

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.526 of 2019

ORDER:

This writ petition is filed seeking a Writ of Mandamus declaring the action of the 1st respondent in issuing removal order dated 16.08.2002 on 27.11.2017 i.e., after a lapse of 15 years though the petitioner was never absent from duties as illegal, arbitrary and unconstitutional and against the principles of natural justice and consequently set aside the same.

Heard Mrs.G.Uma Rani, learned counsel for petitioner and the learned Government Pleader for Services-I.

It has been contended by the petitioner that he was appointed as Home Guard vide proceedings dated 25.03.1996 and he has been discharging his duties without any complaint. While so, on 27.11.2017, the respondents have served removal order dated 16.08.2002, wherein it was stated that the petitioner was unauthorizedly absent from duties during 19.12.2001 to 16.08.2002 and for that lapse, the petitioner was removed vide order dated 16.08.2002, but the removal order was served only on 27.11.2017.

Learned counsel for petitioner contended that when the petitioner was discharging his duties during 2001-2002, no disciplinary action has been initiated against him and he was never informed about unauthorized absent from duty. The petitioner was never absented himself from duty during 2001-2002 and therefore contends that appropriate orders be passed in the writ petition by setting aside the order of removal dated 16.08.2002, which was served on the petitioner on 27.11.2017.

Learned Government Pleader appearing for respondents, basing on written instructions dated 21.01.2019, contended that the petitioner was unauthorizedly absent during the period 19.12.2001 to 16.08.2002 and the respondents have removed the petitioner from service vide proceedings dated 16.08.2002, but the removal order could not be served on the petitioner. However, during verification of the records in November, 2017, it has come to the notice that the petitioner was already removed from service vide proceedings dated 16.08.2002 and the petitioner has also submitted fake documents at the time of his appointment as Home Guard and on that ground also, the services of the petitioners were removed. Therefore, contends that the respondents have rightly passed the removal order dated 16.08.2002 and the same was served on the petitioner on 27.11.2017.

This Court, having considered the rival submissions, is of the considered view that having allowed the petitioner to work for more than 21 years, the respondents have passed the removal order dated 16.08.2002, served on the petitioner only on 27.11.2017 on the ground that the petitioner was unauthorizedly absent during the period 19.12.2001 to 16.08.2002, which is not permissible under law. If the removal order is passed on 16.08.2002, the same should have been served on the petitioner in the year 2002 itself. If the removal order is passed on 16.08.2002 and the same is not served, then the removal order will become nonest in the eye of law and that will not have any effect. Having allowed the petitioner to work for more than 21 years, the respondents cannot be allowed to pass removal order dated 16.08.2002, which was served on the petitioner on

27.11.2017, and contend that the petitioner was removed from service with retrospective effect i.e. 16.08.2002. If the petitioner has committed any serious illegality in submitting fake documents, it is always open to the respondents to proceed in the matter after giving opportunity to the petitioner. Therefore, the impugned removal order dated 16.08.2002, which was served on the petitioner on 27.11.2017, is liable to be set aside and is accordingly set aside.

Accordingly, the writ petition is allowed. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

Date: 28-01-2019

Prv

