

Court No. - 6

Case :- WRIT - A No. - 11285 of 2020

Petitioner :- Virendra Pratap Shukla Home Guard Resident No.0234

Respondent :- State Of U.P. Thru Prin.Sec. Home Guards Lko. And Ors.

Counsel for Petitioner :- Ramesh Kumar Srivastava,Shailesh Verma

Counsel for Respondent :- C.S.C.

Hon'ble Abdul Moin,J.

1. Heard learned counsel for the petitioner and learned Standing counsel appearing on behalf of the State-respondents.
2. Under challenge is the order dated 03.04.2020. a copy of which is annexure 7 to the writ petition whereby the services of the petitioner as Home Guard have been dispensed with.
3. Bereft of unnecessary details, the case set forth by the learned counsel for the petitioner is that the petitioner has been working since long on the post of Home Guard. The conditions regarding discharge, suspension and resignation of Home Guards is governed by the Uttar Pradesh Home Guard Adhiniyam, 1963 of which Section 12 provides for a simple discharge or removal from service without any provision or obligation upon an employer to conduct a full fledged inquiry.
4. The petitioner had initially been removed from service vide order dated 22.11.2019. The representation filed against the same had also been rejected vide order dated 04.01.2020.
5. Being aggrieved, the petitioner filed a writ petition before this Court being Writ Petition No. 5008 (SS) of 2020 Inre; Home Guard Virendra Pratap Shukla Vs. State of U.P and Ors.
6. The writ Court vide judgment and order dated 20.02.2020, a copy of which is annexure 6 to the writ petition quashed the orders dated 22.11.2019 &

04.01.2020. The writ Court further directed the District Commandant Home Guard, Balrampur to pass a fresh order pertaining to the petitioner strictly in accordance with the procedure indicated in circular dated 02.09.2013. The copy of the circular dated 02.09.2013 has been brought on record by the respondents along with the counter affidavit as annexure CA 2 which circular provides for dispensing with the services of Home Guard after issue of Show Cause Notice.

7. In pursuance to the order of the writ Court, the respondents issued a Show Cause Notice dated 01.11.2019, a copy of which is annexure 2 to the writ petition followed by another Show Cause Notice dated 13.11.2019, a copy of which is part of annexure 2 to the writ petition requiring the petitioner to submit his reply. The petitioner claims to have submitted his reply on 19.11.2019, a copy of which is annexure 3 to the writ petition wherein he denied the charges that had been levelled against him in the Show Cause Notice. The competent authority vide order impugned dated 03.04.2020, a copy of which is annexure 7 to the writ petition has dispensed with the services of the petitioner. The charges against the petitioner have been put point wise in the said order.

8. The contention of learned counsel for the petitioner is that a perusal of Point No. 2 indicated in order impugned would indicate that while considering the reply of the petitioner in pursuance to the Show Cause Notice issued by the respondents, the respondents have also examined various witnesses in support of the charges as levelled against the petitioner in the said Show Cause Notice i.e of the petitioner having assembled on 18.10.2019 and having tried to create pressure for taking back a dismissed Home Guard namely Sri Pawan Soni in service and having restrained the other Home Guards, who were on the spot, to not board the bus for the purpose of election duty.

9. The contention is that in terms of the circular dated 02.09.2013 which is applicable on Home Guards and in terms of the relevant regulations no inquiry is required to be conducted against a Home Guard yet when only a summary procedure is prescribed consequently, the respondents should have simply considered the reply that had been submitted by the petitioner in pursuance to the Show Cause Notice dated 01.11.2019 and there would not have any occasion

for examining the witnesses in support of the allegations levelled in the said Show Cause Notice inasmuch as nothing restrained the respondents from following the summary procedure as has been prescribed in the circular dated 02.09.2013. The contention is that once the witnesses have been examined by the respondents in support of the charges as levelled against the petitioner in the said Show Cause Notice consequently, the said witnesses should also have been permitted to be examined by the petitioner and in absence of such examination being permitted to the petitioner it is apparent that the services of the petitioner have been dispensed with on the basis of material which has been gathered behind his back and thus the procedure which has been adopted by the respondents can no longer be said to be summary in nature as prescribed in the circular dated 02.09.2013.

10. The other ground as urged by the learned counsel for the petitioner is that a perusal of the order impugned would indicate that despite the charge of the petitioner having sat on a Dharna Pradarshan from 01.12.2019 to 04.12.2019 was not forming part of the Show Cause Notice and obviously could not have formed part of the notice as the Show Cause Notice is dated 01.11.2019 and the allegation levelled against the petitioner of Dharna Pradarshan is for the period from 01.12.2019 to 04.12.2019 consequently, it was in the fitness of things that the respondents, in case were of the view that the petitioner had indulged in a Dharna Pradarshan should have given a Show Cause Notice with respect to the said charge also but not giving a Show Cause Notice with respect to the said charge and referring to the said charge while passing the order dispensing with the services of the petitioner would be clearly an act which cannot stand the test of reasonableness as well as being in gross violation of rules of natural justice whereby vitiating the order impugned on this ground alone.

11. On the other hand, learned Standing counsel on the basis of averments in the counter affidavit argues that admittedly the petitioner being a Home Guard there is no detailed procedure which has been prescribed to be followed for the purpose of removal of his services. The only procedure as prescribed is in terms of the circular dated 02.09.2013 which prescribes for a Show Cause Notice to be

issued to a Home Guard and thereafter an action to be taken in pursuance thereof. It is contended that after the initial order of dispensing with the services of the petitioner had been set aside by the writ Court vide judgment and order dated 20.02.2020, a Show Cause Notice dated 01.11.2019 followed by the reminder dated 13.12.2019 had been given to the petitioner and after considering the reply of the petitioner dated 19.11.2019, a detailed order dated 03.04.2020 has been passed whereby all the points as have been referred to by the petitioner in his reply have been considered and thus there is no illegality or infirmity in the order by which the services of the petitioner have been dispensed with.

12. Heard the learned counsel appearing on behalf of the contesting parties and perused the records.

13. From the arguments as raised by the learned counsel appearing on behalf of the contesting parties and perusal of records it emerges that while the petitioner was working as a Home Guard, initially his services were dispensed with vide order dated 22.11.2019 and the representation filed against the said order had also been rejected vide order dated 04.01.2020. The petitioner being aggrieved filed a writ petition and the writ Court vide judgment and order dated 20.02.2020 had set aside both the orders with the direction to the District Commandant Home Guard to pass a fresh order strictly in accordance with the procedure indicated in the circular dated 02.09.2013. The circular dated 02.09.2013 only prescribes a summary procedure to be followed in case of dispensing with the services of a Home Guard on the grounds as enumerated in the said circular meaning thereby that no detailed inquiry is to be held against a Home Guard in order to dispense with the services as the Home Guard is not a holder of civil post.

14. Subsequent to the order of the writ Court, the respondents issued a Show Cause Notice dated 01.11.2019 whereby the petitioner has been charged with the allegations described above. The said Show Cause Notice was followed by a reminder dated 13.11.2019. The petitioner submitted a detailed reply on 19.11.2019 which has not found favour with the competent authority who, vide detailed order dated 03.04.2020, has dispensed with the services of the

petitioner.

15. Perusal of the order dated 03.04.2020 would indicate that the order has been split into three points. So far as point no. 2 is concerned, a perusal of the same would indicate that various witnesses have been cited by the respondents in support of the said charge against the petitioner. Incidentally, none of the witnesses have been indicated in the Show Cause Notice that had been issued to the petitioner. Nothing precluded the respondents from passing an order on the basis of the reply filed by the petitioner inasmuch as once show cause notice issued to the petitioner did not indicate any witnesses cited in support of the said notice, consequently, placing reliance on the statement of witnesses in support of the charge against the petitioner would clearly be an act which is not countenanced in the eyes of law and cannot be said to be legal and valid in the eyes of law more particularly when it is only a summary procedure which has been prescribed as per the circular dated 02.09.2013.

16. Another aspect of the matter is that the order impugned also refers to the petitioner having indulged in a dharna pradarshan between 01.12.2019 to 04.12.2019. Admittedly, no Show Cause Notice with respect to the said charge has ever issued to the petitioner inasmuch as the only show cause notice issued to the petitioner was of 01.11.2019 and the Dharna Pradarshan is alleged to have been done by the petitioner from 01.12.2019 to 04.12.2019 i.e subsequent to the said show cause notice. Again nothing precluded and restrained the respondents from issuing a notice to the petitioner with respect to the said charge but not issuing any notice with respect to the said charge and thereafter considering the said charge against the petitioner while passing an order removing the petitioner from service renders the order impugned to be patently bad in the eyes of law on this ground alone.

17. Taking into consideration the aforesaid discussion, the writ petition is allowed. The order impugned dated 03.04.2020, a copy of which is annexure 7 to the writ petition is quashed. The respondents are directed to pass a fresh order after considering the reply of the petitioner dated 19.11.2019.

18. Let an order in this regard be passed within a period of six weeks from the date of receipt of a certified copy of this order.

Order Date :- 17.5.2024

Pachhere/-