



W.P.No.33585 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2024

CORAM

THE HON'BLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.33585 of 2022

P.Boopalan

... Petitioner

Vs.

The Commandant
(HOME GUARD)
Puducherry Police Department, Puducherry.
Respondent

...

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for records of the respondent in No. 01/ SP (HG)/ 2022/ OW- 256 dated 10.11.2022 and quash the same as illegal and consequently direct the respondent to reinstate the petitioner in the post of Home Guard with all attendant monetary and promotional benefits on par with his juniors.

For Petitioner : Mr.K.Sasindran
For Respondent : Mr.V.Vasanthakumar, AGP

ORDER

The Writ Petition is filed for issuance of Writ of Certiorarified Mandamus, calling for the records of the respondent in No. 01/ SP (HG)/



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2022/ OW- 256 dated 10.11.2022 quash the same and consequently direct the respondent to reinstate the petitioner in the post of Home Guard with all attendant monetary and promotional benefits.

2.The case of the petitioner is that upon selection, he was enrolled as Home Guard with effect from 02.01.2007. While so, a FIR in Crime No.288 of 2018 under Section 4 (1) (aaa) read with 4 (1-A) of the Tamil Nadu Prohibition Act came to be registered against him. The petitioner was Accused No.5 in the said case. Considering the said case, an order was passed on 05.12.2018, thereby dismissing the petitioner from service with immediate effect. Thereafter, on 19.11.2021, the said FIR was closed as mistake of facts. Therefore, the petitioner sent his representation to the respondent, to reinstate him in service. Since there was no positive response from the respondent, the petitioner approached this Court in W.P.No.18548 of 2022 and by an order dated 21.07.2022, this Court directed the respondent therein to consider the representation of the petitioner dated 13.12.2021 and to pass orders thereon in its own merits. In compliance thereof, the impugned order is passed.



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3.Heard, Mr.K.Sasindran, learned counsel appearing on behalf of the petitioner and Mr.V.Vasanthakumar, learned Additional Government Pleader appearing for the respondent.

4.The learned counsel for the petitioner would submit that when the FIR registered against him has been closed as mistake of facts, the respondents are liable to revisit the order dismissing the petitioner from service on the basis of the FIR.

5.Per Contra, *Mr.V.Vasanthakumar*, the learned Additional Government Pleader would submit that after considering the case on merits only, the representation of the petitioner has been decided. In any event his appointment is only for a period of three years and the said period has already been over.

6.I have considered the rival submissions made on either side and perused the material records of the case.



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7. At the outset, I am unable to accept the contention of the learned Additional Government Pleader that the appointment of the petitioner is only for a period of 3 years, because, the petitioner was appointed in the year 2007 for a period of 3 years and his services being periodically extended and was in service even at the time of his removal i.e., in the year 2018. Therefore, the said submission cannot be countenanced. Coming to the merits of the matter, the impugned order is a non speaking order and the same is extracted hereunder :

“WHEREAS, Thiru. P. Boopalan HG 2104 was enrolled as Home Guard on 22.01.2007 in the Police Department, Puducherry. After the completion of basic training, he was posted at Karaikal Region. On 19.10.2018 Thiru. P. Boopalan, HG 2104 have been arrayed as accused No.5 in the Criminal case in Cr. No.288/2018 U/s Tamil Nadu Prohibition Act 4(1) (aaa), 4(1-A) at Thittacherry Police Station, Nagapattinam District, Tamil Nadu. Since, the Criminal case had been registered against Thiru. P. Boopalan, HG 2104, and report was sent to the Commandant General Home Guards, Puducherry for taking disciplinary action against him, Thiru. P. Boopalan, HG 2104 was dismissed as per section 10(1), 4(5) of the Puducherry Home Guards Act 1965 and 12(3) of the Puducherry Home Guards Rules 1966 from the Home Guard Service as per the order of the Commandant vide No.01/SP (HG)/2018/OW-300 on 05.12.2018. After the investigation of the above case, the Station House Officer, Thittacherry Police Station has lodged a Final Report before the Hon'ble Judicial Magistrate -II Court, Nagapattinam, Tamil Nadu treating the case only as "Action Dropped" on 19.11.2021. After that, Thiru. P. Boopalan, HG 2104 had submitted a representation to the Commandant, Home Guard, Puducherry on 13.12.2021 and requested the



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Commandant, Home Guard, Puducherry to reinstate him into Home Guard service. In this regard, the Superintendent of Police, Home Guard had sent a file to the Commandant General Home Guard, Puducherry for orders on reinstatement into Home Guard service.

WHEREAS, Thiru. P. Boopalan, HG 2104 had filed a writ petition (writ of Mandamus) vide No.18548 of 2022, before the Hon'ble High Court of Judicature, Madras and the Hon'ble Court vide order dated 21.07.2022 had ordered the Commandant, Home Guards, Puducherry to consider his representation dated 13.12.2021.

THEREFORE, the Commandant General Home Guards, Puducherry after going through his representation dated 13.12.2021 of Thiru. P. Boopalan HG 2104 and relevant documents, denied the request of Thiru. P. Boopalan, HG 2104.”

8.Thus, it can be seen that except stating that after going through the representation of the petitioner and other relevant documents, the Commandant had denied the request made by the petitioner, absolutely, no reason whatsoever has been mentioned. When the representation is directed to be considered by this Court in W.P.No.18548 of 2022 dated 21.07.2022, it is trite that the reasons for rejection of the representation has to be communicated to the petitioner and an order cannot be passed without adducing any reason whatsoever.

9.In view thereof, this Writ Petition is disposed of on the following



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terms:

(i) The impugned order dated 10.11.2022 in No. 01/ SP (HG)/ 2022/ OW- 256 is set aside;

(ii) The respondent shall pass fresh orders on the representation of the petitioner dated 13.12.2021, within a period of 12 weeks from the date of receipt of a copy of this order.

(iii) No costs.

01.04.2024

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Index:Yes

Speaking Order: Yes

Neutral Citation: No

To

The Commandant

(HOME GUARD)

Puducherry Police Department, Puducherry.



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D.BHARATHA CHAKRAVARTHY, J.,

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