



WEB COPY

WP No. 30990 of 2019



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03-09-2025

CORAM

THE HONOURABLE MR.JUSTICE T. VINOD KUMAR

WP No. 30990 of 2019

1. P.Senthil Kumar
S/o. Palanisamy, No.54, Kamaraj
Street, Gobichettipalayam, Erode Dist.

Petitioner(s)

Vs

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

2.The Deputy Superintendent of Police,
Gobi Subdivision, Gobichettipalayam,
Erode District.

3.The Area commander,
District Home Guards, Erode

Respondent(s)

PRAYER

Writ Petition filed under Art.226 of the Constitution of India praying to call for the records of the impugned order of the 1st Respondent in his proceedings in Ma.Aa.No. 608/2019 and Na.Ka.No. A3/14681/2019 dated 26.06.2019 straight away removing the petitioner from service without even giving an opportunity of hearing as required under section 13 of the Tamil Nadu Home Guards Act



1963 and Rule 12 of the Tamil Nadu Home Guards Rules 1963 and quash the same as illegal and consequently direct the Respondents to reinstate the petitioner in service considering his meritorious service rendered and having been awarded so many prestigious awards like the Hon'ble Chief Minister's award as he is a victim of departmental rivalry when seen in the backdrop of the fact he was on the verge of being promoted as Company Commander, his next promotional avenue, due to his reputation and merit.

For Petitioner(s): M.Purushothaman

For Respondent(s): Mrs. V. Yamunadevi,
Special Govt. Pleader

ORDER

Heard Mr.M.Purushothaman, learned counsel for the petitioner and Mrs.Yamuna Devi, learned Spl. Govt. Pleader appearing for the respondents and perused the records.

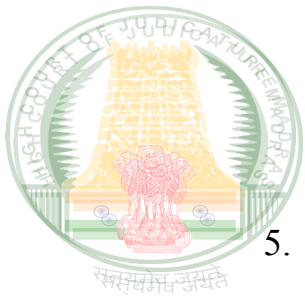
2. The brief facts of the case of the petitioner is that he was working as a Home Guard and had rendered services for more than 21 years; that in recognition of his services, he was also recommended for being awarded Police Medal in the year 2016; that while working as a Platoon Commander, Gobi Unit, Erode District, a false and frivolous complaint dated 03.05.2019 had been lodged against him by one Parimala Devi before the All Women Police Station, Gobi; and based on the aforesaid complaint, the respondents



have initiated action against the petitioner and issued order of removal from the service of Home Guard, with effect from 03.05.2019.

3. It is further contended by the petitioner that the respondent while removing him from the services of Home Guard, did not follow the procedure contemplated under Section 13 of the Tamil Nadu Home Guard Act 1963 (in short 'Act') r/w.sub rule (4) of Rule 12 of the Tamil Nadu Home Guard Rules 1963 (in short 'Rules') and thus, the impugned order of removal of the petitioner from the services of the Home Guard apart from being illegal, arbitrary is also contrary to the Act and the Rules and is thus liable to be set aside.

4. *Per contra*, the learned Spl. Govt. Pleader appearing on behalf of the respondent while denying the writ averments, submitted that based on the complaint lodged against the petitioner, he was arrested and remanded to judicial custody in relation to offence under sections 294(b), 417, 420 and 505(i) of IPC and since the petitioner has been arrested and remanded to judicial custody, the service of the petitioner could not be continued, more particularly, being in a disciplined services, where he is required to maintain integrity and also demonstrate good conduct.



5. Learned Special Govt. Pleader further submitted that since the petitioner had involved himself in the commission of crime vide Cr.No.5 of 2019, the respondent got disrepute to the forces and as such, he has been removed from the services. Thus, the order does not call for any interference.

6. I have taken note of the respective contentions.

7. Firstly, it is to be noted that the petitioner's services are governed by the provisions of Tamil Nadu Home Guard Act 1963 and as per the said Act, the constitution and control of Home Guard is a voluntary body and the person appointed is entitled to pay and allowances as defined under section 11 of the Act.

8. Section 5 of the Act deals with period of service and discharge and confers power on the authority to discharge the person appointed as a Home Guard at any time on such ground and subject to such conditions as have been prescribed; that the proviso to the sub section (1) of section 5 of the Act mentions that it shall not be necessary for such authority to disclose the ground



of discharge, if such authority considers such disclosure to be against the public interest.

9. Section 13 of the Act deals with suspension or removal of Home Guard by the Commissioner of Police in the City of Madras or Superintendent of Police in the District, in the circumstances enumerated under clause (a) and (b) of sub section (1) of section 13 of the Act. The clause (b) of sub section (1) of section 13 of the Act provides for suspension or removal of a Home Guard who is guilty of any breach of discipline or of any misconduct.

10. In so far as the term '*discipline*' as used in clause 9(b) of sub section 1 of section 13 is concerned, the same has reference to Rule 12 of the Rules. Sub section (2) of section 13 of the Act provides that no order under sub section (1) viz; regarding suspension or removal, shall be passed, unless the member of the Home Guard affected by such order is given an opportunity to be heard in his defence.

11. Rule 12(4) of the Rules also requires the concerned Home Guard being given an opportunity to explain the charge against him. A conjoint



reading of the provisions of the Act and the Rules would indicate that before a Home Guard is removed or suspended from service, he/she is required to be given an opportunity of hearing, which indicate the principles of natural justice being built into the Act and Rules enabling a Home Guard to know the reasons for the action initiated against him/her.

12. In the facts of the present case, by the impugned order, the respondents have removed the petitioner from the service of Home Guard, however, without complying with the mandatory requirement of section 13(2) of the Act, r/w. Rule 12(4) of the Rules. Though on behalf of the respondent, it has been vehemently contended that since section 14 of the Act provides for an appeal against the order passed under section 13 of the Act, to be preferred to the Inspector General of Police, Tamilnadu, within 30 days and the petitioner having not availed the said remedy within the time prescribed thereunder and only after expiry of the said time limit, having approached this court by the present writ petition and as such, he is not entitled to be granted any relief, it is to be noted that if only the respondents had not violated the mandate of section 13 r/w. 12(4) of the Act, the respondents can take the aforesaid plea of the



petitioner requiring to avail remedy of appeal. As the impugned order is passed without granting opportunity of hearing, this Court is of the view, it is not necessary to relegate the petitioner to avail the alternate remedy.

13. Further, as noted herein since, the respondent while issuing impugned proceedings did not adhere to the mandatory requirement of giving an opportunity of being heard to the petitioner in his defence, this Court is of the view that the existence of alternative remedy/(Appeal) is not a bar to consider the challenge to the impugned proceedings.

14. Further, a Division Bench of this Court, in similar circumstances in WA.No.208 of 2019 in relation to services governed by the aforesaid Act and Rules, had held that passing of an order without giving opportunity of hearing or issuing any show cause notice or calling explanation to be contrary to Rule 12(4) of the Rules 1963. In the light of the aforesaid decision, this Court is of the view that the impugned order passed by the respondents without affording opportunity of hearing cannot be sustained. Accordingly, the impugned order is set aside and the matter is remitted back to the respondent authorities to take



action strictly in accordance with the provisions of the Act and the Rules, in the event of respondents intending to proceed with the matter.

15. Subject to the above observation, the writ petition is disposed of. No costs.

msr

03-09-2025

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

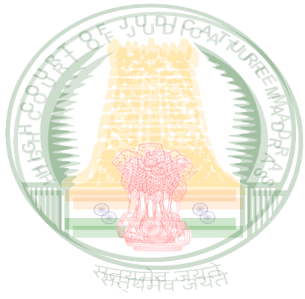
Neutral Citation: Yes/No

To

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