2001 was rejected on 12.11.2002, giving rise to filing of the present writ petition.

3. The main contention raised by the learned counsel appearing for the petitioner is to the effect that the conclusion of the enquiry officer to the effect that Charge Nos.2 and 4 are established is based on no evidence on record and therefore the order of dismissal passed on such enquiry report cannot be sustained.

4. A counter affidavit has been filed on behalf of Respondent No.2, namely, the Registrar General, High Court, Madras, wherein it has been indicated that the report of the enquiry officer relating to Charge Nos.2 and 4 is based on materials on record and such conclusion should not be interfered with by the High Court while exercising jurisdiction under Article 226 of the Constitution. Apart from supporting the order relating to dismissal on merit, it was also pleaded that the writ petition should be dismissed on the ground of laches as the order of dismissal has been passed in the year 1998 and the appeal had been preferred after a lapse of about 3 years and thereafter the writ petition has been filed in December, 2003, even though the appeal was disposed of on 12.11.2002. Learned counsel for the petitioner relied upon the decision reported in 1967 II LLJ 34 (MOON MILLS v. INDUSTRIAL COURT, BOMBAY) to plead that the writ petition should not be dismissed merely on the ground of laches and delay. It was pleaded that the prima facie case on merits should be considered. The learned counsel submitted a detailed written submission in support of the petitioner's case.

5. Coming to the latter question first, it is of course true that the order of dismissal was passed in the year 1998. However, the appeal filed by the petitioner on 6.10.2001 was disposed of on merit in November, 2002 and thereafter the writ petition has been filed, of course after a lapse of about 12 months. The initial delay in filing the appeal cannot be considered as a ground to dismiss the writ petition on laches as the appeal was never rejected on the ground of delay. Since the appeal was disposed of on merit, laches, if any, prior to filing of the appeal, cannot be held against the petitioner. Thereafter, the petitioner has taken about 12 months

in filing the writ petition, but such a period cannot be considered as a case of inordinate delay so as to defeat the claim of the petitioner, more particularly when the question relates to dismissal of a person from service and petitioner has raised substantial issues of law regarding the charge memo issued. In the peculiar facts and circumstances of this case, we are not inclined to dismiss the writ petition on the ground of laches as we intend to proceed to analyse the case on merits.

6. So far as the validity of the order of dismissal is concerned, the main contention of the petitioner is to the effect that the conclusion of the enquiry officer regarding guilt of the delinquent on Charge Nos.2 and 4 are not legally sustainable and are not based on any evidence. He has placed reliance upon the decisions reported in 1984 II LLJ 186 (A.L. KALVA v. PROJECT AND EQUIPMENT CORPORATION OF INDIA), 1988 II LLJ 171 (BODU TARAMAND v. DISRICT SUPERINTENDENT OF POLICE, JAMNAGAR), 1989 I LLJ 374 (K.N. SHUKLA v. BHARAT HEAVY ELECTRICALS), and 1995 I LLJ 931 (J. DHANRAJ v. TAMIL NADU ELECTRICITY BOARD) and submitted that the finding of the enquiry officer was not only perverse but against law.

7. It is of course true that while deciding a matter under Article 226 of the Constitution, the High Court does not purport to sit as an appellate authority over the order passed by the disciplinary authority and the jurisdiction of the High Court is confined to examine as to whether the conclusion of the disciplinary authority / enquiry officer is supported by any evidence on record or whether relevant materials have been considered or whether such authority was influenced by irrelevant consideration or whether there is any violation of principle of natural justice or procedural impropriety or irregularity. While doing so, the High Court is not expected to re-appreciate the evidence like an appellate court. The question has to be examined keeping in view the aforesaid well settled principle of law (see (2003) 4 SCC 579 (INDIAN RAILWAYS CONSTRUCTION COMPANY v. AJAY KUMAR) and (1997) 5 SCC 129) (HIGH COURT,BOMBAY v. UDAY SINGH).

8. Keeping in view the aforesaid well settled principle of law, the contentions raised by the petitioner are required to be examined. Charge No.2 is to the following effect :-

> "Charge No.II:
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> That you, Thiru K. Venkatesan, the then Judicial Magistrate No.III, Usilampatti released the accused concerned on bail without giving notice to Asst. Public Prosecutor or police in the following crime Nos. when you know that they are exclusively triable by a court of Sessions. ..."

Thereafter reference has been made to 17 cases. The conclusion of the enquiry officer is to the following effect:-

> " ... The substance of the charge in that the Delinquent Officer released the accused on bail in several cases (which are enumerated in the charge) which are exclusively triable by a Court of Sessions without issuing notice to Police or Magisterial Clerk as well as the records show that Delinquent Officer issued notice to the Police and Asst. Public Prosecutor and then pass orders. Therefore, it cannot be said that the Delinquent Officer has granted bail to the accused in the said cases without notice to the Assistant Public Prosecutor or Police, but in all these cases the offences alleged only exclusively triable by the Sessions Judges. Therefore, the bail should have been moved before the Sessions Court.
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> As Magistrate, the Delinquent Officer should not have granted bail undertaking bail applications. The Delinquent Officer defends his action as Judicial orders and that no appeal were filed against them. But, this cannot be accepted. Granting bail by a Magistrate in cases exclusively triable by the Sessions Court is a serious matter, that too when objected by the prosecution. Either the Magistrate who granted bail in such cases acted with ulterior motive or out of ignorance. In both cases it is an illegality. Therefore the Delinquent Officer released the accused in the cases exclusively triable by the Sessions Court is proved and to this extent this charge is proved."
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> (Emphasis supplied by us)

9. From the aforesaid conclusion, it is apparent that the enquiry officer came to the conclusion that the orders had been passed after giving notice to the police and the Assistant Public Prosecutor. To that extent, the charge levelled against the delinquent is not proved. The only other conclusion of the enquiry officer is to the effect that the offences being exclusively triable by a Sessions Judge, the bail applications should have been referred to the Sessions Court and the Magistrate should not have granted bail by entertaining bail applications. Learned counsel for the petitioner submitted that there is no legal impediment under Section 437 Cr.P.C. in granting bail in cases triable by Court of Sessions. There is no jurisdictional bar on Judicial Magistrate in granting bail. The counsel therefore pleaded that when the act alleged does not constitute misconduct at all, the entire disciplinary proceedings are vitiated.

10. It is obvious that the act of the delinquent officer granting bail relate to exercise of his judicial discretion. It is

not the allegation that while exercising such judicial discretion the Magistrate has passed the orders on the basis of any ulterior motive such as illegal gratification or to show favouritism. The tenor of the charge is to the effect that the cases being exclusively triable by a Court of Session, the Magistrate had no jurisdiction to grant bail and the bail applications should not have been entertained by him, but should have been referred to the Sessions Court.

11. In our considered opinion, such a conclusion by the enquiry officer is not tenable in law. The different cases indicated in the charge were of course exclusively triable by a Court of Session. Serial Nos.1, 2, 4, 6, 7, 8, 9, 11, 12, 13 and 15 primarily related to alleged commission of offences under Section 4(1-A) of the Tamil Nadu Prohibition Act and, in some of the cases, in addition to Section 4(1-A) 328 IPC has been added. Section 4(1-A) of the Tamil Nadu Prohibition Act, 1937 is to the following effect :-

> "4(1-A)Where in the case of an offence falling under clause (a), clause (aa), clause (aaa), Clause(b), Clause (h), or clause (i) of sub-section (1), the liquor or any intoxicating drug involved contains any ingredient which is likely to cause death or grievous hurt to the consumer, then the offender, on conviction, shall be punished -
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> (i) if death has ensured due to its consumption, with rigorous imprisonment for life and with fine which shall not be less than five thousand rupees; and
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> (ii) in any other case, with rigorous imprisonment for a term which may extend to ten years and with fine which may extend to seven thousand rupees;"

A perusal of the aforesaid provision makes it clear that if death has been caused due to consumption, the sentence contemplated is life imprisonment, whereas in any other case, the sentence contemplated is imprisonment for a term which may extend to ten years and fine.

12. The offences relating to Serial Nos.3, 5, 10, 14 and 16 relate to Section 307 IPC., but in the absence of any allegation that any hurt has been caused, such offences were punishable with 7 years imprisonment and not life imprisonment. Keeping in view the above aspects, the conclusion of the enquiry officer that the Magistrate has no jurisdiction to consider the bail application and grant bail is required to be examined.

13. The provisions contained in section 437 Cr.P.C., which is the provision empowers a Magistrate to grant bail, to the extent relevant for present purpose, are extracted hereunder:-

"437. When bail may be taken in case of non-bailable offence.- (1) When any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail, but-

(i) such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life.

(ii) ...

Provided that the Court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm:

...

(3) When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence under Chapter VI, Chapter XVI or Chapter XVII of the Indian Penal Code (45 of 1860) or abetment of, or conspiracy or attempt to commit, any such offence, is released on bail under sub-section (1), the Court may impose any condition which the Court considers necessary-

(a) in order to ensure that such person shall attend in accordance with the conditions of the bond executed under this Chapter, or

(b) in order to ensure that such person shall not commit an offence similar to the offence of which he is accused or of the commission of which he is suspected, or

(c) otherwise in the interests of justice."

14. A bare perusal of the aforesaid provisions makes it clear that the Magistrate is not empowered to grant bail in those cases where there is reason to believe that the accused person has committed offences punishable with imprisonment for life or with death. Where, however, the offences alleged are not punishable either with life imprisonment or death, but punishable with some lesser punishment, i.e., 10 years rigorous imprisonment or less, there is no embargo on the jurisdiction of the Magistrate to release such accused person on bail. Even where a person is reasonably

suspected of having committed an offence punishable with life imprisonment or death, the Magistrate has jurisdiction to consider and grant bail if the applicant is a woman or sick or infirm or a child below the age of 16 years as contemplated in the first proviso.

15. In the present case, it is not the case of the Department that the Magistrate has granted bail in a case where the person was prima facie guilty of an offence punishable with life imprisonment or death. On the other hand, the only case of the Department is to the effect that the offences in 17 instances being exclusively triable by a Court of Session, the Magistrate could not have / should not have granted bail.

16. No provision has been brought to our notice which prevents the Magistrate from dealing with a bail application and grant bail to a person who allegedly committed an offence which is exclusively triable by a Court of Session. As a matter of fact, there are several offences such as under Sections 123, 124, 126, 201 .... of IPC, which are exclusively triable by a Court of Session but the sentence is not life imprisonment or death and the maximum punishment contemplated being imprisonment for particular years, i.e., 10 or 7 years. It cannot be said that in law the Magistrate has no jurisdiction to deal with such matters and grant bail. In our opinion, the charge itself was misconceived and the finding cannot be sustained.

17. Charge No.4, which has been held to be proved, is as follows :-

> "Charge No.IV :-
>
> That you, Thiru K,. Venkatesan, the then Judicial Magistrate No.III, Usilampatti applied for Casual Leave for the period from 25.8.1995 to 29.8.1995 on the ground that your mother is suffering from illness at Madras and your presence at Madras is very much essential, but accompanied the Usilampatti Bar Members to Goa for a tour, spent time with prostitutes, thus committed immoral activities concerning moral turpitude, grave misconduct, giving false information to leave the headquarters and conduct unbecoming of a Judicial Officer and thereby rendered yourself liable to be punished under the Tamil Nadu Civil Services (Discipline and Appeal) Rules."

18. As submitted by the learned counsels appearing for both the parties, the charge essentially consist of three parts. - (1) The delinquent took Casual Leave for a period from 25.8.1995 to 29.8.1995 on the ground that his mother was suffering from illness at Madras, which was not correct, and thereby the delinquent had given false information to leave the Headquarters.

(2) The delinquent had left the Headquarters and went to Goa by giving false information.

(3) The delinquent spent time with prostitutes thus committing immoral activities concerning moral turptitude.

19. Learned counsel appearing for the petitioner has submitted that when the enquiry officer came to the conclusion,

> "... No doubt the evidence is not conclusive as the Delinquent Officer went to Goa along with the members of the Bar and spent time with prostitutes.",

it must be held that charges had not been established. It is submitted by him that there is no evidence to indicate that in fact the delinquent officer had gone to Goa and similarly there is no evidence to show that the availing of casual leave on the ground that his mother was ailing is incorrect. It is also submitted by him that even though the Department had relied upon three photographs, M.Os.1 to 3, the negatives of such photograph (M.O.4) had not been proved in the presence of the delinquent and yet the enquiry officer had relied upon such M.O.4. It is further submitted that, at any rate, there is no material to indicate that the photographs were taken in Goa with some prostitutes as alleged by the Department. It is contended by the counsel for petitioner that the finding is based on hearsay evidence without any direct of circumstantial evidence. The evidence of Murugan, a practising Advocate, is relied upon. This is based on the petition dated 25.1.1996 addressed to the Chief Justice marked as Ex.P-67 and his statement during preliminary enqury is marked as Ex.P-68 and the three photographs sent by him are Material Objects 1, 2 and 3. However, during enquiry the said Murugan did not support his petition Ex.P-67 and said that it was hearsay and that he had no personal knowledge. Hence, counsel for petitioner has submitted that the findings are contrary to evidence and the findings are perverse. The counsel for petitioner also submitted that the photographs of the petitioner in the company of a lady is in respect of screen test in order to explore the possibility of acting in films. It was therefore submitted that the finding of the enquiry officer is based on conjectures and surmises. The conclusion arrived at by the enquiry officer cannot be said to be conclusion arrived by a reasonable person on the materials available. In this connection, learned counsel relied upon the following decisions:

1969 II LLJ 377 - CENTRAL BANK OF INDIA v. PRAHASH CHAND JAIN
1963 II LLJ 452 - KHARDAH & CO. v. WORKMAN
1963 II LLJ 371 - KESORAM COTTON MILL v. GANGADHAR

He has also submitted that statement of Murugan cannot be relied upon

as he did not affirm the truth of his statement when he was arrayed as witness. Therefore, his statement in the course of enquiry contrary to Exs.P-67 & 68 is in support of the petitioner and therefore the allegation of misconduct will fail. He relied upon the decision reported in 1972 I LLJ 180 (DELHI CLOTH & GENERAL MILLS v. LUDH BUDH SINGH) to state that Department has to establish the allegation of misconduct and not the delinquent.

20. We are unable to accept the submission of the learned counsel appearing for the petitioner to the effect that conclusion of the enquiry officer regarding guilt of the delinquent under Charge No.4 is not supported by any evidence. It is of course true that there is no specific material on record to prove that the delinquent had gone to Goa during the period when he availed casual leave to come to Madras. Even assuming that the delinquent had not gone to Goa, the question remains as to whether the delinquent had taken casual leave and left the Headquarters with permission on false pretext. Similarly it has to be seen whether the delinquent conducted himself in a manner unbecoming of a Judicial Officer.

21. So far as obtaining casual leave and leaving Headquarters with permission is concerned, it is not disputed that the leave was taken on the ground that mother of the petitioner was ailing at Madras. The Department has not produced any evidence to the effect that during the said period the mother of the delinquent was not ailing. However, the fact as to whether the mother of the delinquent was ailing at that stage is obviously a fact within the special knowledge of the delinquent and apart from the bare denial in his explanation, the delinquent has not bothered to adduce any material in support of the plea taken in the casual leave application regarding the alleged illness of his mother. It may be that if this would have been the only allegation, one could have expected the Department to adduce some evidence on this aspect relating to illness. However, in the present case, it is found that the Department had atleast produced photographs which show the delinquent in a close company of a lady in an unusual pose, which was admittedly shot during the same period when the delinquent's mother was allegedly sick.

22. It is of course true that the learned counsel appearing for the petitioner submitted that though the photographs had been marked in the presence of the petitioner, the negatives had not been produced in his presence. Even assuming that negatives had not been produced in the presence of the petitioner, there is no dispute that the photographs M.Os.1 to 3 had been taken on record in the presence of the delinquent. It is not his case that the photographs do not relate to him. During the course of enquiry, the delinquent has made a suggestion to one witness that the photographs should be construed as taken while the delinquent was having rehearsal for screen test

with the intention of acting in films in future. It is also not disputed by the delinquent that those photographs relate to the period when the delinquent allegedly came to Madras on casual leave on account of the alleged illness of his mother. Even assuming for a moment that the photographs have not been taken in Goa, the photographs at least indicate that the delinquent was photographed in the company of a lady in an unusual posture, which is unbecoming of a Judicial Officer, and that too during the period when his mother was allegedly ailing.

23. In such peculiar circumstances, it is obviously for the delinquent to adduce some evidence that in fact his mother was ailing and he had not applied for casual leave on a false pretext. It is also for the delinquent to prove that while the photographs were taken, the delinquent was merely rehearsing for the purpose of acting in films. In the absence of definite and justifiable reasons, it cannot be said that the earlier complaint of the Advocate Murugan and his statement Ex.P-68 dated 23.2.1996 before the C.B.I. Court, as one without basis. In such circumstances, it cannot be said that the conclusion of the enquiry officer is erroneous or without substance. The inference drawn is logical one, which any reasonable person will conclude in such circumstances.

24. Further, there is some evidence regarding the trip of Goa by the delinquent as stated by one of the witnesses, Murugan, an Advocate, during the preliminary enquiry, Ex.P-68. It is of course true that such statement was taken during the enquiry when the delinquent was not present. Subsequently, such statement was marked as a document during formal enquiry. At that stage, the person who made the statement during the preliminary enquiry came out with a vague statement that he does not remember. The witness has admitted his signature on the statement. When the statement under the preliminary enquiry was taken by a Judicial Officer and the signature of the person was obtained, it cannot be suggested that no such statement has been made. The original statement of the Advocate during the preliminary enquiry clearly indicates the trip of the delinquent to Goa. As rightly held by the enquiry officer a vague answer has been given by the witness obviously because in the meantime the witness had second thoughts for whatever reason.

25. In this context, one has to remember that the delinquent belongs to a noble service, namely, Judicial service. Like Caesar's wife, persons holding Judicial posts must always be above suspicion. Even assuming that the delinquent did not go to Goa and had come to Madras and the casual leave application was justified, the fact remains that the delinquent has been photographed in the company of a lady during the relevant time, which is meekly described as screen test for acting in film. Such conduct of the delinquent cannot be viewed leniently and is unbecomming of a

Judicial Officer. Keeping in view the sensitive post held by the delinquent, it is for him to explain under what circumstances such photographs were taken. In the absence of any such explanation, it can be safely held that the conduct of the delinquent was unbecoming of a Judicial Officer. In this connection, the observation made by the Supreme Court in (1997) 5 SCC 129 (HIGH COURT OF JUDICATURE AT BOMBAY, through its Registrar v. UDAYSINGH AND OTHERS) in paragraphs 10 and 11 are worth quoting :-

> "10. It is seen that the evidence came to be recorded pursuant to the complaint made by Smt. Kundanben, defendant in the suit for eviction. It is true that due to time lag between the date of the complaint and the date of recording of evidence in 1992 by the Enquiry Officer, there are bound to be some discrepancies in evidence. But the disciplinary proceedings are not a criminal trial. Therefore, the scope of enquiry is entirely different from that of criminal trial in which the charge is required to be proved beyond doubt. But in the case of disciplinary enquiry, the technical rules of evidence have no application. The doctrine of "proof beyond doubt" has no application. Preponderance of probabilities and some material on record would be necessary to reach a conclusion whether or not the delinquent has committed misconduct. The test laid down by various judgments of this Court is to see whether there is evidence on record to reach the conclusion that the delinquent has committed misconduct and whether a reasonable man, in the circumstances, would be justified in reaching that conclusion. The question, therefore, is whether on the basis of the evidence on record, the charge of misconduct of demanding an illegal gratification for rendering a judgment favourable to a party has been proved. In that behalf, since the evidence by Kundanben, the aggrieved defendant against whom a decree for eviction was passed by the respondent alone is on record, perhaps it would be difficult to reach the safe conclusion that the charge has been proved. But there is a contemporaneous conduct on her part, who complained immediately to her advocate, who in turn complained to Assistant Government Pleader and the Assistant Government Pleader in turn complained to the District Government Pleader, who in turn informed the District Judge. The fact that the District Judge made adverse remarks on the basis of the complaint was established and cannot be disputed. It is true that the High Court has directed the District Judge to substantiate the adverse remarks made by the District Judge on the basis of the statements to be recorded from the advocates and the complaint. At that stage, the respondent was not working at that station since he had already been

transferred. But one important factor to be taken note of is that he admitted in the cross-examination that Shri Gite, District Government Pleader, Nasik had no hostility against the respondent. Under these circumstances, contemporaneously when Gite had written a letter to the District Judge stating that he got information about the respondent demanding illegal gratification from some parties, there is some foundation for the District Judge to form an opinion that the respondent was actuated with proclivity to commit corruption; conduct of the respondent needs to be condemned. Under these circumstances, he appears to have reached the conclusion that the conduct of the respondent required adverse comments. But when enquiry was done, the statements of the aforesaid persons were recorded; supplied to the respondent; and were duly cross-examined, the question arises whether their evidence is acceptable or not. In view of the admitted position that the respondent himself did admit that Gite had no axe to grind against him and the District Judge having acted upon that statement, it is difficult to accept the contention that the District Judge was biased against the respondent and that he fabricated false evidence against the respondent of the three advocates and the complainant. When that evidence was available before the disciplinary authority, namely, the High Court, it cannot be said that it is not a case of no evidence; nor could it be said that no reasonable person like the Committee of five Judges and thereafter the Government could reach the conclusion that the charge was proved. So, the conclusion reached by the High Court on reconsideration of the evidence that the charges prima facie were proved against the respondent and opportunity was given to him to explain why disciplinary action of dismissal from service could not be taken, is well justified.

11. Under these circumstances, the question arises whether the view taken by the High Court could be supported by the evidence on record or whether it is based on no evidence at all. From the narration of the above facts, it would be difficult to reach a conclusion that the finding reached by the High Court is based on no evidence at all. The necessary conclusion is that the misconduct alleged against the respondent stands proved. The question then is what would be the nature of punishment to be imposed in the circumstances? Since the respondent is a judicial officer and the maintenance of discipline in the judicial service is a paramount matter and since the acceptability of the judgment depends upon the credibility of the conduct, honesty, integrity and character of the office and since

the confidence of the litigant public gets affected or shaken by the lack of integrity and character of the judicial officer, we think that the imposition of penalty of dismissal from service is well justified. It does not warrant interference."

26. We are therefore unable to find any good ground to accept the contentions strenuously urged by the learned counsel for the petitioner in so far as Charge No.IV is concerned. The decisions relied upon by the learned counsel for the petitioner does not improve the case of the petitioner any further. The petitioner is unable tio show that his mother was really sick and that he had taken part in the alleged screen test and he aced bna fide. The Enquiry Officer has given sufficient opportunity to the petitioner to clear himself of the charges levelled and the conclusion arrived at by the officer will fall within the parameters of test of reasonableness and preponderance of probability that is required in such proceedings as laid down by the Apex Court in (1997) 5 SCC 129 referred to above.

27. For the aforesaid reasons, we have come to the conclusion that Charge No.2 was misconceived and the Charge No.4 relating to unbecoming conduct of the delinquent has been proved. Even though the delinquent has been exonerated in respect of other charges, Charge No.4 is serious enough to sustain the order of dismissal. As observed by the Supreme Court in AIR 1963 SC 779 (State of Orissa & others Vs. Bidhya Bhusan), when the finding relating to one charge is serious enough and can be sustained, the order of dismissal even on one such charge cannot be quashed. The writ petition is therefore liable to be dismissed.

28. Accordingly the writ petition is dismissed. No costs.

We record our appreciation of the valiant effort taken by the learned counsel for the petitioner in his pursuit to convince this Court in all aspects of the case and supporting his arguments by decisions with sincerity and dedication.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

dpk

To

1.The Secretary to Government of Tamil Nadu,
Home Department,
Fort St. George, Chennai 9.

2. The Registrar General,
High Court of Judicature,
at Madras 104.

+1cc to M/s. B.Rajendran, Advocate Sr 15985

+1cc to Govt. Pleder Sr 16104

+1cc to Mr.K.Venkatesan, Advocate Sr 16134

MAB (CO)
km/12.4.

WP.No.36613/2003