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W.P.(MD)NO.2210 OF 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.09.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.2210 of 2019 and
W.M.P.(MD)Nos.1760 to 1762 of 2019

G.Sellaperumal,
S/o.Ganesan,
Home Guard, Alankulam H1, Company THG 65,
Tirunelveli District.
Residing at
12/24H, Main Road, Pa.Ilandaikulam 627 602,
O.Thulakkapatti Post, Pappakudi Phase I,
Cheranmadevi Taluk. ... Petitioner / Petitioner

Vs.

1. The Director General of Police,
Dr.Radhakrishnan Road,
Mylapore, Chennai – 600 004.
2. The Additional Director General of Police,
Dr.Radhakrishnan Road,
Mylapore, Chennai – 600 004.
3. The Superintendent of Police,
Tirunelveli District, Tirunelveli.
4. The Deputy Superintendent of Police (Armed Police),
Tirunelveli District, Tirunelveli.



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5. The Platoon Commander,
Home Guards Organisation,
Tirunelveli (Rural),
Alankulam Company, Alankulam Taluk,
Tirunelveli.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order dated 18.09.2018 in Rc.No. A1 / 3059 / DCD & HG / 2017 passed by the 2nd respondent by confirming the removal order in Na.Ka.No. E2 / 700 / 48838 / 2017 / Ma.Aa.No.64 / 2018 dated 12.01.2018 passed by the 3rd respondent and quash the same and consequently direct the respondents to reinstate the petitioner in service with all consequential monetary and other service benefits including next promotion as Section Leader Platoon Commander.

For Petitioner : Mr.M.Gnanasekar,
for Mr.P.Balamurugan.

For Respondents: Mr.A.K.Manickam,
Special Government Pleader.

* * *

**ORDER**

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Heard the learned counsel on either side.

2. The writ petitioner was appointed as a Home Guard on 17.11.2008. By the impugned order dated 12.01.2018, he was removed as member of the Home Guard. The petitioner's counsel would allege that since the petitioner represented to the authorities for betterment of their service benefits and for being placed on par with the Home Guards working elsewhere in other states, the impugned action was taken more as a punitive measure.

3. This allegation made by the writ petitioner has of course been controverted by the respondents. The learned Special Government Pleader appearing for the respondents took me through the averments set out in the counter affidavit and submitted that the order impugned in this writ petition does not call for any interference.

4. I carefully considered the rival contentions and went through the materials on record.



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5. The case on hand is governed by the provisions set out in Tamil Nadu Home Guard Act, 1963 and the rules framed thereunder. Section 13 of the Act provides for suspension or removal of the members of the Home Guard. It reads as follows:-

13. Suspension or removal- (1) The Commissioner of Police in the City of Chennai and the Superintendent of Police in a district may, by order in writing, suspend or remove from the Home Guard any member of the Home Guard under his control,-

(a) who on being called out by an order under Section 6 without reasonable cause neglects or refuses-

(i) to obey such order,

(ii) to exercise the powers, discharge the duties and perform the functions as a member of the Home Guard, or

(iii) to obey any lawful order or direction given to him for the exercise of the powers,



discharge of the duties and performance of the functions as a member of the Home Guard, or

(b) who is guilty of any breach of discipline or of any misconduct.

(2) No order under sub-section (1) shall be passed unless the member of the Home Guard affected by such order is given an opportunity to be heard in his defence.

(3) The suspension or removal of a member of the Home Guard under this section shall be in addition to any penalty to which such member may be liable under any other law for the time being in force."

Sub Section 2 clearly states that no order under sub-section (1) shall be passed unless the member of the Home Guard affected by such order is given an opportunity to be heard in his defence. Rule 12 of the Tamil Nadu Home Guards Rules 1963 is as follows:-

"12. Discipline. - (1) A member of the Home Guard shall perform such duties and functions as may be assigned to him and shall obey every order



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of his superior officers.

(2) If a contingent of Home Guard is acting in conjunction with the police, they shall be subject to the control of the senior police officer present.

(3) The Commissioner of Police in the City of Madras or the Superintendent of Police in a district may, for good and sufficient reason, impose on any member of the Home Guard any of the following penalties, namely:-

(a) Suspension; and

(b) Removal.

(4) All cases of indiscipline shall be brought before an Orderly Room consisting of the Adjutant, a Divisional Commander and a Company Commander, charges framed and the Home Guard charged shall be given an opportunity to explain the charge against him. The findings of the orderly room and its recommendation shall be forwarded to the Area Commander who shall decide what further action is to be taken in the matter."



6. In this case, charges were framed against the petitioner on 08.12.2017. Explanation was called for from the petitioner. The petitioner gave his explanation on 21.12.2017. Without adhering to the statutory provisions, the impugned order has been straightaway and arbitrarily passed. The impugned order does not refer to the charges framed against the petitioner. The explanation of the petitioner has not been adverted to. The Superintendent of Police, Tirunelveli District is of course competent to remove the petitioner from the Home Guards. But he must have borne in mind the statutory provisions and procedures. Without doing so, the impugned order has been passed. It is clearly illegal and the same is set aside.

7. The order of removal passed by the Superintendent of Police, Tirunelveli, was put to challenge by the petitioner before the appellate authority. The order of the appellate authority is no different! Without even referring to the appeal filed by the petitioner, citing the petitioner's some other representation, the appellate order came to be passed. The orders of the original authority as well as the appellate



authority are patently illegal and betray utter non-application of mind. This writ petition stands allowed. The writ petitioner shall be reinstated as the member of the Home Guard forthwith. No costs. Consequently, connected miscellaneous petitions are closed.

26.09.2022

Index : Yes / No

Internet : Yes/ No

PMU

Note : Issue order copy on 28.09.2022.

To:

1. The Director General of Police,
Dr.Radhakrishnan Road,
Mylapore, Chennai – 600 004.
2. The Additional Director General of Police,
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G.R.SWAMINATHAN,J.

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