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W.P.No.28470 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2024

CORAM:

**THE HONOURABLE MR.JUSTICE D.BHARATHA
CHAKRAVARTHY**

Writ Petition No.28470 of 2022

K.Rajesh

S/o.Late Kumaravel

... Petitioner

Vs.

1. Union of India,

Represented by the Director General of Police,
office of DGP, Coastal Road, U.T.Puducherry.

2. The Commandant (Home Guards),

Office of the Commandant (Home Guards)
Puducherry, U.T.Puducherry.

3. The Superintendent of Police (Home Guards),

Puducherry, U.T.Puducherry.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus, calling for records relating to the impugned portion stating “the period of his removal is treated as not spent on duty and he shall not claim seniority and Honorarium for the period of his removal” of the order of the 2nd respondent No.01/SP(HG) /2018/OW- 67 (A), dated 11.04.2018 and quash the same and consequentially direct the 2nd respondent to restore seniority of the petitioner in the list of Home Guards.



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For Petitioner : Mr.Achari and Antoni
For Respondents : Mrs.S.Mythreye Chandru
Special Govt. Pleader

ORDER

This writ petition is filed calling for records relating to the impugned order dated 11.04.2018, in as much as it denies the seniority and honorarium to the petitioner for the period of removal.

2. The case of the petitioner is that the petitioner was enrolled as a Home Guard upon selection. While so, on 23.03.2012, he was removed from the rolls on account of a criminal case in Crime No.27 of 2012 under Section 66 E of Information Technology Act, 2000 being registered against him.

3. The allegation against the petitioner was that, he clandestinely left his mobile phone in the changing room and recorded the private image of one of the lady warden working in the sub Jail.

4. It can be seen that the charges are serious in nature. The Trial Court convicted him. However, on appeal in Criminal Appeal No.6 of 2015, the learned II Additional Sessions Judge at Pondicherry, after considering the entire case found that the prosecution did not establish in



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the first instance that the mobile phone found belongs to the petitioner.

No such images, which were allegedly captured were also not produced before the Court.

5. The Court has also considered that no complaint was lodged by the concerned employee, who was examined as P.W.2 nor her husband who was examined as P.W.6. The Lower Appellate Court has found that the prosecution has not established any of the ingredients of the crime at all and acquitted the accused.

6. In that view of the matter, the respondents again reconsidered the issue and by the order impugned in the writ petition dated 11.04.2018, ordered reinstatement of the petitioner.

7. While ordering reinstatement, it is stated that the petitioner will not be entitled to seniority and honorarium.

8. The learned counsel appearing on behalf the petitioner would submit that the respondents would be justified in denying the honorarium on account of “No Work No Pay” basis. But when the petitioner granted



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reinstatement upon acquittal in the criminal case, depriving the petitioner his seniority will not hold good.

9. *Per contra*, Mr.R.Syed Mustafa, learned Additional Government Pleader relying upon the relevant file note would contend that considering the serious nature of allegations, and over all facts and circumstances of the case while reconsidering the grievance of the petitioner, at the same time, taking into account the relevant circumstances both the seniority as well as the backwages were denied to the petitioner and no exception whatsoever can be taken to the impugned order.

10. I have considered the said rival submissions made on either side and have perused the materials placed on record.

11. As far as the seriousness of the charges are concerned, I have gone through the judgment of the Appellate Court, which acquitted the petitioner. It can be seen that none of the aspects were proved and there was no material, therefore it cannot be stated that merely on the ground of benefit of doubt, the petitioner was acquitted. Consequently, it can be



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seen that the impugned order grants “reinstatement”. Once it is ordered as "reinstatement" it goes without saying that the petitioner service as Home Guard is continuous. Therefore, when the petitioner has been removed from the rolls for no fault and the reinstatement was ordered, he would be entitled to the seniority. It is another aspect that when its comes to backwages, as the respondents fully justified in denying him on the ground of 'No work No pay'

12. In view thereof, this writ petition is allowed on the following terms:

1. The impugned order dated 11.04.2018 is declared to be illegal to the extent of which denies the seniority alone;
2. The petitioner would be entitled on the seniority as if he was continuous in service with effect from 29.01.2010.
3. No costs.

05.04.2024

Index: Yes/No
Speaking Order: Yes/No
Neutral Citation: Yes/No
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D.BHARATHA CHAKRAVARTHY, J.

mp

To

1. The Director General of Police,
office of DGP, Coastal Road, U.T.Puducherry.
2. The Commandant (Home Guards),
Office of the Commandant (Home Guards)
Puducherry, U.T.Puducherry.
3. The Superintendent of Police (Home Guards),
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