
(2015) 01 MAD CK 0064

In the Madras High Court

Case No : Writ Petition (MD) No. 78 of 2015 and M.P. (MD) No. 1 of 2015

S. Nagaraj

APPELLANT

Vs

The Director General of Police

RESPONDENT

Date of Decision : 07-01-2015

Acts Referred:

Citation : (2015) 01 MAD CK 0064

Hon'ble Judges : K. Ravichandra Babu, J.

Bench : Single Bench

Advocate : K. Navaneetha Raja, for the Appellant; S. Kumar, Addl. Govt. Pleader, Advocates for the Respondent

Final Decision : Allowed

Judgement

K. Ravichandra Babu, J.—Mr. S. Kumar, learned Additional Government Pleader takes notice for the respondents and by consent of both the parties, the main writ petition itself is taken up for final disposal at the stage of admission.

2. Heard the learned Counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents.

3. The petitioner is aggrieved against the order passed by the third respondent dated 11.12.2014, whereby the petitioner was dismissed from service. The petitioner was working as Home Guard and the impugned order of dismissal came to be passed on the ground that he conducted himself against the duty assigned to him and hence, there is dereliction of duty. It is the case of the petitioner that the said impugned order was passed without following any of the procedures more particularly, Section 13 of the Tamil Nadu Home Guard Act, 1963, wherein the authority is bound to give an opportunity of hearing to the petitioner before passing the order of dismissal.

4. According to the petitioner, the authority who passed the impugned order has not issued any show-cause notice or charge memo and on the other hand, the order of dismissal came to be passed straightaway without affording an

opportunity of hearing to the petitioner.

5. The learned Additional Government Pleader appearing for the respondents fairly submitted that the order passed against the petitioner was not in conformity with Section 13 of the Tamil Nadu Home Guard Act, 1963, and therefore, submitted that the matter may be remitted back to the authorities to follow the procedures and pass fresh orders accordingly.

6. A perusal of the impugned order would show that the same came to be passed without issuing any show-cause notice or charge memo to the petitioner. Further, the same was passed by making an allegation of dereliction of duty on the part of the petitioner.

7. Needless to say, without affording an opportunity of hearing to the petitioner, the petitioner cannot be terminated from service, more particularly, when Section 13 of the Tamil Nadu Home Guard Act, 1963 contemplates that no order under sub-section (1) imposing of removal/suspension shall be passed without giving an opportunity of hearing to the delinquent. For proper appreciation, Section 13 of the Tamil Nadu Home Guard Act, 1963, is extracted hereunder:-

"13. Suspension or removal -(1) The Commissioner of Police in the City of (Chennai) and the Superintendent of Police in a district may be order in writing suspend or remove from the Home Guard any member of the Home Guard under his control,-

(a) who on being called out by an order under Section 6 without reasonable cause neglects or refuses-

(i) to obey such order

(ii) to exercise the powers, discharge the duties and perform the functions as a member of the Home Guard, or

(iii) to obey any lawful order or direction given to him for the exercise of the powers, discharge of the duties and performance of the functions as a member of the Home Guard, or

(b) who is guilty of any breach of discipline or of any misconduct.

(2) No order under sub-section (1) shall be passed unless the member of the Home Guard affected by such order is given an opportunity to be heard in his defence.

(3) The suspension or removal of a member of the Home Guard under this section shall be in addition to any penalty to which such member may be liable under any other law for the time being in force.

8. Considering the admitted factual position that the impugned order came to be passed without affording an opportunity of hearing to the petitioner, I am of the view that the same can not be sustained any more.

9. Accordingly, the writ petition is allowed and the impugned order is set aside and the matter is remitted back to the third respondent to proceed against the petitioner by following due procedure and pass appropriate orders on merits and in accordance with law thereafter. Consequently, the connected Miscellaneous petition is closed. No costs.