

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2020
CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.Nos.34829 of 2018, 35582, 1697 of 2019
and
W.M.P.Nos,36454, 36473, 1896 of 2019 & 40383 of 2018

D. Venkatesan ... Petitioner in W.P.No.34829/2018
P. Adhisivam ... Petitioner in W.P.No.35582/2019
J. Ponmudi ... Petitioner in W.P.No.1697/2019

Vs.

- 1.The Inspector General of Police,
Santhome High Road,
Chennai - 600 004.
- 2.The Additional Director General of Police,
Home Guards, Santhome High Road,
Chennai - 600 004.
- 3.The Superintendent of Police,
Villupuram District, Villupuram.
- 4.The Armed Reserve Deputy Superintendent of Police,
Kakuppam, Villupuram.
- 5.The Area Commander,
Home Guards, Near Town Police Station,
Villupuram, Villupuram District.

... Respondents
in all W.Ps

Prayer in W.P.Nos.34829 of 2018 and W.P.35582/2019: Writ petitions filed under Article 226 of the Constitution of India, praying for the issuance of writ of certiorarified mandamus, calling for the concerned records relating to the order dated 08.07.2015 in Ma.Aa.No.658/2015- Na.Ka.No.H2/026836/2015 passed by the third respondent and quash the same insofar as the petitioner is concerned and consequently direct the third respondent to reinstate the petitioner in services of Home Guards with all consequential monetary and other benefits insofar as the petitioner is concerned.

Prayer in W.P.1697/2019:

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified

Mandamus calling for the concerned records relating to the order dated 03.01.2019 in Na.Ka.No.H2/26836/2015 passed by the 3rd respondent and the order dated 08.07.2015 in Ma.Aa.No.658/2015-Na.Ka.No.H2/026836/2015 passed by the 3rd respondent and quash the same in so far as the petitioner is concerned and consequently direct the 3rd respondent to reinstate the petitioner in services of Home Guards with all consequential monetary and other benefits in so far as the petitioner is concerned.

For Petitioners : Mr. M. Gnanasekar
For Respondents : Mr. P.S. Siva Shanmuga Sundaram,
in W.P.34829/2018 Special Government Pleader
& W.P.1697/2019
For Respondent in
W.P.35582/2019 : V. Prabhu Government Advocate

C O M M O N O R D E R

All the above writ petitions have been filed challenging the impugned proceedings of the third respondent dated 08.07.2015 wherein the petitioners services as Home Guards were terminated.

2. The brief facts of the case is that the petitioners were selected as Home Guards by the fourth respondent in the year 2001, 2005 and 2007 respectively. They underwent training and they continued to regularly attend duty till the year 2015. While so it was found that the petitioners were absenting themselves and therefore, based on the recommendation of the second respondent and the fourth respondent, totally 27 Home Guards were called to the orderly room. The enquiry was fixed on 06.06.2015 by the third respondent. Out of the 27 persons, 11 persons appeared and the balance 16 persons did not appear. The persons who appeared were warned and they were told that they should not repeat this indiscipline in future and they were allowed to join duty. Insofar as the rest of the 16 persons are concerned, they were removed from service by the proceedings of the third respondent dated 08.06.2015.

3. It is the further case of the petitioners that subsequently based on the reports of the fourth and fifth respondents, the third respondent passed the impugned order dated 08.07.2015, terminating the services of all the 27 persons who were working as Home Guards. Aggrieved by the same, the present writ petitions have been filed before this Court.

4. Mr. M. Gnanasekar, learned counsel appearing on behalf of the petitioners submitted that the similarly placed persons have already approached this Court and filed writ petitions and

all the writ petitions were allowed and confirmed in the writ appeal and consequent upon the same, all have also been taken back as Home Guards. The learned counsel further submitted that the petitioners are also similarly placed and the earlier orders passed by this Court, will also enure to the benefit of the petitioners.

5. The learned counsel in order to substantiate his submission drew the attention of this Court to the orders passed in W.P.No.17070 of 2016 dated 24.11.2016, W.A.No.483 of 2017 dated 01.06.2017 and W.A.No.208 of 2019 dated 28.01.2019.

6. The learned counsel submitted that the petitioners were terminated from service without offering any opportunity and the termination of the similarly placed persons were set aside by this Court only on this ground. The learned counsel further submitted that the reports submitted by the fourth and fifth respondent were not even furnished to the petitioners. Therefore, the petitioners did not have an opportunity to know the exact complaint that was given by the fourth and fifth respondents.

7. The respondents have filed a counter in all the three writ petitions. The relevant portion in the counter is extracted hereunder:-

"Based on the recommendations of the Area Commander (fifth Respondent herein) and the Deputy Superintendent of Police, Armed Reserve, Villupuram (fourth Respondent herein) had conducted OR for 27 Home Guards against whom allegations of indiscipline were brought to notice. The Orderly Room was conducted on 06.06.2015. The petitioner had attended the Orderly Room against based on the recommend actions of the Area Commander (fifth respondent herein) the Deputy Superintendent of Police, Armed Reserve, Villupuram (fourth Respondent herein) the Superintendent of Police, Viluppuram District (third Respondent herein) had passed order in D.O. 658/2015 Na.Ka.No. H2/026836/2015 Dt. 08.07.2015 discharging all the 27 Home Guards whose services were not recommended for the Re-appointment on completion of 3 years term."

8. The learned Special Government Pleader apart from reiterating the facts stated in the counter affidavit submitted that the petitioners were put on notice on an earlier occasion when it was reported that they were absenting themselves regularly and that if they continue to do so, they were warned that their services will be terminated. In order to substantiate the submission, the learned Special Government

Pleader relied upon the proceedings dated 08.06.2015, and the records were also furnished before this Court. The learned counsel submitted that the petitioners do not fall on the same category like the other writ petitioners who had approached this Court on an earlier occasion. The learned counsel submitted that the petitioners were sufficiently put on notice and they continue to be indisciplined and absenting themselves from duty and therefore, left with no other option, the impugned order came to be passed by the third respondent. The learned counsel further submitted that there are absolutely no merits in the writ petition and the same is liable to be dismissed.

9. This Court has carefully considered the submissions made on either side and perused the materials available on record.

10. This Court has carefully considered the records that were submitted by the respondents. It is seen from the records that during the enquiry conducted on 08.06.2015 in the orderly room, apart from the petitioners, the petitioners who had earlier approached this Court were also called for the enquiry. Subsequently, a common order came to be passed by the third respondent, terminating the services of 27 Home Guards.

11. It will be relevant to take note of the orders that were passed in the earlier writ petitions filed by the other Home Guards challenging the same impugned order.

12. One Raghavendran filed W.P.No.17070 of 2016. This Court allowed the writ petition by order dated 24.11.2016 and the relevant portions in the order is extracted hereunder:-

"22.In the counter, the respondents were stated that the above Act and the Rules are not applicable to the present case on hand.

23.I disagree with the counter of the respondents that the said circular and rules were not applicable. Both the circular and Rules were clearly stated that if any action is taken for indiscipline work against the Home Guard and unsatisfactory work, he should be given an opportunity to defend his case. But, admittedly, in this case, there is no record produced by the respondents to show that before passing the impugned order dated 08.07.2015, no notice or show cause were issued to the petitioner calling explanation.

24.In the result:

(a) the writ petition is allowed, by setting aside the order dated 08.07.2015 in Ma.Aa.No.658/2015 Na.Ka.No.H2/026836/2015, passed by the third respondent insofar as the petitioner is concerned;

(b) the 3rd respondent is hereby directed to reinstate the petitioner into services of Home Guards and the petitioner is not entitled to backwages and service benefits from the date of order of termination dated 08.07.2015 till the date of reinstatement;

(c) the said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order."

13. The above order was taken on appeal in W.A.No.483/2017. The Division Bench confirmed the order of the learned Single Judge. The relevant portions of the order of the Division Bench is extracted hereunder:-

"6.The learned Special Government Pleader brought to the notice that a warning memo issued to the petitioner on 09.06.2015 about the non-attendance of not less than 10 service calls. But, in that case, as found in the typed set, he has been given a warning to co-operate with the service calls and thereafter only, this action seems to have been taken and therefore, we do not find any merit in the arguments advanced by the learned Special Government Pleader.

7.We do not find any illegality in the order passed by the learned Single Judge. When the circular provides for extension of benefits of enquiry and opportunity of hearing before any action is taken with regard to any misconduct, in the absence of any such opportunity before discharge or termination, it is bad and non-est in the eye of law. In the circumstances, we are of the view that the decision of the learned Single Judge ordering reinstatement with back wages does not call for any interference. Accordingly, the writ appeal is disposed of. However, any such misconduct is committed in future, the Department is at liberty to take action and to proceed in accordance with law. Further, it is made clear that since non-compliance of the circular is found, the decision taken by the Department is held as bad in the eye of law. However, liberty is given to the Department to proceed in accordance with the circular issued by the Additional Director General of Police, as referred in the typed set and if it is found otherwise, it is for them to take a decision in accordance with law."

14. One Sundara Gandhi who was also similarly filed W.P.No.25086 of 2018 before this Court challenging the same

order. This Court allowed the writ petition by an order dated 26.09.2018. This order was subsequently implemented by the third respondent by proceedings dated 19.11.2018, the said Sundaragandhi was reinstated into service as Home Guard.

15. Two other persons namely Premnath and Devanathan approached this Court challenging the very same impugned order by filing W.P.No.32601/2017. This writ petition was dismissed and they filed an appeal in W.A.No.208 of 2019. This appeal was allowed by this Court by an order dated 28.01.2019. The relevant portions of the order is extracted hereunder:-

7.It is an admitted fact that order, dated 08.07.2015 has been challenged, in W.P.No.1707 of 2016. It is expected from the Government that if one person is entitled to the relief, similarly placed persons are also entitled, to obtain the same declaration, in their favour. State is therefore, unfair in not extending the same to the appellants. Order, dated 24.11.2016, passed by this Court, in setting aside the order, dated 08.07.2015, in W.P.No.17070 of 2016, and the State, ought to have been extended to the appellants/writ petitioners. Laches by the appellants, in approaching the Court, cannot be a reason to deprive the appellants of the same benefit, which others were given.

16. It is very clear from all the above orders that the impugned order has been set aside with respect to the petitioners therein who had approached this Court mainly on the ground that they were not put on notice before they were terminated from service.

17. Rule12(4) of the Tamil Nadu Home Guards Rules, 1963 specifically states that in all cases of indiscipline the same should be brought before orderly room and the Home Guards should be given an opportunity to explain the charges against him. This Rule was taken into consideration in all the earlier cases and this Court held that the concerned petitioners were not given opportunity in line with this rule and therefore the impugned order of the third respondent was interfered on that ground. The petitioners are also similarly placed and they cannot be treated differently in these writ petitions. It should be borne in mind that a common order was passed for 27 Home Guards and therefore when this Court has interfered with the common order regarding 4 of the Home Guards on the ground that they were not given an opportunity, the same reasoning will enure the benefit of the petitioners also. The petitioners cannot be treated differently.

18. In view of the above discussion, this Court has no hesitation to interfere with the impugned order passed by the third respondent dated 08.07.2015 and the same is hereby quashed insofar as the petitioners are concerned. It is made clear that the petitioners shall be reinstated into service and it is also made clear that the petitioners will not be entitled for any back wages. If in case, the petitioners continue with the indiscipline in future, it will also be open to the respondents to take action strictly in accordance with Rule 12(4) of the Tamil Nadu Home Guards Rule, 1963.

19. In the result, all the writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

AT

To

- 1.The Inspector General of Police,
Santhome High Road,
Chennai - 600 004.
- 2.The Additional Director General of Police,
Home Guards, Santhome High Road,
Chennai - 600 004.
- 3.The Superintendent of Police,
Villupuram District, Villupuram.
- 4.The Armed Reserve Deputy Superintendent of Police,
Kakuppam, Villupuram.
- 5.The Area Commander,
Home Guards, Near Town Police Station,
Villupuram, Villupuram District.

+1 CC to Govt. Pleader sr 14264.

+3 CCS to Mr. M. Gnanasekar, Advocate sr 14084 to 14086.

W.P.Nos.34829 of 2018, 35582, 1697 of 2019
and

W.M.P.Nos,36454, 36473, 1896 of 2019 & 40383 of 2018

JP(CO)

SP(11/03/2020)