IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :26.09.2018

CORAM
THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI

W.P. No.25086 of 2018 and WMP No.29143 and 29144 of 2018

S.Sundara Gandhi

..... 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 Town Police Station,
   Villupuram, Villpuram District.

..... Respondent

PRAYER Writ petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified mandamus after 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.

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For Petitioner : Mr. M.Gnanasekar

For Respondents : Mrs.R.Janaki,

Additional Government Pleader

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O R D E R

The grievance of the petitioner in this writ petition is that while he was working as Home Guard from 14.12.1995 in the Tamil Nadu Home Guard Organisation in the District of Villupuram upto 30.06.2015, the Superintendent of Police, Villupuram by an order in Ma.No.658/2015 Na.Ka.No.H2/026836/2015 dated 08.07.2015 without giving any opportunity of hearing to the petitioner, refused to renew the appointment on the ground that the petitioner's service was not found satisfactory for the past preceding three years. The petitioner further submits that along with petitioner, appointment of 27 persons were not renewed. Thereafter, challenging the said impugned order, the petitioner made several representations to the respondents to reinstate him into service. Since no response is forthcoming, the petitioner came forward to file this writ petition to quash the impugned order and seeking for a direction to the 3rd respondent to reinstate the petitioner into services of Home Guards with all consequential monetary benefits.

2. During the course of hearing, the learned counsel appearing for the petitioner has drawn the attention of this Court to the Circular issued by the Additional Director General of Police, Civil Defence Training and Additional Commandant General, Home Guards, Nandanam, Chennai - 35 wherein in paragraph No.3 it has been clearly revealed that "before removing or dismissing a Home Guard from the Home guard organisation, he should be given reasonable opportunity to defend himself and in para above have to be followed very closely without any deviation", so also, the similarly situated person has filed writ petition in WP No.17070 of 2016 before this Court and obtained an order of reinstatement, wherein it has been held as follows :

> "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 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 08.07.2018 in respect of this petitioner is Serial No.8 is liable to be set aside.
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> 24. In the Result :
>
> (a) the writ petition is allowed, by setting

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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 terminationd ated 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 copy of this order."

3. After hearing the learned counsel appearing for the parties, going through the materials on record and considering the aforesaid fact, notwithstanding the fact that the petitioner approached this Court at a belated stage, this Court is of the view that the petitioner is entitled to the relief as sought for. Accordingly, this writ petition stands disposed of in terms of the order passed in the aforesaid writ petition, with a direction to the 3rd respondent to reinstate the petitioner into service, by setting aside the impugned order in Ma.No.658/2015 Na.Ka.No.H2/026836/2015 dated 08.07.2015. However, the petitioner is not entitled to any backwages and consequential monetary benefits during the aforesaid period and it is made clear that setting aside of the impugned order shall not stand on the way of the respondents to proceed against the petitioner in accordance with law, if he is guilty of any delinquency as alleged against him. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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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.

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

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

+1cc to Mr.M.Gnanasekar, Advocate, S.R.No.67161
+1cc to the Government Pleader, S.R.No.67068

W.P. No.25086 of 2018

VBA(CO)

rrs 11/10/2018

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