

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

WRIT PETITION No.35716 of 2014

ORDER: (ORAL)

(Per Suresh Kumar Kait, J)

Vide the present petition, petitioners have assailed order dated 22.08.2014 passed in O.A.No.5014 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 disposed of, directing the petitioners to reinstate the 1st respondent into service as Home Guard forthwith and pass appropriate orders within a period of three weeks from the date of receipt of the order.

2. The present writ petition is filed stating that the 1st respondent submitted representation to the Addl. DGP, Home Guards, Hyderabad, directly in the month of March, 2013, against the removal order dated 24.03.2004, requesting him to re-enroll him as Home Guard, by informing the case facts in Cr.No.78/2001 of Cumbum P.S., wherein he was acquitted under Section 232 Cr.P.C., by the Asst. Sessions Judge, Markapur on 13.03.2017 vide S.C.No.211 of 2005.

3. Learned counsel appearing on behalf of the petitioners submits that the 1st respondent was acquitted owing to the witness turning hostile and not because of his innocence/lack of participation in the riot and facts vide office letter in C.No.3571/H1/2003 dated 01.05.2013 dated 21.03.2013. However, the learned Tribunal, without

considering the fact that he was involved in a criminal case and suppressed at the time of recruitment, allowed the O.A., filed by the 1st respondent.

4. Fact remains that the 1st respondent was appointed on 27.02.2004 and removed on 24.03.2004, on the ground that he was involved in Cr.No.78 of 2001 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. Since the 1st respondent was removed from service on 24.03.2004 based on the criminal case, after acquittal from the said case, he filed appeal on 31.07.2013 and the same was dismissed by the appellate authority.

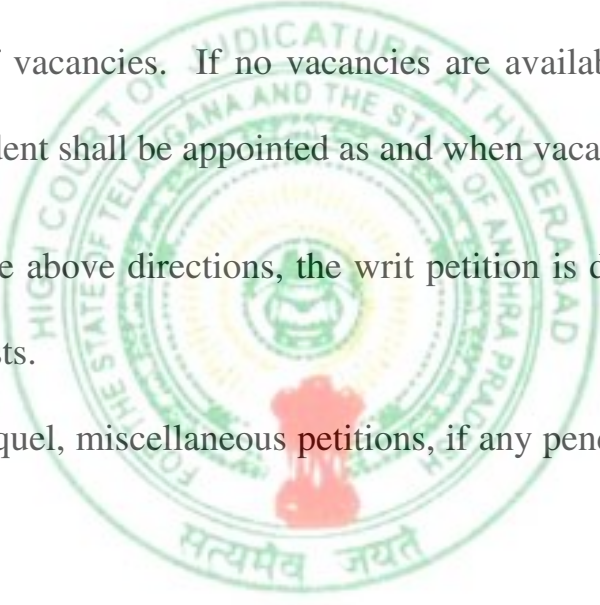
5. It is not the case of the petitioners that the 1st respondent suppressed the facts at the time of his appointment as Home Guard and on coming to know about the case pending against him, he was removed from service. Since he is acquitted from the said case, the learned Tribunal directed the petitioners to reinstate the 1st respondent into service as Home Guard and pass appropriate orders.

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 24.03.2004, 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 has later been acquitted, 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