



W.P.No. 3254 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 19.02.2025

CORAM:

THE HONOURABLE MR JUSTICE C.V. KARTHIKEYAN

W.P.No.3254 of 2024 and
W.M.P. Nos.3522 to 3524 of 2024

R. Thamizharasan

... Petitioner

VS

1. Union Territory of Puducherry

Represented by

The Director General of Police,
Puducherry Police Department,
Puducherry.

2. The Commandant General (Home Guards),
Office of the Commandant of General (Home Guard)
Puducherry Police Department,
Puducherry.

3. The Commandant (Home Guards),
Office of the Commandant of (Home Guard)
Puducherry Police Department,
Puducherry.

4. The Superintendent of Police (Home Guards),
Office of the Superintendent of Police (Home Guards)
Puducherry Police Department,
Puducherry.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus calling for the



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records relating to impugned order vide No.01/SP(HG/2024/OW-16 dated 30.01.2024 passed by the 2nd respondent and quash the same and consequently direct the respondents to reinstate the petitioner into service as "Home Guard (HG G-21)" with all monetary and non monetary benefits, including seniority and promotion.

For Petitioner : Mr. Prakash Adiyapadam

For Respondents : Mr. J. Kumaran
Additional Government Pleader
(Pondy).

ORDER

This Writ Petition has been filed in the nature of a certiorarified Mandamus seeking the records relating to the order dated 30.01.2024 passed by the second respondent, The Commandant General (Home Guards), Office of the Commandant General (Home Guard), Puducherry Police Department, Puducherry, and to quash the same.

2. The petitioner seeks reinstatement into service as Home Guard (HG G-21) with monetary and non monetary benefits including seniority and promotion. In the affidavit filed in support of this writ petition, it had been contended that the petitioner had been enrolled on 12.01.2007



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pursuant to an order No.453/A9/Estt.I(B)/Pol./2006 issued by the Commandant, Home Guards, Puducherry, as Home Guard in accordance with Section 4(3) of the Puducherry Home Guards Rules, 1966. The said enrollment was subject to the following conditions:

1. *"It is an enrollment and not an appointment to any Government Service/posts.*
2. *The enrollment is purely voluntary and it will not confer any right on the enrolled person to claim any permanent appointment in Government service in future.*
3. *This enrollment shall terminate on the expiry of the period of three years. The period of three years shall commence from the date on which the enrolled person reports before the Superintendent of Police (HG), Puducherry.*
4. *This enrollment shall not entitle the concerned individual for any extension or further enrollment as Home Guards."*



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3. The second respondent had then placed the petitioner on suspension on 25.02.2008. Though in the affidavit it is claimed that such an order of suspension was passed without affording an opportunity of being heard, the petitioner was aware of the reason for placing him under suspension since he was arrayed as an accused in F.I.R. in Crime No.2/2008 registered on 18.02.2008 by All Women Police Station, Villianur, Puducherry, for the alleged commission of offences punishable under Sections 498A, 494 and 506(ii) IPC r/w Section 34 IPC. The petitioner remained under suspension. Consequent to investigation in the aforementioned FIR, a final report had been filed before the Jurisdictional Magistrate Court, namely, the Chief Judicial Magistrate at Puducherry, which was taken cognizance of the final report in C.C. No.32/2009. By a judgment dated 08.10.2019, the petitioner was convicted for the offences punishable under Sections 498 and 494 IPC r/w 34 IPC. The petitioner was also imposed with punishment to undergo sentence by the Chief Judicial Magistrate.

4. The petitioner then filed an appeal in Criminal Appeal No.21/2019, which came up for consideration before the II Additional Sessions Court at Puducherry. By a judgment dated 25.02.2022, the



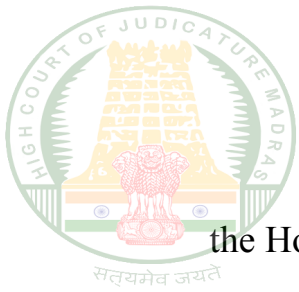
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petitioner was acquitted of all the charges. Thereafter, the petitioner reasonably expected that his suspension would be revoked. It must also to be mentioned that in the meanwhile, the petitioner had also filed W.P.No.5383/2009 seeking review of the order of suspension. The second respondent, thereafter, passed an order dated 30.01.2024, now impugned in the writ petition, dismissing the petitioner from service. The impugned order is extracted below for better appreciation.

"In pursuance of the provision to the Section 10(1) of the Puducherry Home Guards Act 1965 & Section 12(3) (e) of the Puducherry Home Guards Rules 1966, the undersigned hereby removes forthwith Thiru.R.Thamizharasan (HG-1964) who is under suspension from the Roll of the Home Guards Organisation, U.T. of Puducherry and dismiss him from the services of the Home Guards with immediate effect."

5. This order is questioned by the learned counsel for the petitioner by claiming that an opportunity of being heard was not given and also that there was a compulsion on the part of the authority who passed the order to reduce in writing the reasons for passing the order of dismissal.

In this connection, the learned counsel placed reliance on Rule 10(2) of



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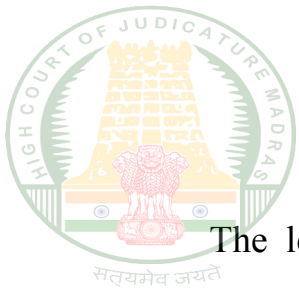
the Home Guards Rules, 1966, which reads as follows:

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"(2) The Commandant General shall also have authority to dismiss any Home Guard on the ground of conduct which has led to his conviction on the criminal charge.

(3) When the Commandant or the Commandant General passes after inquiry and order suspending, reducing, dismissing or fining any Home Guard under Sub-section (1), he shall record such order or cause the same to be recorded together with the reasons therefore and not of the inquiry made, in writing, and no such order shall be passed unless the person concerned has been given an opportunity to be heard in his defence.

(4) Any Home Guard aggrieved by such order of the Commandant may appeal against that order to the Commandant General and any Home Guard aggrieved by such order of the Commandant General may appeal against that order to the Government, within thirty days of the date on which he was served with notice of the concerned order; and thereupon the Commandant General or the Government, as the case may be, may pass such orders as he or it thinks fit."



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The learned counsel for the petitioner stated that the aforementioned Rules provide that the authority, who passes the order should record such order or cause the same to be recorded with reasons thereof and not of the enquiry made, in writing and that no order shall be passed without an opportunity being granted of being heard.

6. On the side of the respondent it is contended that an appeal provision is available as against the impugned order. It is trite in law to point out that when principles of natural justice had been thrown into the bin by the respondents while passing an administrative order, the Court with every authority can set right that wrong, namely, the procedure adopted by passing the order. It would be a poor argument to state that the petitioner should have filed an appeal against an order which does not contain reasons and was passed without granting an opportunity to the petitioner of being heard and which did not state whether any enquiry was conducted or even whether the respondent contemplated to hold such an enquiry. In the absence and failure of recording the reasons for passing the order of dismissal, it is only appropriate that this Court steps in to hold that the said order does not withstand scrutiny of this Court.



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7. An alternative argument put on behalf of the respondents was that the petitioner can claim a right to remain on enrollment only for a period of three years which was the term under which he had been initially enrolled. Even if that argument is to be taken, it is seen from the records that the petitioner was initially enrolled into service on 12.01.2007 and placed under suspension on 25.02.2008. If it is to be taken on a rough calculation that he had worked for one year and one month, then the petitioner has reasonable expectation to be considered to continue to be in enrollment for a further period of one year and 10 months.

8. I leave it to the wisdom of the respondents, to take a decision either way, namely, they could give reasons for passing any order they want, or they could extend the service of the petitioner, or they can even terminate the service of the petitioner, but, they must follow rules and then pass appropriate orders. The impugned order has to be set aside and is set aside. The matter is remitted back to the second respondent for fresh consideration. The petitioner is already facing an order of suspension. In view of that particular fact, let a fresh order be passed by the second respondent within a period of three weeks from the date of



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receipt of a copy of this order. Till such time, the petitioner shall remain placed under suspension and further orders must be passed afresh within a period of three weeks.

9. The learned counsel for the petitioner made a plea that the petitioner should be paid subsistence allowance. That is a decision which will have to be taken only by the second respondent if at all a representation in writing is given by the petitioner. Let it also be considered in its proper light.

10. With the above directions, this Writ Petition stands disposed of. No costs. Consequently connected miscellaneous petitions are closed.

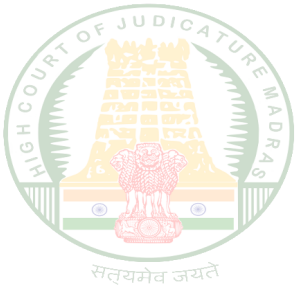
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Internet : Yes / No

Index: Yes / No

Speaking order / Non speaking order

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