

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.No.22566 OF 2019

ORDER

This writ petition is filed seeking the following relief:

“....to issue a writ in the nature of Writ of Mandamus or any other appropriate writ, order or direction by calling for the records relating the proceedings of the 2nd respondent bearing C.No.2/RI-HG/H1/2002-D.O.No.12/2002,dt 15.03.2002 and quash the same in so far as it relates to the petitioner is concerned by declaring as illegal, arbitrary and unconstitutional being violative of Articles 14, 16, 21 of the Constitution of India apart from well known principles of natural justice and consequently direct the respondents to reinstate the petitioner into service as Home Guard with all consequential benefits as otherwise the petitioner will be put to heavy and irreparable loss”

The petitioner was appointed as Home Guard and he is discharging his duties to the utmost satisfaction of his superiors. While so, the respondents have removed him on the premise that he had unauthorizedly absented to his duty.

Learned counsel appearing for the petitioner submits that without conducting any enquiry, the respondents have removed the petitioner from service contrary to Rule 7 (4) of the Madras Home Guards Rules, 1949 (for short ‘the Rules’); that similar issue fell for consideration before Division Bench of this Court in W.P.No.35460 of 2013 and batch preferred by the State against the orders of the Andhra Pradesh

Administrative Tribunal, whereunder the Tribunal has set aside the orders of removal of the petitioners therein on the ground that the disciplinary authority had not followed Rule 7 (4) of the Rules; that while dismissing the batch of writ petitions on 8.6.2018, the Division Bench directed the writ petitioners therein to reinstate all the Home Guards by conducting physical test. It is prayed that appropriate orders be passed by setting aside the impugned removal order and reinstate the petitioner into service in terms of the common order dated 8.6.2018 passed by Division Bench of this Court in W.P.No.35460 of 2013 and batch.

Learned Government Pleader appearing for the respondents does not dispute the same, however, contends that liberty may be given to the respondents to initiate disciplinary action against the petitioner in accordance with the Rules.

Having considered the rival submissions made by the learned counsel on either side, this Court is of the view that since the impugned removal order was passed without conducting any enquiry as contemplated under Rule 7(4) of the Rules and without giving any opportunity to the petitioner, the same is liable to be set aside in terms of the

common order dated 8.6.2018 passed by Division Bench of this Court in W.P.No.35460 of 2013 and batch.

Accordingly, the Writ Petition is allowed and the impugned removal order is set aside. The respondents are directed to reinstate the petitioner as Home Guard subject to medical fitness without any benefits in relation to his past service including seniority, continuity of service and attendant benefits. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

17th October, 2019
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