

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 1.6.2017

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.No.483 of 2017
and
C.M.P.Nos.7256 and 7257 of 2017

1. Inspector General of Police,
Home Guards, 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 Supt.
of Police, Kakuppam, Villupuram.
 5. Area Commander,
Home Guards, West Police Station,
Villupuram, Villupuram District.
- Versus
- Appellants
- B.Raghavendran
- Respondent

Prayer: Writ Appeal filed filed under Clause 15 of the Letters Patent against the order dated 24.11.2016 passed in W.P.No.17070 of 2016 on the file of this court.

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 dt 8.7.2015 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 in reinstate the petitioner in services of Home Guards with all consequential monetary and other benefits

For appellants : Mrs.A.Srijayanthi,
Special Govt. Pleader

For respondent : Mr.M.Gnanasekar

JUDGMENT

(Judgment of the court was made by HULUVADI G.RAMESH, J.)

Heard Mrs.A.Srijayanthi, learned Special Government Pleader appearing for the appellants and Mr.M.Gnanasekar, learned counsel, who is directed to take notice for the respondent. With consent, the main case itself is taken up for disposal.

2. It appears that regarding non-regularization of appointment of the petitioner in the service of Home Guards, he filed a writ petition challenging the said act. It appears that as per a Circular issued by the Additional Director General of Police, in case of three years of continuous service on contractual basis or in the usual course, it is the discretion of the appointing authority to decide whether a person can be regularized. In the case on hand, during 2004, the petitioner was appointed on contractual basis and he continued so upto the date of action being taken not to regularize but to discharge him. In the writ petition filed before the learned Single Judge, a stand was taken by the Government that regularization is not a matter of right and it is a discretion available to the appointing authority. Since the petitioner was found indulged in some misconduct, he was so discharged and the question of extending him any benefit of holding enquiry and taking a decision does not arise as it is the case of temporary appointment.

3. In this appeal, amongst other several grounds raised by the Government, it is submitted that regularisation of Home Guards appointed on contractual basis is not a matter of right.

4. The learned counsel appearing for the respondent/writ petitioner has submitted that the petitioner was in continuous service for more than eleven years as on the date of taking action not to regularise the services of the petitioner and on the ground of alleged misconduct which he is alleged to have involved, his services were not regularized as against the G.O. issued by the Government. The G.O. provides that for any action to be taken with regard to any misconduct is to be done only after holding enquiry. This was brought to the notice of the learned Single Judge and in that view of the matter, the learned Single Judge has observed that no due opportunity was given nor any enquiry was held before a decision is taken by

the appointing authority not to regularize the services of the petitioner and deprecating such an act ordered for reinstatement without backwages.

5. In the case on hand, the allegations sought to be made against the petitioner was that non-co-operation to the higher officials and indiscipline work. The learned Single Judge, having noted that circular provides for such enquiry to be held before any action is being taken and having observed that no enquiry was held on some bald allegations, ordered for reinstatement.

6. The learned Special Government Pleader brought to the notice that a warning memo issued to the petitioner on 9.6.2015 about the non-attendance of not less than 10 service calls. But, in that case, as found in the typed set, he has been given a warning to co-operate with the service calls and thereafter only, this action seems to have been taken and therefore, we do not find any merit in the arguments advanced by the learned Special Government Pleader.

7. We do not find any illegality in the order passed by the learned Single Judge. When the circular provides for extension of benefits of enquiry and opportunity of hearing before any action is taken with regard to any misconduct, in the absence of any such opportunity before discharge or termination, it is bad and non-est in the eye of law. In the circumstances, we are of the view that the decision of the learned Single Judge ordering reinstatement with backwages does not call for any interference. Accordingly, the writ appeal is disposed of. However, any such misconduct is committed in future, the Department is at liberty to take action and to proceed in accordance with law. Further, it is made clear that since non-compliance of the circular is found, the decision taken by the Department is held as bad in the eye of law. However, liberty is given to the Department to proceed in accordance with the circular issued by the Additional Director General of Police, as referred in the typed set and if it is found otherwise, it is for them to take a decision in accordance with law. No costs. The connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

ssk.

To:

- 1.The Inspector General of Police,
Home Guards, Chennai 600 004.
2. The Additional Director General
of Police, Home Guards,
Chennai 600 004.
3. The Superintendent of Police,
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Villupuram.
4. Armed Reserve Deputy Supt.
of Police, Kakuppam, Villupuram.
5. Area Commander,
Home Guards, West Police Station,
Villupuram, Villupuram District.

+1cc to Government Pleader sr.39407

+1cc to Mr.M.Ganasekar,Advocate sr.39966

W.A.No.483 of 2017

vsn(co)
ss(20/6/2017)



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