

(2013) 05 CAL CK 0020
In the Calcutta High Court
Case No : W.P.S.T. No. 619 of 2010

Bikash Kumar Das

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 10-05-2013

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14, 15, 3(q), 3(r)
Constitution of India, 1950 — Article 226, 309, 310, 311
West Bengal Home Guards Act, 1962 — Section 10, 3, 5, 6, 6(2)

Citation : (2013) 3 CALLT 161 : (2013) 5 CHN 363

Hon'ble Judges : Nishita Mhatre, J; Anindita Roy Saraswati, J

Bench : Division Bench

Advocate : Arindam Chatterjee, Mr. Chandan Bhadury, Mr. S. Adak and Ms. Lipika Chatterjee in all the Petitioner, for the Appellant; Tapan Kumar Mukherjee, Nilotpal Chatterjee for the State in W.P.S.T. No. 622 of 2010, Mr. Pradip Dutta, Pinaki Dhole for the State in W.P.S.T. No. 619 of 2010, Mr. S. Pal, Supratim Dhar for the State in W.P.S.T. No. 623 of 2010, Mr. K. Mondal, Prartab Haider for the State in W.P.S.T. No. 620 of 2010 and Mr. Tapabrata Chakraborty as Amicus Curiae, for the Respondent

Judgement

1. All these petitions, petitioners have challenge the order of the West Bengal Administrative Tribunal which has refused to grant relief to the Petitioners to correct their respective dates of birth which are recorded in the District Home Guard Master Roll. The learned Government Advocate, Mr. Mukherjee, who appears for the Respondents-State of West Bengal in W.P.S.T. No. 622 of 2010 and all the other Government Advocates contend that the Tribunal had no jurisdiction to consider the grievances of the Petitioners. According to them, since the posts held by the Petitioners are not civil posts, they are not entitled to approach the West Bengal Administrative Tribunal for any relief. They submit that though the State had not raised the issue of the jurisdiction of the Tribunal to entertain the applications filed, the Tribunal ought to have considered the issue first before embarking on the decision on merits. The learned advocates submit that since the issue raised by them is a question of law it can be raised at any

point of time and indeed before this Court as well for the first time.

2. There is no dispute that all the Petitioners were appointed as members of the Home Guard (hereinafter referred to for the sake of brevity as Home Guards). The Petitioners have been appointed as Home Guards on various dates. They have the requisite qualifications and have been working as Home Guards since their respective dates of appointment. The Petitioners learnt that their dates of birth were wrongly recorded in the District Home Guard Master Roll and, therefore, applied for rectification of their respective dates of birth. They were informed by the Director General & Commandant General, Home Guard that their applications for rectification were pending with the Government. The Petitioners then submitted a representation to the State Government. They were informed by the Principal Secretary, Department of Civil Defence that the change of their respective dates of birth was not permissible.

3. Aggrieved by this decision, the Petitioners approached the Administrative Tribunal. The State Government raised various issues before the Administrative Tribunal with respect to the merits of the Petitioners' case. However, they did not raise the issue regarding the jurisdiction of the Administrative Tribunal to entertain the applications filed by the Home Guards.

4. Mr. Mukherjee for the Respondents/State submits that the Home Guard is a voluntary organization and persons who volunteered to join as members of the Home Guard are permitted to work as such. According to him, there are no sanctioned posts for the Home Guards. He points out that since the service is voluntary, the Home Guards are not entitled to any fixed pay scale. Instead, the State Government determines the allowance for the expenses which a Home Guard may incur while on duty. That amount is paid to them on the days they volunteer to work. In these circumstances, Mr. Mukherjee submits that the Home Guards do not hold a civil post and, therefore, are not entitled to move the West Bengal Administrative Tribunal for the redress of their grievances. Mr. Mukherji submits that the question of jurisdiction of the Tribunal vis-a-vis Home Guards is no longer res integra as two different Division Benches of this Court have held that the Home Guard is a voluntary organisation. He therefore submits that the Administrative Tribunal has no jurisdiction to entertain the grievances of Home Guards.

5. We have appointed Mr. Tapabrata Chakraborty as amicus curiae in this matter as the issue raised is important. He has submitted before us, after referring to the provisions of the West Bengal Home Guards Act, 1962 (hereinafter referred to as 1962 Act), as amended, that the Home Guards cannot be considered to be persons who are bereft of any remedy when they have a grievance pertaining to a service matter. He pointed out by relying on section 3(q) and section 15 of the Administrative Tribunal Act, 1985 (for short, the 1985 Act) that Home Guards who may not be necessarily holding civil posts do come within the purview of the 1985 Act. According to him, a restrictive meaning cannot be ascribed to section 3(q) of the 1985 Act and if read in a wider context, it would be apparent that

Home Guards also fall within the ambit of the 1985 Act.

6. Both Mr. Chakraborty and Mr. Mukherjee have relied on various judgments which we will refer to presently.

7. In order to determine whether the Administrative Tribunal has jurisdiction to entertain issues relating to Home Guards, it would be necessary to examine a few provisions of law. Section 15 of the 1985 Act provides thus:

Section 15. Jurisdiction, powers and authority of State Administrative Tribunals. -

(1) Save as otherwise expressly provided in this Act, the Administrative Tribunal for a State shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court ***) in relation to-

(a) recruitment, and matters concerning recruitment, to any civil service of the State or to any civil post under the State;

(b) all service matters concerning a person [not being a person referred to in clause (c) of this sub-section or a member, person or civilian referred to in clause (b) of sub-section (1) of Section 14] appointed to any civil service of the State or any civil post under the State and pertaining to the service of such person in connection with the affairs of the State or of any local or other authority under the control of the State Government or of any corporation [or society] owned or controlled by the State Government;

(c) all service matters pertaining to service in connection with the affairs of the State concerning a person appointed to any service or post referred to in clause (b), being a person whose services have been placed by any such local or other authority or corporation [or society] or other body as is controlled or owned by the State Government, at the disposal of the State Government for such appointment.

(2) The State Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section (3) to local or other authorities and corporations [or societies] controlled or owned by the State Government:

Provided that if the State Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this sub-section in respect of different classes of, or different categories under any class of, local or other authorities or corporations [or societies].

(3) Save as otherwise expressly provided in this Act, the Administrative Tribunal for a State shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation [or society], all the jurisdiction, powers and authority exercisable immediately before that date by all Courts (except the Supreme Court 3***) in relation to--

(a) recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation [or society]; and

(b) all service matters concerning a person [other than a person referred to in clause (b) of sub-section (1) of this section or a member, person or civilian referred to in clause (b) of sub-section (1) of section 14] appointed to any service or post in connection with the affairs of such local or other authority or corporation [or society] and pertaining to the service of such person in connection with such affairs.

(4) For the removal of doubts, it is hereby declared that the jurisdiction, powers and authority of the Administrative Tribunal for a State shall not extend to, or be exercisable in relation to, any matter in relation to which the jurisdiction, powers and authority of the Central Administrative Tribunal extends or is exercisable.

8. A bare perusal of the aforesaid section indicates that service matters, which may not relate to a civil service of the State or to civil posts under the State, can also be examined and determined by the Administrative Tribunal. Section 3(q) of the 1985 Act defines "service matters" thus-

"service matters", in relation to a person, means all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or, as the case may be, of any corporation [or society] owned or controlled by the Government, as respects-

- (i) remuneration (including allowances), pension and other retirement benefits;
- (ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;
- (iii) leave of any kind;
- (iv) disciplinary matter; or
- (v) any other matter whatsoever;

9. Reading the aforesaid sections in conjunction it would be apparent that all matters relating to the conditions of service of a person appointed or engaged to work "in connection with the affairs" of any State with respect to any matter whatsoever, would be considered as a "service matter". Such matters can be entertained by the Administrative Tribunal.

10. In the case of Union of India and others Vs. Deep Chand Pandey and another, , the Supreme Court observed that it is incorrect to give a narrow and restrictive interpretation to section 14 and 3(q) of the Administrative Tribunals Act. The Court observed that while piloting the Bill for the introduction of the Act on the statute book the Minister of Law had stated in the Rajya Sabha that he believed that the expression conditions of service to be of such a wide amplitude

that any attempt to enumerate them would be "really so dangerous from the point of view of the employees themselves that by exclusion you say that the others are not". These observations have to be borne in mind while determining whether the Home Guards are entitled to approach the Administrative Tribunal to redress their grievances.

11. The 1962 Act has been enacted to provide for the constitution of a Home Guard in the State of West Bengal. u/s 3 of the 1962 Act the Superintendent of Police in the District or the Commissioner of Police in Calcutta has been empowered to constitute a body, known as the "Home Guard" with members who will discharge functions in relation to the protection of persons, the security of property or the public safety as may be assigned to them in accordance with the provisions of the Act and the Rules framed thereunder. Thus, the Home Guard assists the police in handling law and order and for the general safety and security of the public and property. The Superintendent of Police or the Commissioner of Police may enroll such persons as Home Guards who are fit and willing to serve. u/s 5 of 1962 Act the members of the Home Guard can be called out at any time for training or to discharge any of the functions assigned to the Home Guard. When a member is called out for duty he is entitled to the same powers, privileges and protection as an officer of the police force. Section 6(2) stipulates that no prosecution can be launched against a member of the Home Guard in respect of anything done by him in the discharge of his functions, except with the previous sanction of the District Magistrate or the Commissioner of Police, Calcutta. Section 7 stipulates that the members of the Home Guard when called out are to function directly in aid of the police force and are under the control of the Police officers. If a Home Guard refuses to obey or neglects any order without sufficient cause, he may be convicted by a competent Court and may be punished with a fine. Section 9 empowers the State Government to frame Rules consistent with the Act, inter alia, for the payment of allowances to the Home Guards and for the conferment on them such powers as are exercisable by a police officer.

12. The 1962 Act indicates that the Home Guard is a body consisting of several members who are permitted to act or exercise powers conferred on a police officer. They are expected to assist the police in any situation when called for duty. It is true that the Home Guards volunteer for service but once these persons are accepted and become a part of the Home Guard, they are covered by the enactment and the Rules framed thereunder. They can take no independent decisions and have to follow the Rules specified and the orders of the Superintendent of Police or the Commissioner of Police and their Commanding Officer. This Commanding Officer also has to act shoulder to shoulder with the police and his orders cannot prevail over the orders of the police. The 1962 Act provides for the manner of the distribution of work in the organization of the Home Guard and for various other aspects dealing with Home Guards. The conditions of service for the Home Guard have been stated and the service of such persons is ordinarily voluntary and unpaid, save as directed by

the State Government. The State Government has been empowered to determine the allowance to be paid to the members of the Home Guard when called out on duty. A Home Guard is expected to attend parades and lectures. Training is imparted to the members of the Home Guard. The syllabus of the course is decided by the Inspector General of Police or the Commissioner of Police, Calcutta. Such training is to be given by Officers appointed for that purpose by the Superintendent of Police or, the Commissioner of Police. Rule 7 of 1962 Act provides that the duties of the members of the Home Guard are: 1] to assist the police force in the protection of the civil population against the forces of crime and disorder, 2] to work in close touch with the Civil Defence Organization and 3] to perform such duties and in connection with the protection of persons, the security of the property or the public safety, as the State Government may, from time to time, assign to them. Rule 9 of 1962 Act speaks about the discipline for a member of the Home Guard. The appointing authority is empowered to remove a Home Guard for misconduct or neglect of duty or breach of discipline. The appointing authority is certainly the State Government and not a member of the Home Guard or the District Commandant of the Home Guard.

13. It is thus evident that the State has pervasive control over the Home Guard and its members. We fail to see how the Administrative Tribunals Act is not applicable to the Home Guards.

14. The learned advocate for the State has relied on the judgments of this Court in the cases of *State of West Bengal and Others Vs. Kinkar Karmakar and Others* and *Lutfar Rahaman and Another, and Shri T. Kodanda Rao & Ors. v. The Union of India & Ors.*, reported in (2010) 2 CLJ (Cal) 446.

15. In *Kinkar Karmakar's* case, the Court has held that having regard to Sections 5, 6, 7, 8, 9 and 10 of 1962 Act and Rule 4 of the Home Guard Rules, the appointment of Home Guards is not at par with the State Government employees or the police personnel. In these circumstances, the Court was of the view that the members of the Home Guard cannot contend that they are entitled to equal pay for equal work inasmuch as they are not entitled to the pay drawn by the Police Officers or the constables. The Court then observed in para 32 as follows:

32. We, however, express our desire that the legislature as well as executives should re-think on the issue as to what best they can do within the framework of the Constitution for welfare of the members of the home guard. They have given some benefits in deference to the desire of this court as discussed above. We hope and trust in future they would try to give something more. We, however, cannot issue any direction on that score. It would be open for the legislature to re-enact the law on the subject. It would be open to the executives to extend further benefits if permissible within the scope of the said Act of 1962 as amended uptill date. We, abundantly make it clear that our desire should not be construed as any special right accrued in favour of the members of the home guard to claim as a matter of right any further benefit from the State. The State

would be free to act in accordance with law. While doing so they should keep in mind the plight of the members of the home guard so highlighted by us as above and should consider their case sympathetically in the light of the observation made by us hereinbefore.

16. The Court in the aforesaid case did not consider the issue as to whether the Administrative Tribunal had jurisdiction to entertain grievances of the members of the Home Guard but observed that the Home Guards are volunteers and therefore cannot claim parity with the police personnel.

17. In the case of Shri T. Kodanda Rao's case a Division Bench of this Court considered the following question referred to it by a learned single judge:

Whether on the facts of the case the writ application is maintainable in the High Court and the Central Administrative Tribunal has no jurisdiction to decide it?

18. Home Guards of the Andaman and Nicobar Islands, Home Guard Organisation had approached the Central Administrative Tribunal for regularisation of their service. The Tribunal had directed the Administration to frame a Scheme for regularization of the members of the Home Guard. That order of the Tribunal was challenged in W.P.C.T. No. 73 of 2003 and WPCT No. 158 of 2003. After hearing the parties, the Division Bench of this Court in its judgment, dated 16th December, 2003, took the view that though the members of the Home Guard employed by the Andaman & Nicobar Islands are employees of the Administration, they are not holders of civil posts and not civil servants by observing thus:

The Home Guard Act does not provide for a recruitment process. The engagement as Home Guards is not an engagement in service or an engagement to a civil post under the union. Therefore, we do not find that the respondents could maintain the claim before the learned Central Administrative Tribunal for the grievances ventilated by them.

19. The Court then converted the writ petition to an original writ petition and disposed of the same. The Division Bench gave directions to the Andaman & Nicobar Administration for framing a Scheme for regularization of the Home Guards, who had put in long years of service. That judgment was challenged before the Apex Court by the Administration. The SLP was dismissed in Union of India (UOI) and Others Vs. Parul Debnath and Others, . The judgment of the Division Bench had been confirmed substantially by the Apex Court and, therefore, it did not interfere with the directions issued to the Administration to frame a Scheme as directed by the Administrative Tribunal. It appears, thereafter, the Scheme was framed and was challenged before the learned Single Judge. The learned single Judge took the view that the judgment of the Division Bench, dated 16th December, 2003 had been delivered in a matter over which the Division Bench had no jurisdiction to entertain. This Court observed in Kondanda Rao's case (supra) that since the matter had traveled up to the Apex Court earlier and the judgment and order of the Division Bench had been

affirmed, there was no scope for the learned Single Judge to doubt the jurisdiction of the Division Bench in entertaining the writ petition by converting it to a writ under Article 226 of the Constitution. Accordingly, the writ petition was disposed of and the matters were remitted to the learned single Judge for hearing the petition on merits.

20. Mr. Mukherjee has argued that in view of these two judgments, one of which traveled all the way to the Supreme Court, it is but obvious that the Home Guards cannot ventilate their grievances before the Administrative Tribunal. According to him, if at all they have a grievance they should file original writ petitions before this Court.

21. It is true that the Division Bench in the judgment dated 16th December, 2003 has held that since the Home Guard Act does not have any recruitment process and the engagement is not an engagement in service or engagement in a civil post, the Central Administrative Tribunal has no jurisdiction.

22. However, with respect, we are unable to agree with the view taken by the Division Benches of this Court for more than one reason. As we have already observed section 3(q) of the 1985 Act does not restrict the meaning of service matters and it pertains to any person employed by any authority or society owned or controlled by the Government with respect to remuneration, tenure, leave, disciplinary matters etc. Now having regard to the Home Guards Act, there is no doubt that it is the Government which stipulates the remuneration or allowances payable to them. The tenure of service is also that which the Government provides. It is true that a person has to volunteer to serve with the Home Guards, much like a person volunteers for recruitment for any job with the Government. However, after the volunteer or recruit is accepted in service, whether with the Home Guard or Government, he is covered by the statute applicable to such service. He is expected to work in consonance with the rules governing such service. The age of retirement of the Home Guards has been stipulated by the Government to be sixty years. Moreover, with respect to disciplinary matters it is only the Government i.e., the police which has control over the Home Guards. Section 3(r) of the 1985 Act defines "service rules" to mean the rules, regulations, orders or other instructions or arrangements in force for the time being to redress any grievance in relation to such matters. The Act of 1962 and the Rules framed thereunder prescribe the "service rules" for Home Guards.

23. The conjoint reading of section 3(q) and 3(r) and section 15 of the 1985 Act, in our opinion, indicates that the Home Guards are covered by the West Bengal Administrative Tribunal. It is not sufficient to only consider the Home Guards Act and Rules framed thereunder to ascertain whether the Administrative Tribunal has jurisdiction. The provisions of the Administrative Tribunals Act must also be considered. With respect, we are unable to agree with the view taken by the earlier benches that because persons volunteer for service as Home Guards they remain volunteers even after they are appointed as Home Guards when they

have to follow the rigours of employment and retirement. A volunteer cannot be told to retire at a particular age as this would be antithetical to the concept of voluntary service. In our opinion the induction of a volunteer into service with the Home Guard cannot be an impediment for his approaching the Administrative Tribunal to redress his grievance.

24. In the case of *The State of Assam and Others Vs. Shri Kanak Chandra Dutta*, , the Supreme Court considered the meaning of the term "civil post" with respect to a Mauzadar appointed in the Assam valley. The Court held as follows:

9. The question is whether a Mauzadar is a person holding a civil post under the State within art. 311 of the Constitution. There is no formal definition of "post" and "civil post". The sense in which they are used in the Services Chapter of Part XIV of the Constitution is indicated by their context and setting. A civil post is distinguished in Article 310 from a post connected with defence; it is a post on the civil as distinguished from the defence side of the administration, an employment in a civil capacity under the Union or a State, see marginal note to Art. 311. In Art. 311, a member of a civil service of the Union or all-India service or a civil service of a State is mentioned separately, and a civil post means a post not connected with defence outside the regular civil services. A post is a service or employment. A person holding a post under a State is a person serving or employed under the State, see the marginal notes to Arts. 309, 310 and 311. The heading and the sub-heading of Part XIV and Chapter I emphasize the element of service. There is a relationship of master and servant between the State and a person said to be holding a post under it. The existence of this relationship is indicated by the State's right to select and appoint the holder of the post, its right to suspend and dismiss him, its right to control the manner and method of his doing the work and the payment by it of his wages or remuneration. A relationship of master and servant may be established by the presence of all or some of these indicia, in conjunction with other circumstances and it is a question of fact in each case whether there is such a relation between the State and the alleged holder of a post.

10. * * * * *

11. Judged in this light, a Mauzadar in the Assam Valley is the holder of a civil post under the State. The State has the power and the right to select and appoint a Mauzadar and the power to suspend and dismiss him. He is a subordinate public servant working under the supervision and control of the Deputy Commissioner. He receives by way of remuneration a commission on his collections and sometimes a salary. There is a relationship of master and servant between the State and him. He holds an office on the revenue side of the administration to which specific and onerous duties in connection with the affairs of the State are attached, an office which falls vacant on the death or removal of the incumbent and which is filled up by successive appointments. He is a responsible officer exercising delegated powers of Government. Mauzadars in the Assam Valley are appointed Revenue Officers and ex officio Assistant Settlement

Officers. Originally, a Mauzadar may have been a revenue farmer and in independent contractor. But having regard to the existing system of recruitment, employment and functions, he is a servant and a holder of a civil post under the State.

25. In the present case as well, the State, through the Police Authority has the power to select and appoint Home Guards, although the terminology used is that a member of the Home Guard would volunteer and he would be enrolled as a member. Legal semantics cannot obfuscate the ground realities, inasmuch as a person, who volunteers for duty with the Home Guard, is not automatically enrolled. He has to comply with the prerequisites for appointment including the educational qualifications and the age.

26. Thus, in our opinion, the use of the words "volunteer" and "enrolment" for the employment of Home Guards do not dramatically alter the concept of an employee who falls within the purview of the State Government. The salary or allowance that he is paid is again subject to what the State Government decides. The Home Guard is a public servant working under the supervision of the Superintendent of Police or Commissioner of Police. He is a responsible officer exercising powers delegated to him by the Superintendent of Police or Commissioner of Police which are at par with the powers of the Police Officer.

27. In *State of West Bengal and Others Vs. Pantha Chatterjee and Others*, , the Supreme Court considered whether the Home Guards could claim pay parity with the regular Border Security Personnel. A learned Single Judge of this Court while considering the issue had concluded that the Home Guards could not be treated as volunteers engaged in casual nature of work so as to be termed as part time staff of the Government of West Bengal and held that there existed a relationship of master and servant between the Home Guards and the State Government. The Division Bench upheld the findings of the learned Single Judge. The State Government, being aggrieved by these orders, preferred the proceedings before the Supreme Court. The Court did not accept the contention of the State Government that since the employees are volunteers and it was of the voluntary organization, the Respondents in that case were not entitled to relief. The Court upheld the decision of the High Court and held that the State of West Bengal was in the position of an employer.

28. In the case of *Union of India & Ors. v. Parul Debnath & Ors.*, (supra) the Home Guards of the Andaman & Nicobar Islands had approached the High Court for regularization of their service. The Circuit Bench at Port Blair issued the directions to the Government to prepare an appropriate Scheme for regularization of the service of the home guards. Aggrieved by that decision, the matter was challenged before the Supreme Court. The Supreme Court held thus:

22. Firstly, we are in agreement with Mr. Das and the Division Bench of the High Court that the intention of the earlier Division Bench while disposing of the two writ petitions filed by Manoj Kumar Singh and others was that the Scheme was to

be framed not only in terms of the directions given by the Central Administrative Tribunal but also in the light of the views expressed in Pantha Chatterjee's case (supra). A glance at the Scheme makes it very clear that the same had not been framed in terms of the directions given by the Division Bench and also this Court and certainly not in keeping with the decision in Pantha Chatterjee's case (supra). As has been very rightly pointed out in the judgment under appeal, it was the intention, both of the Tribunal and the High Court, as well as this Court, that the respondent Home Guards were to be absorbed in the regular establishment of the Andaman and Nicobar Islands and no new appointment was required to be made. It was, therefore, further intention of the Tribunal as well as the Courts that the absorption of the eligible respondents were to be at one go and not in phases, as has been sought to be suggested in the proposed Scheme. In fact, such a procedure had neither been directed by the Tribunal nor the High Court, nor this Court in Pantha Chatterjee's case (supra). As a result, the question of 100% reservation would not arise since the absorption of the respondents did not amount to new appointment which could have given rise to the question of reservation. In our view, the Division Bench has very correctly observed that the intention of the Tribunal and the Courts was that the benefits to be given to the writ petitioners (respondents herein) should be extended to all of them uniformly and without making any discrimination. The very fact that some of the respondents would be regularised, while the others would have to wait till the next vacancies arose or the possibility that some of the candidates who were otherwise eligible, might not even be absorbed, was never the intention when the directions were given to frame a Scheme for absorption of the respondents. In our view, such a course of action appears to have been adopted to negate the effect of the earlier orders so that the respondents as a whole were deprived of the benefit of absorption and the further benefit of equal pay for equal work as was indicated in Pantha Chatterjee's case (supra). As a direct consequence of the disparity in the pay structure of the respondents, who were to be absorbed in stages, their post-retrial benefits would be affected and would not be uniform which was also not intended when directions were given for framing of Scheme to absorb the said respondents.

29. The Court directed that a Scheme be evolved. This judgment was delivered in a matter which originated in the Central Administrative Tribunal.

30. Taking a conspectus of the aforesaid decisions and the provisions of law, we are afraid, that we are, with respect, unable to agree with the view taken by this Court that the Home Guards are engaged as volunteers or that the State Government is not their employer and consequently they are not entitled to approach the West Bengal Administrative Tribunal.

31. We, therefore, refer the following issue to a Larger Bench-

Whether the members of the Home Guard, who are appointed under the West Bengal Home Guards Act, 1962 can approach the West Bengal Administrative Tribunal to redress their grievances pertaining to service matters?

32. Papers be placed before the Hon"ble the Chief Justice for appropriate directions to constitute a Larger Bench. We are grateful to Mr. Chakraborty for the time and energy spent by him in ably assisting the Court in this matter.