



W.P(MD)No.16476 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.10.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.16476 of 2018

and

W.M.P.(MD)Nos.14608 and 19453 of 2018

S.Nagaraj

... Petitioner

Vs.

1.The Superintendent of Police,
Tirunelveli District,
Tirunelveli.

2.The Sub-Inspector of Police,
Home Guard Service,
Tenkasi Company,
Tirunelveli.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for records pertaining to the impugned order passed by the Respondent No.1 in Na.Ka.No.E2/11547/2016 dated 21.04.2016 and quash the same and consequently direct the Respondent No.1 to reinstate the petitioner into service with continuity and all benefits.



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For Petitioner : Mr.S.M.A.Jinnah

For Respondents : Mr.R.Suresh Kumar,
Addl. Government Pleader.

ORDER

Heard the learned counsel on either side.

2.The writ petitioner was appointed as Home Guard on 06.04.2009. He was summarily removed from service vide order dated 11.12.2014 by the Superintendent of Police, Tirunelveli District. Questioning the same, he filed W.P.(MD)No.78 of 2015. The said writ petition was allowed on 07.01.2015 and the order of removal was set aside. The matter was remanded to the file of the Superintendent of Police, Tirunelveli District with liberty to proceed afresh on merits and in accordance with law. The petitioner was reinstated on 28.02.2015. He was issued with notice dated 22.04.2015 alleging of lack of attendance on his part. The writ petitioner offered his explanation. His specific allegation was that even though he was called upon to appear before the orderly room, no enquiry was conducted and that he was asked to affix his signature on a blank paper. He sent a representation in that regard on 18.11.2015. Thereafter the impugned order dated 21.04.2016 came to be passed permanently



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removing the petitioner from Home Guard Service. Challenging the same, the present writ petition has been filed.

3.The learned counsel appearing for the writ petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order and direct the writ petitioner's reinstatement.

4.The respondents have filed a detailed counter affidavit and the learned Additional Government Pleader took me through its contents. He submitted that the writ petition is not maintainable because the writ petitioner failed to avail the alternative remedy of appeal available under Section 14 of Tamil Nadu Home Guard Act, 1963. He would also state that the failure to furnish the enquiry report will not vitiate the proceedings. This is for more than one reason. Non-furnishing of the enquiry report has not caused any prejudice to the writ petitioner. Secondly, the relevant provisions merely contemplate that the writ petitioner should be given an opportunity of hearing in his defence and there is no stipulation for serving the enquiry report. He would further state that the writ petitioner has no legal right to continue as member of Tamil Nadu Home Guard and therefore, the writ petition deserves to be dismissed.



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5.I carefully considered the rival submission and went through the materials on records. This is second round of litigation. On the earlier occasion also, the petitioner was served with a summary order of dismissal without holding an enquiry or complying with the principles of natural justice. As rightly pointed out by the learned counsel for the petitioner, as per Section 13 of Tamil Nadu Home Guard Act, 1963, an order of removal could not be passed without giving the affected member an opportunity to be heard in his defence. In the first instance, even without hearing the petitioner, he was sacked. Only following the intervention of this Court, he was reinstated. Thereafter, he was served with a fresh notice alleging lack of attendance. According to the learned counsel for the petitioner, the petitioner was having 66% attendance and that it was falsely alleged that he was having only 31.77% attendance. The primary ground on which the impugned order is set aside is that it proceeds on grounds which have not been set out in the show cause notice. It is too well settled that the final order passed against the noticee will have to be on the very same basis on which show cause notice was originally issued. In this case, the show cause notice alleged lack of attendance on the petitioner's part, but the final order is anchored on several other allegations made against the writ petitioner. The final order does not even deal with the aspect of lack of attendance. There



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is clear breach of the principles of natural justice. On this ground, the order impugned in this writ petition is quashed and the writ petition is allowed.

6.I am not remanding the matter because this is second round of litigation. At some point of time or the other, the issue will have to be given a quietus. When the matter was taken up for hearing, by a detailed order, an interim stay was granted on 26.07.2018. However, the respondents have not reinstated the petitioner or complied with the interim order. Of course, contempt will not lie as the respondents had filed a petition for vacating the interim order very shortly. I, therefore, refrain from hauling up the respondents for contempt. Now that the impugned order has been set aside and the writ petition is allowed, the respondents will reinstate the writ petitioner as member of Home Guard forthwith and without any delay. Proceedings to that effect will be issued by the first respondent within a period of five weeks from the date of receipt of a copy of this order. The petitioner will also be assigned duty accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

28.10.2022

Index : Yes / No

Internet : Yes/ No

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Issue order copy on 02.11.2022.



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G.R.SWAMINATHAN, J.

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To:

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Tirunelveli.
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