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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2022

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.16418 of 2020
and WMP.No.20600 of 2020

G.Sathish Kumar .. Petitioner

vs.

- 1.The ADGP / Director of Civil Defence and
Additional Commandant General Home Guards,
Tamil Nadu, Chennai-600 004.
- 2.The Superintendent of Police,
District Police Office,
Nagapattinam District, Nagapattinam. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the production of the records relating to the order dated 19.06.2020 made in Ma.AANAI No.443/2020, Na.Ka.No.E1/7490/2020 passed by the second respondent herein as confirmed by the order of the first respondent dated 23.07.2020 made in Rc.No.A1/1054 DCD & H.G/2020, quash the same and direct the respondents to reinstate the petitioner in service with continuity of service, backwages and with all other attendant benefits.

For Petitioner : Mr.S.Senthilnathan

For Respondents: Mr.M.Bindran,
Additional Government Pleader

O R D E R

The petitioner, challenging the impugned order of the first respondent dated 23.07.2020, dismissing the appeal filed by him and thereby confirming the order of removal from service dated 19.06.2020 passed by the second respondent, has filed the present writ petition.



2. The case of the petitioner is that he was initially appointed on 19.04.1991 as Home Guard and posted at Nagapattinam Rural Home Guard Unit and served for about more than 20 years. While so, the second respondent has issued a Show Cause Notice dated 12.06.2020, on the allegation that the petitioner used to collect mamool in kind from merchants, vegetable vendors, sweet stall keepers and tea stall owners. In pursuant to the show cause notice, the petitioner had submitted his explanation and the disciplinary authority / second authority, after considering the petitioner's explanation, had passed an order of removal from service dated 19.06.2020 and the appeal filed by the petitioner was also dismissed by the first respondent/appellate authority on 23.07.2020. Aggrieved by the same, the petitioner has filed the present writ petition.

3. The learned counsel for the petitioner would submit that the respondents have violated Rule 12(4) of the Tamil Nadu Home Guards Rules, 1963 and without giving opportunity to the petitioner, final order has been passed by the disciplinary authority and therefore, there is a clear violation of principles of natural justice and on that score, the impugned orders are liable to be set aside.

4. The learned Additional Government Pleader appearing for the respondents has drawn the attention of this Court to the counter affidavit of the second respondent wherein it has been stated that there is no violation of principles of natural justice and the order of the first respondent dated 23.07.2020 is not illegal or contrary to the rules.

5. The grievance of the petitioner is that before passing final orders by the disciplinary authority, the petitioner has not been afforded with any opportunity and to that extent, there is no answer in the counter affidavit. Therefore, this Court has no hesitation to hold that there is a violation of Rule 12 (4) of the Tamil Nadu Home Guards Rules, 1963 and on that ground, the impugned orders are liable to be set aside.

6. Accordingly, the order dated 19.06.2020 made in Ma.AANAI No.443/2020, Na.Ka.No.E1/7490/2020 passed by the second respondent herein as confirmed by the order of the first respondent dated 23.07.2020 made in Rc.No.A1/1054 DCD & H.G/2020 are set aside and the matter is remitted back to the first respondent to consider afresh, after affording opportunity to the petitioner and take appropriate decision in accordance with law, as expeditiously as possible, within a period of twelve weeks from the date of receipt of a copy of this order.



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7. The Writ Petition stands disposed of. No costs.
Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CO)

//True copy//

Sub Assistant Registrar

Jvm

To

1. The ADGP / Director of Civil Defence and
Additional Commandant General Home Guards,
Tamil Nadu, Chennai-600 004.

2. The Superintendent of Police,
District Police Office,
Nagapattinam District, Nagapattinam

+1cc to Mr.S.Senthilnathan, Advocate SR.No.18532

+1cc to Special Government Pleader SR.No.18557

W.P.No.16418 of 2020

SKM(CO)
GMY(30/03/2022)