



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2024

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THE HONOURABLE MR.JUSTICE VIVEK KUMAR SINGH

W.P.No.22304 of 2021 and
W.M.P.No.23533 of 2021

M.Aravindan

... Petitioner

Vs.

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

2.The Deputy Superintendent of Police,
Armed Reserve Police,
Nagapattinam.

... 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 relating to the order dated 09.09.2021 made in Ma.Order No.700/2021 and Na.Ka.No.E1/10395/2021 passed by the first respondent herein, quash the same and direct the respondents to reinstate the petitioner in service with continuity of service, back wages and with all other attendant benefits.

For Petitioner : Mr.S.Senthilnathan

For Respondents : Mr.R.U.Dinesh Rajkumar, AGP



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ORDER

This Writ Petition has been filed for quashment of the order dated 09.09.2021 made in Ma.Order No.700/2021 and Na.Ka.No.E1/10395/2021 passed by the first respondent and direct the respondents to reinstate the petitioner in service with continuity of service, back wages and all other attendant benefits.

2. Heard the learned counsel on either side and also perused the materials available on record.

3.The petitioner was working as Home Guard in Nagapattinam and the first respondent issued a Show Cause Notice dated 01.09.2021 to him alleging that he took the hand bag of a woman, who was in the Maruti Omni van and kept it in his two wheeler. Thereafter, the bag was returned. Since the woman did not give any complaint, a Police Constable lodged a complaint and a case was registered in Crime No.749 of 2021 under Section 379 IPC. Denying the charges and explaining about the situation, the petitioner submitted his explanation dated 06.09.2021. The first respondent without conducting any enquiry had straight away passed an order of removal from



service referring to Rule 12 of the Tamil Nadu Home Guard Rules, 1963.

Against which, the petitioner has filed the present petition.

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4. The learned counsel for the petitioner submitted that the petitioner has been awarded with the major punishment of dismissal from service by impugned order dated 09.09.2021. The hand bag was returned to her, but somebody in the crowd mistook the incident and the same went viral in the social media. The concerned woman who lost her hand bag, has got it back and hence, did not lodge any complaint. The first respondent without holding any enquiry straight away passed an order of removal from service referring to Rule 12 of the Tamil Nadu Home Guard Rules, 1963. In support of his contention, he relied on the judgment of the Hon'ble Division Bench of this Court in the case of the ***Superintendent of Police and others Vs. P.Amalraj*** in ***W.A.No.978 of 2011***.

5. The learned Additional Government Pleader appearing for the respondents submitted that a show cause notice has been issued to the petitioner calling upon him to give explanation as to why the petitioner should not be dismissed from service for the misconduct and charge of delinquency



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under Rule 12 of the Tamil Nadu Home Guard Rules, 1963. It is true that the petitioner has submitted his explanation in which no valid points were found for acceptance. Only after conducting proper enquiry, the order of removal has been passed and there is no violation of principles of natural justice in the order passed by the first respondent. He also brought to the notice of this Court to the judgment of the Hon'ble Supreme Court in the case of ***the State of Karnataka and another Vs. Umesh in Civil Appeal No.1763-1764 of 2022.***

6. The plea taken by the competent authority is that the petitioner has crossed the line from his duty by doing an act which was contrary to the position which he was holding. It is true that there may be some contravention in the Tamil Nadu Home Guard Rules, 1963, for awarding the major punishment which is a very harsh move taken by the Department. It is to be noted that under extraordinary circumstances, this mis-happening took place. Covid -19 pandemic was prevailing at that point of time and the petitioner took some steps so as to maintain peace in the area where the incident had taken place.



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7.The punishment awarded to the petitioner is very harsh. The Rule 12(4) of the Tamil Nadu Home Guard Rules, 1963, makes it clear that enquiry should be conducted in a fair manner by issuing charge memo and affording an opportunity to the charged employee to explain his/her position and the discreet enquiry report shall be communicated to the delinquent. But in the instant case, the said procedure has not been followed, which would amount to violation of principles of natural justice.

8.In view of the above facts, this Court find merits in the claim made by the petitioner and the Writ Petition is allowed with the following directions:-

(i) The impugned order dated 09.09.2021 made in Ma.Order No.700 of 2021 and Na.Ka.No.E1/10395/2021 passed by the first respondent is hereby quashed;

(ii) The respondents shall pass a fresh order by considering the facts, circumstances and the law laid down, within a period of four months from the date of receipt of a copy of this order.



(iii) No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

Speaking order / Non-speaking order

To

- 1.The Superintendent of Police,
Nagapattinam District,
Nagapattinam.
- 2.The Deputy Superintendent of Police,
Armed Reserve Police,
Nagapattinam.

VIVEK KUMAR SINGH, J.



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