

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI**

WRIT PETITION No.1772 of 2015

ORDER: (ORAL)

(Per Suresh Kumar Kait, J)

Vide the present petition, petitioners have assailed order dated 07.08.2014 passed in O.A.No.2041 of 2014 by the Andhra Pradesh Administrative Tribunal, Hyderabad, whereby the application filed by the 1st respondent under Section 19 of the Administrative Tribunals Act, 1985 has been allowed, directing the petitioners to reinstate the 1st respondent into service as Home Guard subject to his eligibility otherwise.

2. The present writ petition is filed stating that the 1st respondent was selected as Home Guard during the year 1999 and working in Vijayawada City. A case in Cr.No.272 of 2010 under Section 384 read with 34 IPC was registered against him basing on the report given by one Nimmathota Peda Manga alleging that he collected bribe from her and was caught red-handed by the higher officers. Basing on the gravity of the contents of the reports submitted against the 1st respondent and neglect of duty, he was removed from the rolls of Home Guards Organisation vide D.O.No.31/2010 (C.No.3586/H1/2010) dated 28.09.2010 of the Commissioner of Police, Vijayawada City. After completion of trial, the III Addl. Chief Metropolitan Magistrate, Vijayawada, pronounced judgment

convicting the 1st respondent. Later on, he was released under Section 4(1) of the P.O. Act.

3. Learned counsel appearing on behalf of the petitioners submits that the 1st respondent was released under Section 4(1) of the P.O. Act after due admonishing. However, the learned Tribunal, without considering the fact that he was involved in a criminal case, allowed the O.A., filed by the 1st respondent, holding that no stigma is attached with the release of the 1st respondent under the Probation of Offenders Act and as he is not under any stigma, the 1st respondent is entitled for reinstatement into service.

4. Fact remains that the 1st respondent was appointed in the year 1999 and removed on in the year 2010 on the ground that he was involved in Cr.No.272 of 2010 under Section 384 read with 34 IPC as mentioned above. It is admitted fact that a show-cause notice was not issued calling for explanation in terms of Rule 7 of the Madras Home Guard Rules, 1949 before the removal order was passed.

5. Since the 1st respondent was released after admonishing by the competent criminal court, the learned Tribunal directed the petitioners to reinstate the 1st respondent into service as Home Guard, subject to his eligibility otherwise.

6. It is submitted by the learned Govt. Pleader appearing on behalf of the petitioners that the post of Home Guard is a temporary and honorary one and therefore reinstatement order cannot be issued in the

present case and if any orders are passed as per the directions of the learned Tribunal, the petitioners have to pay back-wages.

7. We find force in the submission of the learned Govt. Pleader that since the 1st respondent is not working since 2010, therefore, the question of paying wages for the said period does not arise. Since the 1st respondent was removed from service on the ground that he was involved in a criminal case, wherein he was later released under Probation of Offenders Act, we are of the considered opinion that interests of justice would be met if the petitioners are directed to appoint the 1st respondent in the post of Home Guard without back-wages within a period of four weeks from the date of receipt of this order, subject to availability of vacancies. If no vacancies are available as on today, the 1st respondent shall be appointed as and when vacancies arise.

8. With the above directions, the writ petition is disposed of. No order as to costs.

As a sequel, miscellaneous petitions, if any pending, shall stand closed.

SURESH KUMAR KAIT, J

ABHINAND KUMAR SHAVILI, J

February 21, 2018
MRR