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W.P.No.14294 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2024

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THE HONOURABLE Mr.JUSTICE C.KUMARAPPAN

W.P.No.14294 of 2020
and
W.M.P. No. 17769 of 2020

L.Balaji Subash

Vs.

... Petitioner

1. Additional Director General of Police,
Home Guards,
O/o. Director General of Police,
Dr. Radhakrishnan Salai,
Mylapore, Chennai – 600 004.

2. Inspector General of Police,
Home Guards,
O/o. Director General of Police,
Dr. Radhakrishnan Salai,
Mylapore, Chennai – 600 004.

3. Commissioner of Police,
O/o. Commissioner of Police,
Greater Chennai Police,
Chennai – 600 007.

... Respondents



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Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to order proceedings No. RC. No. HG/41/26330/2020 dated 30.05.2020 of the third respondent and consequent order No. Rc. No. A111002/DCD&HG/2020, dated 08.07.2020 of the first respondent and quash the same insofar as it relates to removal from the Home Guard Service, which is against the rules framed under Rule 12 and under Rule 14 appeal made of the Tamil Nadu Home Guards Rules, 1963 and allow the appeal.

For Petitioner : Mr. T. Sivagnanasambandan

For Respondents : Mr. A.M.Ayyadurai,
Government Advocate

ORDER

The instant Writ Petition has been filed challenging the order of punishment dated 30.05.2020, passed by the third respondent, and the consequential appeal order dated 08.07.2020, passed by the first respondent.

2. Though the learned counsel for the petitioner submitted various grounds, the main contention put forth by the learned counsel for the



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petitioner is regarding the non-application of mind by the first respondent.

To substantiate this contention, the learned counsel for the petitioner would rely upon Section 14(1) of the Tamil Nadu Home Guards Act, 1963: According to the above Act an appeal, against the order of removal, has to be filed within 30 days from the date of receipt of a copy of order. It is his submission that the petitioner has filed appeal well within the limitation. However, the first respondent, while adjudicating the appeal, has summarily rejected it, on the sole ground of limitation, which according to the petitioner is contrary to the factual position. Hence, the learned counsel prayed to interfere with the same.

3. The learned Government Advocate would strongly object to such contention.

4. I have given anxious consideration to the submissions made on either side.

5. Since the issue primarily revolves around the limitation aspect, this Court does not propose to go into the other merits of the matter. While



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considering the impugned order dated 08.07.2020, the first respondent, while disposing of the appeal, has observed as follows in paragraphs 4 and 5:-

“4. Here, it is pertinent to mention that the above individual had received the removal order on 01.06.2020 for indiscipline committed by him and he has submitted the appeal petition dated 06.07.2020 after a lapse of more than 30 days.

5. The section 14(1) of the Tamil Nadu Home Guard Act, 1963 reads as follows:-

(i) An appeal against any order of suspension or removal passed under Section 13 shall lie to the Inspector General of Police, Tamil Nadu, within 30 days of the date of receipt of such order by the person concerned.

(ii) The decision of the Inspector General of Police in the appeal shall be final.”

From the above extract it is clear that the appeal memorandum was rejected solely on the ground of limitation.

6. However, it is the submission of the petitioner that he was served with the order of removal on 01.06.2020. Upon receipt of the same, he sent an appeal memorandum through registered post on 09.06.2020, and it was received by the first respondent on 11.06.2020. When this was pointed out



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by the petitioner, this Court specifically asked both the parties, is there any bar in the Act to prefer appeal through post.

7. The learned Government Advocate would submit that, according to the Tamil Nadu Home Guards Rules, 1963, there is no specific provision as to the mode of filing of the appeal and also there is no express. Therefore, when there is no prohibition to prefer appeal through post, and also considering the peculiar circumstances of this case that, at the relevant point of time, COVID-19 was at its height, sending of the appeal through registered post cannot be faulted.

8. To substantiate such filing of the appeal within the period of limitation, the petitioner has filed the postal receipt, as well as the postal tracking data downloaded from the Postal Department. On a perusal of the said tracking chart, it reveals that the appeal was served upon the first respondent on 11.06.2020 well within limitation. Therefore, this Court is of the firm view that the appeal has been filed within 30 days. Consequently, the summary rejection of the appeal on the ground of limitation is erroneous.



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9. In view of such peculiar circumstances, this Court would like to set aside the order of the first respondent. Accordingly, the order dated 08.07.2020 is set aside and the matter is remitted back to the first respondent for fresh disposal in accordance with law and according to its own merits. Further, the first respondent is directed to consider all the grounds raised by the petitioner, within a period of eight weeks from the date of receipt of a copy of this order.

10. In the result, this Writ Petition is partly allowed, as indicated hereinabove. Consequently, the connected Miscellaneous Petition is closed. No costs.

21.10.2024

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Index : Yes/No

Speaking order /Non Speaking Order

Neutral Citation : Yes/No



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To

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C.KUMARAPPAN, J.

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