

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION (TR) Nos.4627 and 4628 of 2017,
WP.Nos.37678, 47333 of 2018 and 1730 of 2019

COMMON ORDER:

Since the issue involved in all these writ petitions is one and the same, all these writ petitions are heard together and disposed of by this common order.

The petitioners in all these writ petitions are challenging the action of the respondents in passing orders of removal without following the due process of law.

Heard learned counsel for the petitioners and learned Special Government Pleader for Home Services.

It is the case of the petitioners that they were appointed as Home Guards in the year 2003, 1999, 2009, 2007 and 2008, respectively and since then they have been discharging their duties to the utmost satisfaction of their higher authorities. The petitioners further submit that while they were discharging their duties as Home Guards owing to some domestic problems and ill-health, they could not attend the duties for some period and the respondents without conducting any enquiry and following due process of law, passed removal orders.

Learned counsel for the petitioners contends that the issue involved in these writ petitions is squarely covered by

the Judgment rendered by this Court in WP.Nos.28875 and 29382 of 2010 and 5814 of 2011 and batch reported in ***State of Andhra Pradesh and others v. P.Prasad Rao and another***¹ wherein it was held that Rule 7(4) of Madras Home Guards Rules, 1949 (*for short 'the Rules'*) mandates the respondents to give opportunity to the Home Guards before passing the orders of removal. He further contends that when some of the Home Guards whose services were removed have approached A.P.Administrative Tribunal, the Tribunal vide orders dated 25.04.2013 in OA.Nos.1555/2013 and batch was pleased to allow the OAs by setting aside the orders of removal and challenging the said orders when the State had carried those matters to the Honourable High Court by filing WP.No.35460/2013 and batch, the Division Bench of this Honourable High court was pleased to dismiss the said writ petitions vide orders dated 08.06.2018, confirming the orders of the Tribunal. Learned Counsel contends that appropriate orders be passed in these writ petitions by setting aside the orders of removal with a direction to reinstate the petitioners as Home Guards. He also contends that the Division Bench while confirming the orders of Tribunal has held that the respondents/Home Guards are not entitled for the benefit of continuity of service, seniority and arrears of pay.

Learned Special Government Pleader for Services submits that the issue raised in these writ petitions is

¹ 2012 (1) ALD 76 (DB)

squarely covered by the Judgment rendered by the Tribunal in OA.No.1555/2013 and batch and also in WP.No.35460/2013 and batch, dated 08.06.2013 and contends that appropriate orders be passed. Learned Government Pleader further contends that the case of the petitioners would be considered for reinstatement as Home Guards subject to their physical fitness.

Admittedly, in these writ petitions, Rule 7(4) of the Rules was not followed by the respondents and the issue raised in these writ petitions is squarely covered by the Judgment stated supra. This Court having considered the rival submissions made by both the parties, is of the considered view that the respondents without giving any opportunity to the petitioners passed orders of removal and thereby contravened Rule 7(4) of the Rules, and as such, the impugned orders of removal are liable to be set aside.

Accordingly, the impugned orders of removal passed by the respondents are set aside and the respondents are directed to reinstate the petitioners as Home Guards subject to their physical fitness. However, the petitioners are not entitled to any benefit of continuity of service, seniority and arrears of pay by virtue of the orders passed by this Court in WP.Nos.35460/2013 and batch.

With the above observations all the writ petitions are allowed. No order as to costs.

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

ABHINAND KUMAR SHAVILI, J

08.03.2019
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