

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2016

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

WP.No.17070 of 2016

B.Raghavendran

.. Petitioner

Vs.

1.Inspector General of Police,
Chennai 600 004.

2.Additional Director General of Police,
Home Guards, Chennai 600 004.

3.Superintendent of Police,
Villupuram District,
Villupuram.

4.Armed Reserve Deputy Superintendent of Police,
Kakuppam, Villupuram.

5.Area Commander,
Home Guards, Near Police Station,
Villupuram, Villupuram District.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the concerned records relating to the order dated 08.07.2015 in Ma.Aa.No.658/2015 Na.Ka.No.H2/026836/2015 passed by the 3rd respondent in so far as the petitioner is concerned and quash the same and consequently direct the 3rd respondent to reinstate the petitioner in services of Home Guards with all consequential monetary and other benefits.

For Petitioner : Mr. M.Gnanasekar

For Respondents : Mrs.P.Kavitha
Government Advocate

O R D E R

The writ petition has been filed by the writ petitioner for issuance of Writ of Certiorarified Mandamuus, calling for the concerned records relating to the order dated 08.07.2015 in Ma.Aa.No.658/2015 Na.Ka.No.H2/026836/2015 passed by the 3rd respondent in so far as the petitioner is concerned and quash the same and consequently direct the 3rd respondent to reinstate

the petitioner in services of Home Guards with all consequential monetary and other benefits.

2.The case of the petitioner is that originally he was appointed as a Home Guard in the Tamilnadu Home Guards Organisation on 17.04.2004 and he has been continuously working from the date of appointment without any complaint. He has also stated that he was working without any absence and his services were appreciated by his superiors and there was no complaint in respect of his work as on date.

3.The writ petitioner also come forward by saying that he has been attending duty regularly without absence upto 30.06.2015. While so, the Superintendent of Police, Villupuram by an order in No.Ma.No.658/2015 Na.Ka.No.H2/026836/2015 dated 08.07.2015 refused to renew the appointment on the ground that the petitioner's services were not satisfactory during the past preceding 3 years. Along with the writ petitioner, there are about 27 persons' appointments were not renewed. In the list of non-renewal, this petitioner's name was find place in Serial No.8. But the said order was passed without giving any notice to the petitioner and the same was passed by the 5th respondent behind his back. Therefore, the petitioner was made a representation on 01.08.2015 to the Inspector General of Police, namely the 1st respondent herein and again on 24.08.2015 a representation was sent by request for reinstatement into services. Apart from this, the petitioner also made representation on 24.09.2015 to the 3rd respondent/Superintendent of Police for the very same request and he has duly enclosing all the relevant certificates to show that he has attended the duty continuously for the 3 preceding years without any absence. Thereafter, on 14.01.2016, he has submitted a representation to the 1st respondent and on 18.01.2016 and 08.02.2016 to the 3rd respondent, the representations were sent by the petitioner.

4.A Circular has been issued by the Additional Director General of Police, Civil Defence Training and Additional Commandant General, Home Guards, Nandanam, Chennai-35 regarding the disciplinary action against the erring Home Guards Personnel and the Circular reads as follows:

"1....Of late many appeal petitions have been received from the - (who were removed recently for certain lapses) under the pretext the district S.P./C.O.P. has not followed the under rule 12(4) of Tamilnadu HGs Rules 1963 and in some cases the removed HGs had gone to the courts resulting in unnecessary comments.

2.As per Rule 12(4) of the Tamil Nadu Home Guard Rule 1963 "all cases of indiscipline should be brought

before an orderly room consisting of the Adjutant, a Divisional Commander and a Company Commander, and the Home guard charged shall be given an opportunity to explain the charge against him". After only, the final orders should be passed and no Home guard should be straight or removed.

3. Before removing or dismissing a Home guard from the Home guard organization, he should be given reasonable opportunity to defend himself and in Para above have to be followed very closely without any deviation.

4. The district SPs and COPs are requested to follow the same while taking disciplinary action against the erring Home guards so as to avert court cases and administrative inconveniences.

sd.xx

Addl. D.G.P. Civil Defence Training
& Addl. Commdt. Genl. Home Guards"

5. The writ petitioner also come forward by saying that as per the above it is clear that the Home Guards cannot be sent out unceremoniously without giving any opportunity of hearing and in the case of the petitioner, he has working from the date of appointment for more than 5 years continuously and his service was appreciated by the superiors and the appreciation certificates and the certificates of his merits were also issued. Therefore, challenging the said order dated 08.07.2015, for refusing the renewal of the petitioner this petitioner has filed the present writ petition for the above prayer on various grounds.

6. The writ petitioner also states that the Home Guards are governed by Home Guard Act, 1963 and as per Section 13 of the Act deals with cases of suspension or removal of the Home Guard and under sub-section (2) of Section 13, no order of suspension or removal can be passed without giving an opportunity of hearing to the affected Home Guard to be heard in defence. The 3rd respondent in passing order invoking Rule 12 of the Tamil Nadu Home Guards Rules, which has deals with the procedure to be following while imposing the penalty or removal from services, therefore, as per the sub-rule (4) of the Rule 12, all cases of indiscipline shall be brought before the Orderly Room consisting of the Adjutant, a Divisional Commander and a Company Commander, charges framed and the Home Guard charged shall be given an opportunity to explain the charges framed against him and the findings of the orderly room and its recommendation shall be forwarded to the Area Commander who shall decide what further action is to be taken in the matter. The petitioner's case, the Area Commander is ill-feeling against the petitioner, he has submitted a representations to the Area Commander to consider

the petitioner for promotions as Area Commander which was not to the liking of the Area Commander. Therefore, the Area Commander seems to have sent adverse report against the petitioner, which formed the basis of the order of the removal from services dated 08.07.2015 was passed. Therefore, the Act and the Rules provide for an opportunity of hearing to be given before passing the order of removal, but in the petitioner's case, without giving any personal opportunity, the order has been passed. Therefore, challenging the said order, the writ petitioner has filed the petition for the above prayer.

7.The 3rd respondent has filed the counter denying the allegations set out by the petitioner in the affidavit.

8.The 3rd respondent stated that the writ petitioner Mr.B.Raghavendran has appointed as a Home Guard in Villupuram District as per the provisions of Tamil Nadu Home Guards Act 1963 and the Tamil Nadu Home Guards Rules 1963, for a period of three years. The Area Commander, Home Guards, Villupuram District 5th respondent herein sent proposal not to extend the services of 27 Home Guards including the petitioner whose performance is not satisfactory and indiscipline.

9.The 3rd respondent also states that the 4th respondent Deputy Superintendent of Police, Armed Reserve, Villupuram was instructed to report on the performance of the above 27 Home Guards personnel during review period and send a report. During the review only 11 Home Guards of Villupuram 'A' Company, Tindivanam 'B' Company, Gingee 'D' Company reported including the petitioner and give explanation. 16 Home Guards did not appear and tender their explanation. In his report, the writ petitioner is fighting with Co-Home Guards, uttering unparliamentary words during the work place inciting caste feelings among the Home Guards. He also gave report against the remaining members and recommend that their services need not be extended. On considering the reports given by the respondents 4 and 5 and in view of the 27 Home Guards including the petitioner Thiru.Raghavendran performance is not satisfactory during the 3 years period their service was not extended and an order was passed for the same on 08.07.2015. Not only the petitioner, totally 27 Home Guards were not extended.

10.The 3rd respondent also states that though the writ petitioner had made a representation to the respondents 1 and 2 with a request to reinstate him in duty and the same has been rejected by the A.D.G.P. and Additional Commandant General, Home Guards vide orders Rc.No.A1/1835/DCD&HG/2015, dated 10.06.2016. The circular mentioned by the petitioner is not applicable to this case. If a member is terminated within a period of three years then only question of opportunity would arise. In this

case, the petitioner is relieved only on completion of three years. Therefore, the question of affording an opportunity does not arise. In a similar case before the Madurai Bench of Madras High Court in WP(MD)No.10042 of 2012, dated 09.09.2014, this Court has considered the renewal of the Home Guard and dismissed the writ petition and the said writ petition is squarely applicable to the petitioner's case also.

11.The 3rd respondent also states that during the tenure of the service, the petitioner disobey the superior order and the performance of the petitioner and others are not satisfactorily. Therefore, his service was not extended and the 3rd respondent prayed for dismissal of the writ petition before this Court.

12.Heard Mr.M.Gnanasekaran, learned counsel appearing for the petitioner and Mrs.P.Kavitha, learned Government Advocate, appearing for the respondents.

13.It is an admitted fact that this petitioner was appointed as a Home Guard on 17.04.2004 and he has been put up more than 5 years of service.

14.During his service period, he was appreciated by the higher officials of the respondent and for his good service meritorious certificates were also issued to him.

15.On fair reading of the present impugned order dated 08.07.2015, it is stated that 27 persons including this petitioner was removed from service on the ground that during the period of their service is not satisfactorily and served with indiscipline manner.

16.It is the case of the respondents that this petitioner has served with indiscipline manner and not satisfactorily, there must be an opportunity to be given for giving explanation about his indiscipline work and unsatisfactory service. Admittedly, there was no show cause notice issued by the respondents, calling the petitioner for explanation about his indiscipline activities and unsatisfactory service.

17.Admittedly, the Additional Director General of Police, Civil Defence Training and Additional Commandant General, Home Guards, Nandanam, Chennai-35 has issued a circular is as follows:

"1....Of late many appeal petitions have been received from the - (who were removed recently for certain lapses) under the pretext the district S.P./C.O.P. has not followed the under rule 12(4) of Tamilnadu HGs Rules 1963 and in some cases the removed HGs had gone to the courts resulting in unnecessary comments.

2.As per Rule 12(4) of the Tamil Nadu Home Guard

Rule 1963 "all cases of indiscipline should be brought before an orderly room consisting of the Adjutant, a Divisional Commander and a Company Commander, and the Home guard charged shall be given an opportunity to explain the charge against him". After only, the final orders should be passed and no Home guard should be straight or removed.

3.Before removing or dismissing a Home guard from the Home guard organization, he should be given reasonable opportunity to defend himself and in Para above have to be followed very closely without any deviation.

4.The district SPs and COPs are requested to follow the same while taking disciplinary action against the erring Home guards so as to avert court cases and administrative inconveniences.

sd.xx

Addl. D.G.P. Civil Defence Training
& Addl. Commdt. Genl. Home Guards"

18.As per the circular in para-3 it is made clear that before dismissing a Home Guard from the Home Guard Organisation, he should be given reasonable opportunity to defend himself and the circular also represented that the District S.P.s and C.O.P.s are requested to follow the same while taking disciplinary action against the erring Home Guards so as to avert Court cases and administrative inconveniences.

19.Apart from this, as per Rule 12(4) of the Tamil Nadu Home Guard Rule 1963, it is stated as follows:

"all cases of indiscipline should be brought before an orderly room consisting of the Adjutant, a Divisional Commander and a Company Commander, and the Home guard charged shall be given an opportunity to explain the charge against him"

20.As per the above Rule 12(4) of the Tamil Nadu Home Guard Rule 1963, it is made clear that in all cases of indiscipline should be brought before an orderly room consisting of the Adjutant, a Divisional Commander and a Company Commander, and the Home Guard charged shall be given an opportunity to explain the charge against him. The Rule also says that then only the final orders should be passed and no Home Guard should be straight away dismissed or removed from service.

21.In the counter, the respondents were stated that the above Act and the Rules are not applicable to the present case on hand.

22.I disagree with the counter of the respondents that the

said circular and rules were not applicable. Both the circular and Rules were clearly stated that if any action is taken for indiscipline work against the Home Guard and unsatisfactory work, he should be given an opportunity to defend his case. But, admittedly, in this case, there is no record produced by the respondents to show that before passing the impugned order dated 08.07.2015, no notice or show cause were issued to the petitioner calling explanation.

23. Time and again, this Court and the Hon'ble Apex Court very clearly held in various cases that when the Rules and the Act are will clearly shows that any employees is removed from service without giving any opportunity to the personal hearing that orders should go. Accordingly, the present case on hand without giving any personal opportunity or issuing any show cause notice or calling explanation, the present impugned order was passed against the circular and the Rule 12(4) of the Tamil Nadu Home Guard Rules, 1963. Hence, the impugned order dated 08.07.2015 in respect of this petitioner in Serial No.8 is liable to be set aside.

24. In the result:

(a) the writ petition is allowed, by setting aside the order dated 08.07.2015 in Ma.Aa.No.658/2015 Na.Ka.No.H2/026836/2015, passed by the third respondent in so far as the petitioner is concerned;

(b) the 3rd respondent is hereby directed to reinstate the petitioner in to services of Home Guards and the petitioner is not entitled to backwages and service benefits from the date of order of termination dated 08.07.2015 till the date of reinstatement;

(c) the said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

25. Accordingly, this writ petition is allowed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

vs

To

1. Inspector General of Police,
Chennai 600 004.

2. Additional Director General of Police,
Home Guards, Chennai 600 004.

3. Superintendent of Police,
Villupuram District,
Villupuram.

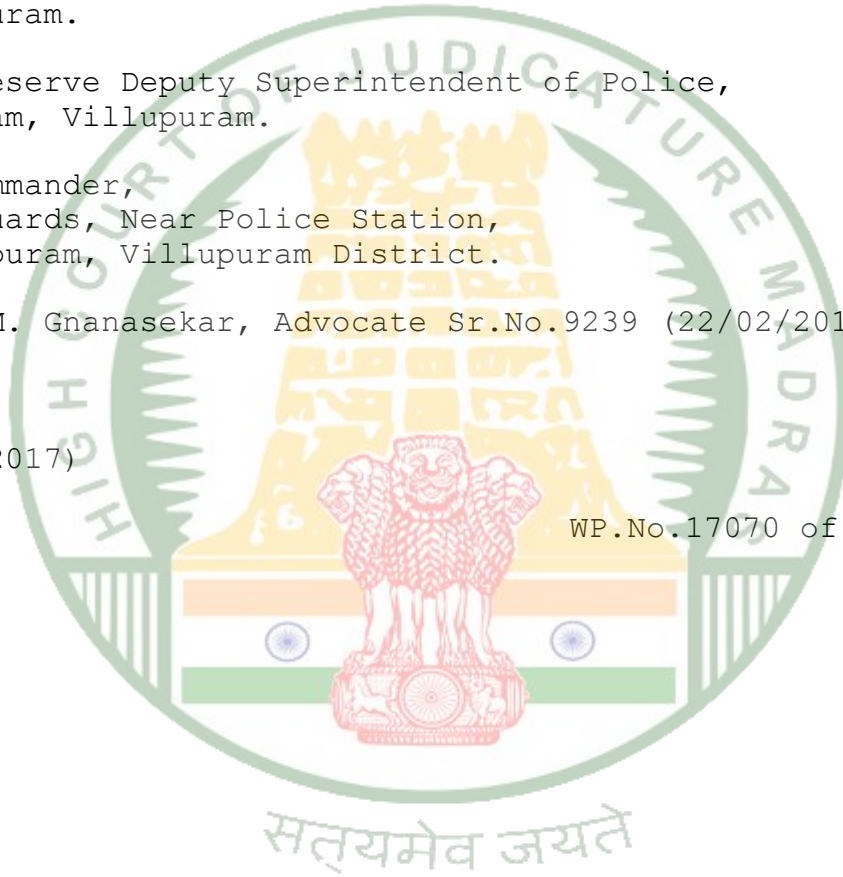
4. Armed Reserve Deputy Superintendent of Police,
Kakuppam, Villupuram.

5. Area Commander,
Home Guards, Near Police Station,
Villupuram, Villupuram District.

+1 cc to M. Gnanasekar, Advocate Sr.No.9239 (22/02/2017)

sai(CO)
md(13/02/2017)

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