

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

WP.No.9383 of 2013

S.Jayabal

... Petitioner

Vs

1.The Additional Director General of Police/
Assistant Commandant General-Home Guards
Chennai-600 004

2.The Superintendent of Police
Tiruppur, Tiruppur District

... Respondents

Prayer:- This Writ Petition is filed, under Article 226 of Constitution of India, to issue a writ of Certiorarified Mandamus to call for the records relating to the impugned order of the first respondent in Na.Ka.No.A1/01783/Ku.Pa&Oo.Ka/2012 dated 07.11.2012 confirming the order passed by the second respondent in D.O.No.552/2012 dated 29.05.2012 and quash the said orders and direct the respondents to reinstate the petitioner in service and grant him all consequential benefits.

For Petitioner :Mr.P.Manoj Kumar

For Respondents :Mr.K.Bhuvaneswari,
Addl Govt.Pleader
for R1 to R3.

ORDER

This writ petition is filed challenging the impugned order of the first respondent dated 07.11.2012 by confirming the order passed by the second respondent dated 29.05.2012 and seeks to quash the same and direct the respondents to reinstate the petitioner in service and grant him all consequential benefits.

2. The petitioner was appointed as a Home Guard (HG NO.23) in Tiruppur Unit in the year 2001. The second respondent has issued the orders of discharge of home guards stating that the persons name appearing in the said list are not attending the regular callout and other duties for the last six months.

Against which, the petitioner preferred an appeal dated 22.06.2012 to the Inspector General of Police, Director of Civil Defence. The first respondent, by order dated 07.11.2012, rejected the appeal preferred by the petitioner. Aggrieved by the said appeal order, the petitioner has filed the present writ petition.

3. The respondents filed counter affidavit and submitted that as per the Home Guard Rules, a Home guard has to attend minimum 16 callouts per month whereas the petitioner did not comply with the same during the period 10/2011 to 3/2012, besides he did not attend the emergency work. Further he absented from duty continuously for the period from 02.02.2012 to 20.03.2012 without submitting any leave petition or ML Certificate. It is further stated that despite warning him to be cautious in future service, he did not change his attitude, but having habitual tendency of absenting for duty. The petitioner has not submitted his explanation for the above mentioned days absence on duty.

4. It is the case of the petitioner that he could not submit his explanation due to the fact that before the order of discharge, no notice has been issued to him to put forth his defence. Further it is stated that except pasting the said order on the notice board, no personal notice has been given to the petitioner.

5. When this court raised a question to the learned Additional Government Pleader appearing for the respondents as to whether procedures as contemplated under Section 13(2) of Tamil Nadu Home Guard Act 1963, have been followed before discharging the petitioner from the Tiruppur Home Guard Unit, it is replied that the reasons for discharge is put on the notice board before issuing order of discharge and no records available to show that the same had been served personally to the petitioner.

6. In view of the above, this court deems it fit not to traverse on the merits of the case but to observe that the respondent has not chosen to provide any opportunity to the petitioner to submit his explanation, before passing orders of discharge under Section 13(2) of Tamil Nadu Home Guard Act, 1963. In such view of the matter, this court has no hesitation to quash the impugned order passed by the respondents for de novo consideration of the matter by the 2nd respondent.

7. In the light of the foregoing discussion, the impugned orders passed by the first respondent dated 7.11.2012 and order of discharge passed by the second respondent dated 29.05.2012 in

so far as the petitioner is concerned, stands quashed for de novo consideration, with the directions infra:-

(1) The impugned discharge order passed by the 2nd respondent dated 29.05.2012 is quashed in so far as the petitioner is concerned and the matter is remitted back to the 2nd respondent to consider the matter afresh in accordance with law.

(2) The 2nd respondent shall serve a show cause notice to the petitioner within a period of two weeks from the date of receipt of a copy of this order. The petitioner on receipt of such notice shall submit his explanation within a period of two weeks thereafter, if so chooses.

(3) On receipt of explanation from the petitioner, the 2nd respondent shall consider the same and pass appropriate orders, as expeditiously as possible, within a period of eight weeks.

(4) Till final orders are passed in the case of the petitioner, status quo as on today shall remain in force and further the petitioner, need not be reinstated into service.

8. The Writ Petition is allowed on the above terms. No costs.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The Additional Director General of Police/
Assistant Commandant General-Home Guards
Chennai-600 004.

2.The Superintendent of Police
Tiruppur, Tiruppur District.

+1cc to the Government Pleader Sr.96022
+1cc to Mr.P.Manojkumar, Advocate Sr.95531

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srg 29/01/2020