

(2002) 04 GAU CK 0032
In the Gauhati High Court
Case No : Civil Rule No. 1584 of 1997

All Assam Tea Plantation Security Force	Vs	APPELLANT
The State of Assam and Others		RESPONDENT

Date of Decision : 22-04-2002

Acts Referred:

Citation : (2003) 1 GLR 233 : (2002) 2 GLT 55

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Advocate : A. Sherif, D.C. Dehtia and S.B. Choudhury, for the Appellant; B.J. Talukdar, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Ranjan Gogoi, J.—A representative action on behalf of the members of the Tea Plantation Security Force, seeking regularisation of services of such members is the eventual complexion of the present writ petition.

2. The facts are short and brief and may be capsuled as hereunder.

According to the writ petitioners, a large number of Tea Estates in the State of Assam, had sometime in the past, faced threats of extremist violence and extortion. Consequently, on the demands raised by the representative of the owners of the Tea Estates, it was decided by the State administration to raise a security force to deal with the situation in hand which had already assumed alarming proportions. According to the writ petitioners, news paper advertisements calling for recruitment to the Assam Tea Plantation Security Force (hereinafter referred to as the Force) was issued pursuant to which thousands of youths of the State applied. A selection process was held in different centres of the State and nearly 600 persons, who are claimed to be the members of the representative body that has instituted the present litigation, were selected. The selected candidates were sent for training, which was for a period of 54 days, whereafter necessary posting orders were issued. According to the writ

petitioners, notwithstanding the sincere and dedicated services rendered by its members, uncertainty and insecurity of tenure has consistently plagued its members and the State authority has arbitrarily resorted to a policy of removal from service which had led to the members of the Force to constitute a Welfare Committee to safeguard and protect their interest. In a meeting of the Executive Body of the said Committee, a decision was taken to ventilate the grievance of the members of the Force before this Court by means of the present writ application. It may be mentioned here that the writ petitioners claim that the initial recruitment of the members of the Force represented by the writ petitioners was made by the State Govt. and the State Govt. exercises complete control over the Force in matters relating to discharge of duties, discipline and other related matters. Though not expressly stated, what is discernible is that the present action has been espoused on behalf of the members of the Force who are working as Sepoys which nomenclature encompasses the vast majority of the Force.

3. Affidavits have been filed in the present proceedings by the Commandant of the Force as well as by the Deputy Director of Civil Defence and Deputy Commandant General of Home Guards, Assam. The affidavits are identical in content. The stand of the State respondents as reflected in the affidavits filed indicates that the Force in question had been raised on the basis of a Memorandum of Understanding executed sometime in the year 1993 by an agreement between the authorities of the State and ABITA (Assam Branch Indian Tea Association - representative body of the owners of the Tea Estate). The State respondent contend that the status of the members of the Force is equivalent to that of the Home Guards governed by the provisions of the Assam Home Guards Act, 1947. Home Guards, under the Act in question, do not have any permanent tenure. It is argued, the members of the Force also would not have any permanent tenure, save and except, a period of 3 years for which they are required to remain in the Force. On the expiry of 3 years of service, the State respondents claim a right to retrench serving members to replace them by new hands. It has been additionally contended, in the affidavits filed, that necessary funds to keep the Force in operation is borne by the Tea Estates and as the salaries of the members of the Force are being paid by the Tea Gardens, they are not employees of the State. The claim for regularisation is sought to be defeated on the aforesaid basis.

4. The Memorandum of Understanding giving birth to the Force as well as the standard operating procedure available on record would go to show that three primary duties, enumerated below, are entrusted to the Force:

- (a) Provide security to key Tea Garden personnel;
- (b) Escorting cash of Tea Gardens ; and
- (c) Guarding costly installations of the Tea Gardens.

The Force, it is stated, has been exclusively raised for the security of the Tea

Gardens against threats from the extremist elements and it is not to be used by the management of the Tea Estates for any private purpose.

Recruitment to the Force is to be made by a Central Recruitment Body set up by the Govt. of Assam in which a representative of the Indian Tea Association is to be co-opted. The operational control of the Force is vested in the Director General of Police who is empowered to delegate his powers to the jurisdictional District Superintendents of Police. The training, administration and discipline of the Force is vested with the Director General, Civil Defence and Commandant General of the Home Guards, Govt. of Assam which powers may be delegated by the said authority to the District Commandant of the Home Guards. Though JCOs/NCOs, who are in immediate charge of the sections of the Force at the Individual garden level, are to take orders from the Garden management in respect of routine functions, the standard operating procedure makes it clear that no disciplinary powers over any member of the Force is vested in the garden management. Concomitant with the duties entrusted, the members of the Force are to carry out their duties with arms including sophisticated ones. The cost incurred in raising and maintaining the Force is, however, to be paid by the Tea Garden authorities, in terms of the MOU in question.

5. Having set out the salient features of the MOU and standard operating procedure framed thereunder, the precise question that arises for determination in the present proceeding, according to Mr. Sharif, learned counsel for the petitioner, is whether the members of the Force are Govt. servants under the State of Assam?

The stand of the State respondents as reflected in the affidavit filed, to say the least, is archaic. To claim that the members of the Force by virtue of the undertaking given at the time of entry into the Force and also in view of the provisions of the Home Guards Act do not have a fixed tenure and are replaceable on the expiry of their fixed tenure by new hands, is to say the least, hardly conducive to attainment of the constitutional goals enshrined in Part IV of the Constitution, particularly Articles 39 and 42 of the Constitution. It is equally inconsistent and seeks to halt the dynamic growth of Articles 14 and 21 of the Constitution.

The alternative contention advanced by the State respondents is that as the initial raising and thereafter up keep of the Force is funded by the Garden authorities, the members thereof are not civil servants. The contention is self defeating. In the ultimate analysis, almost every State activity is funded by the citizens. Compulsory realisations from the citizens, backed by statutory force, constitute the revenue of the State going into the consolidated fund from which fund diverse items of expenditure flow out under very many different heads. It is these realisations from the citizens that eventually fund nearly all Governmental expenditure. Viewed from the aforesaid perspective, the money spent for up keep of the police force of the State and the Tea Plantation Security Force reveals no significant difference. Funds raised for the up keep of the Force do no flow out

of the State coffers in the usual way but in the ultimate analysis the difference is merely one of form and not of substance. No significant basis for the aforesaid department is indicated in the affidavits filed. Neither is the same relevant. Perhaps the reasons lie in the domain of convenience and necessity.

6. The modern day welfare State by taking upon itself multifarious duties in a wide sphere of public life has somewhat obliterated the difference between the sovereign and non-sovereign functions of the State. Yet the concept of "Sovereign function" connote a well defined meaning and it is such Sovereign functions, pertaining to law and order and maintenance of public order, that is looked after by the members of the Force. The justification for creation of the Force instead of entrusting the normal machinery of the Police administration to deal with the threats of the extremists violence insofar as Tea Gardens are concerned, has not been spelt out before the Court by the State authorities. The necessity of providing round the clock security cover to the Tea Gardens located in the far-flung and remote areas of the State and to have an exclusive force to deal with extremists threats to a key industry may have been the reasons behind the MOU giving birth to the Force. Whatever the justification and reasons may have been, the fact remains that the members of the Force under the direct operational and disciplinary control of the Police authorities are performing what are purely State functions. Even assuming the application of the Home Guards Act to the members of the Force, what is revealed is that under the Home Guards Act. Home Guards on duty are public servants and while called for duty have the same powers, privileges and protection as available to a member of the Police force.

7. This Court in the case of the Ksh Moirangthou Singh v. State of Manipur and Ors. reported in 1995 (3) GLR 517 has strongly deprecated and disapproved the action of the authority in continuing the members of the Home Guards on a flexible tenure. Uncertainty ,of tenure does not augur well for any organisation. It kills the incentive to render dedicated service and to build up the necessary identification which is vital to the sound functioning of any organisation. In the instant case, the bulk of the members of the Force were recruited in the year 1993. Long years of service of such members, who, as on date continue to remain in the Force itself create an equitable right to expect some sort of permanency in service.

8. Mr. B.J. Talukdar, learned State Counsel has been emphatic in asserting that no Master and Servant relationship between the State of Assam and the members of the Force exist in the facts of the present case. The argument advanced, taken to its logical conclusion, is that members of the Force are really the employees of the Tea Estate as their salaries and entitlements are being paid by the garden authorities. The question has been dealt with in the foregoing paragraphs from a slightly different perspective. To more specifically answer the argument advanced, the principles applicable in industrial law for determining the existence of a Master and Servant relationship may be conveniently referred

to. What is paramount for determination of such a relationship, is existence of a right of supervise and control the work done. There is no reason why the same principles cannot be applied to normal service jurisprudence if such a precise question is raised on application of the aforesaid test, the results are in favour of the writ petitioners.

9. Consequently, for the reasons alluded in the foregoing paragraphs, this writ petition has to be allowed. The State Respondents will not examine the question as to whether further continuance of the Force in the future would be necessary and if so, to give permanent status along with consequential time scale of pay to such members of the Force who may be in service as on date. The existing framework under which the Force continue to operate will naturally have to undergo certain structural changes at the hands of the authority. If, however, the continuance of the Force raises any room for doubt and speculation in the minds of the authority, the concerned state authorities will ensure continuance of the employment of the members of the Force till such time that the Force remains in operation and simultaneously embark upon a package of phased rehabilitation of the members of the Force. The directions in favour of the members of the Force, as hereinabove, is naturally subject to their being found fit and eligible for continuance in active service. No time limit has been fixed to compel performance of the obligations cast upon the State authorities by this order as this Court sees no reason as to why the authorities will not carry out such obligations within a reasonable time.

10. The writ petition is allowed as indicated above.