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W.P.No.4124 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2023

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THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.4124 of 2022

M.Vinayagamurthy

... Petitioner

Versus

- 1.The State represented by
the Additional Chief Secretary cum Home Secretary,
Govt. of Tamil Nadu, Home Department,
Secretariat, Fort St.George,
Chennai – 600 009.
- 2.The Deputy Secretary,
Govt. of Tamil Nadu, Home Department,
Secretariat, Fort St.George,
Chennai – 600 009.
- 3.Deputy Police Commissioner (Law & Order),
Tiruppur City,
Tiruppur.
- 4.Police Commissioner,
Tiruppur City,
Tiruppur.
- 5.Area Commander,
Home Guards, Tiruppur City,
Tiruppur.
- 6.ADGP/Director of Civil Defence & Additional Commandant General,
Home Guards (Tamil Nadu),
Chennai.



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7. Inspector General of Police/Deputy Commandant General,
Home Guards (Tamil Nadu),
Chennai-600 004.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus (or) any other Writ (or) directions calling for the records of Removal Order proceedings Na Ka A No.91/2019, Na Ka No.A4/869/20761/2018, Dated 08.03.2019 issued by the 4th respondent and to quash the orders of the 4th respondent's removal order in Removal Order proceedings vide Na Ka A No.91/2019, Na Ka No.A4/869/20761/2018, Dated 08.03.2019 and consequently petitioner be re-instated in the service of the Tamil Nadu Home Guards at Tiruppur along with back wages from the date of petitioner dismissal till the date of re-instatement.

For Petitioner : Mr.P.Ravishankar
For Respondents : Mr.P.Balathandayutham,
Special Government Pleader

ORDER

This Writ Petition has been filed to call for the records of removal order in Na.Ka.A.No.91/2019, Na.Ka.No.A4/869/20761/2018, dated 08.03.2019 issued by the 4th respondent and quash the same and consequently, the petitioner be reinstated in the service of the Tamil Nadu Home Guards at Tiruppur along with back wages from the date of the petitioner's dismissal till the date of reinstatement.

2.The case of the Writ Petitioner is that he was working in Tamil Nadu Home Guards at Thiruppur since 2006. A show cause notice, dated



13.02.2019 has been issued to the petitioner by the 3rd respondent seeking explanation for not appearing duty for four days. It is alleged in the show cause notice that despite intimation sent in Whatsapp group and also through phone, the petitioner has not appeared for duty. Thereafter, the impugned dismissal order has been passed on 08.03.2019 by the 4th respondent mainly on the ground that no reply whatsoever was given by the petitioner to the show cause notice, dated 13.02.2019.

3.It is the contention of the learned counsel for the petitioner before this Court that immediately on receipt of show cause notice, on 28.02.2019 the petitioner has given his reply and sent the same through registered post, however, the same has not been placed before the concerned authority. Due to which, the impugned dismissal order has been passed. To substantiate the same, the postal receipt, dated 28.02.2019 addressed to the Assistant Commissioner of Police (Law & Order) is placed on record. It is also brought to the notice of this Court that the petitioner met with accident on 28.06.2016. In this regard, an FIR in Crime No.566 of 2016, dated 29.06.2016 for offence under Sections 279 and 337 has been registered by the Sub Inspector of Police, Avinashi Police Station, Thiruppur.



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Immediately after the accident, the petitioner was admitted in City Ortho Hospital, Thiruppur.

4.Considering the fact that the petitioner sent his reply through registered post on 28.02.2019, this Court is of the view that the impugned dismissal order passed merely on the ground no reply has been received from the petitioner, is not proper and the removal of service, in fact, is without proper opportunity to the petitioner. Having issued the show cause notice, the 4th respondent ought to have verified whether the absence of the petitioner is wilful or for any other valid reason as contended by the learned counsel for the petitioner before this Court. It is the further contention of the petitioner that due to the accident in the year 2016, four plates were implanted due to bone injuries sustained by the petitioner. Only to remove such plates, the petitioner took medical leave at the relevant point of time.

5.Considering the facts and evidence before this Court, this Court is of the view that the impugned dismissal order has to be set aside and the petitioner has to be given one more opportunity. Accordingly, the impugned order in Na.Ka.A.No.91/2019, Na.Ka.No.A4/869/20761/2018, dated



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08.03.2019 passed by the 4th respondent is set aside and this Writ Petition stands allowed.

6.The petitioner is directed to submit fresh explanation to the 4th respondent, within a period of ten days, from the date of receipt of a copy of this order. On such explanation, the 4th respondent shall pass detailed order on merits considering the medical records if any produced by the petitioner.

No costs.

02.08.2023

Index : Yes/No
Internet: Yes/No
Neutral Citation: Yes/No
Speaking Order/Non-Speaking Order

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To

1.The Additional Chief Secretary cum Home Secretary,
Government of Tamil Nadu, Home Department,
Secretariat, Fort St.George,
Chennai – 600 009.

2.The Deputy Secretary,
Government of Tamil Nadu, Home Department,
Secretariat, Fort St.George,
Chennai – 600 009.

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3.The Deputy Police Commissioner (Law & Order),
Tiruppur City,
Tiruppur.

4.The Police Commissioner,
Tiruppur City,
Tiruppur.

5.The Area Commander,
Home Guards, Tiruppur City,
Tiruppur.

6.The ADGP/Director of Civil Defence & Additional Commandant General,
Home Guards (Tamil Nadu),
Chennai.

7.The Inspector General of Police/Deputy Commandant General,
Home Guards (Tamil Nadu),
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