
(2002) 02 DEL CK 0026

In the Delhi High Court

Case No : CWP No's. 3600, 3601 and 3602 of 2001

Chander Bhushan Rai and Others, Dev Kumar and Another
and Jitender Prasad Singh and Others

APPELLANT

Vs

Govt. of NCT of Delhi and Another

RESPONDENT

Date of Decision : 21-02-2002

Acts Referred:

Citation : (2002) 6 SLJ 614

Hon'ble Judges : S.B. Sinha, C.J.;A.K. Sikri, J

Bench : Division Bench

Advocate : J.C. Madan, for the Appellant; Girwhar Singh, JD SD (HG) in Person,
for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, C.J.—Whether the home guards appointed under the Bombay Home Guards Act are holders of civil services and whether their services can be directed to regularized, are the questions involved in these proceedings filed by the writ petitioners.

2. The petitioners were enrolled as home guards for a period of three years. On completion of the said period, they were discharged from service. According to them, they had served as home guards for a long period and as such, they having become civil servants are entitled to regularization with effect from the date of their respective enrolment.

3. The petitioners filed Original Applications claiming regularization of their services as also for their reinstatement upon setting aside the orders of discharge.

4. The respondents' contention, however, is that the relationship of master and servant by and between them and the petitioners never existed. The writ petitioners are volunteers who are called upon during emergency to assist the enforcement agency and are paid subsistence allowance and parade allowance

out of the contingent funds.

5. Home Guards, according to the respondents, is a voluntary organization with motto of "Niskam Sewa" having no statutory rights and obligations.

6. The learned Tribunal, having regard to its various decisions as also the High Court and the Supreme Court, as noticed in para 7 of the impugned judgment, held:

"8. In the afore-stated cases cited by the learned counsel of the respondents, it was held that the petitioner-Home Guards could not be given any relief and the Home-Guards being volunteers were not entitled to regularization. In the case of Raj Kamal (supra) the Hon"ble Supreme Court dismissing the SLP held that the representation must be made to the Government and not to the Court. The mere fact that after the expiry of the term of three years some Home Guards personnel were allowed to continue in the service could not by itself entitle them to additional benefits than what they would have been otherwise entitled to had they been discharged on the expiry of the initial period of three years. In the case of Rameshwar Dass Sharma (supra) their Lordships have held as follows:

".....the Home Guards who are ordinarily demobbed Army personnel are employed on the basis of temporary need from time to time and in case they are called back to do work with arms in hands, they are paid at the rate of Rs. 30/- per day on the basis of eight hours" working during the day, or otherwise they are paid at the rate of Rs. 25/- per day. Petitioner, according to the respondent being an employee under this system cannot ask for regularization. In such circumstances, we do not think that the petitioner is entitled to any relief. We have impressed upon learned counsel, however, to find out from the Home Guard Organisation if in any manner, the petitioner can be accommodated in a limited way.

The SLP and the interlocutory application are disposed of accordingly."

In the case of Man Sukh Lal Rawal (supra), the Hon"ble High Court while dismissing the writ petition expected of the respondents to be alive to this situation and to frame a transparent and workable policy within a period of six months. In the case of Raj Kumar (supra) the Hon"ble High Court did not find any reason to interfere with the decision of this Tribunal and dismissed the petition."

7. On the afore-mentioned findings, the Original Applications filed by the petitioners herein were dismissed.

8. Dr. J.C. Madan, the learned counsel appearing on behalf of the petitioner, would contend that having regard to the provisions of the Bombay Home Guards Act and the Rules framed there under, it must be held that there existed a relationship of master and servant by and between the respondents and the petitioners herein inasmuch as the respondents had the power of superintendence and control over the petitioners. The learned counsel would also

contend that the Home Guards are civil servants, as has been held in AIR 1955 175 (Nagpur) .

9. The learned counsel would submit that the services rendered by the petitioners are not on voluntary basis and to that extent, the provisions of Section 2 of the Bombay Home Guards Act and the relevant provisions of the Delhi Home Guards Rules must be held to be ultra vires.

10. Our attention has also been drawn to a judgment of this court dated 25th May 1999 passed in CWP No. 4286/97 (Mansukh Lal and Ors. v. UOI and Ors.). The learned counsel has also drawn our attention to a Circular letter dated 10th September 1999 whereby and whereunder all departments had been called upon to give preference to home guards for appointment to Group "G" and Group "D" posts.

11. To consider the contentions of the learned counsel for the petitioners, it is necessary to notice the following relevant provisions of the Bombay Home Guards Act, 1947 as extended to the Union Territory of Delhi.

"2. Constitution of Home Guard and appointment of Commandant General and Commandant: (1) The Chief Commissioner of Delhi shall constitute for the Union Territory of Delhi a volunteer body called the Home Guards, the members of which shall discharge such functions and duties in relation to the protection of persons the security of property and the public safety as may be assigned to them in accordance with the provision of this Act and the rules made there under.

Provided that the Chief Commissioner of Delhi may, by notification in the official Gazette divide the Union Territory of Delhi into two or more areas and constitute such a volunteer body for each such area.

(2) The Chief Commissioner of Delhi may appoint a Commandant of each of Home Guards constituted under Sub-section (1).

(3) The Chief Commissioner of Delhi shall appoint a Commandant General of the Home Guards in whom shall vest the general supervision and control of the Home Guards throughout the Union Territory of Delhi and until a Commandant is appointed under Sub-section (2), the Commandant General may also exercise the powers and perform the functions assigned to the Commandant by or under this Act.

3. Appointment of members--(1) Subject to the approval of the Commandant General, the Commandant may appoint as members of the Home Guards such numbers of persons, who are fit and willing to serve, as may from time to time be determined by the Chief Commissioner of Delhi, and may appoint any such member to any office of Commandant the Home Guards.

(2) Notwithstanding anything contained in Sub-section (1) the Commandant General, may subject to the approval of the Chief Commissioner of Delhi, appoint any such member to any post under his immediate control.

4. Functions and duties of members-- (1) The Commandant may at any time call out a member of the Home Guards for training or to discharge any of the functions or duties assigned to the Home Guards in accordance with the provision of this Act and the rules there under.

(2) The Commandant General may in an emergency call out a member of the Home Guards for training or to discharge any of the said functions or duties in any part of the Union Territory of Delhi.

5. Powers, protection and control--(1) A member of the Home Guards when called out u/s 4 shall have the same powers and protection as an officer of police appointed under any Act for the time being in force.

(2) No prosecution shall be instituted against member of the Home Guards in respect of anything done or purporting to be done by him in the discharge of his functions or duties as such member except with the previous sanction of the District Magistrate."

12. Section 6 provides for control of police force over the Home Guards.

13. Section 6-A postulates that every member of the Home Guards, upon cessation, would forthwith deliver up to the Commandant his certificate of appointment or of office and the arms, accoutrements, clothing and other necessary items which had been furnished to him. Section 6-B provides for punishment of the members. Sub-section (1-A) of Section 6-B reads thus:

"Notwithstanding anything contained in this Act, the Commandant shall have the authority to discharge any member of the Home Guards at any time subject to such conditions as may be prescribed, if, in the opinion of the Commandant, the services of such members are no longer required. The Commandant General shall have the like authority in respect of any member of the Home Guards appointed to a post under his immediate control."

14. The said Act also provides for an appeal against an order of punishment. Section 9-A reads thus:

"Home Guards not disqualified from contesting elections to the State Legislature or local bodies."

15. Pursuant to or in furtherance of the powers conferred upon the Chief Commissioner of Delhi under the Bombay Home Guards Act 1947, Rules have been made known as Delhi Home Guards Rules 1959. Rule 6 of the Rules provides that a pledge shall be made by every person on his appointment as a member of the Home Guards in Form "B". Rule 8 of the Rules is in following terms:

8. Term of Office-The term of office of a member of the Home Guards shall be three years.

Provided that the appointment of any such member may at any time be

terminated by the Commandant General or the Commandant, as the case may be before the expiry of the term of office--

(a) by giving one month's notice, or

(b) without such notice, if such member is found to be medically unfit to continue as member of Home Guards."

Rules 17 and 18 of the rules read thus:

"17. Functions and duties - (1) The functions and duties of the Home Guards shall be such as may be assigned by the Chief Commissioner or the Commandant General from time to time.

(2) A member of the Home Guards constituted or any area shall be liable to serve in any other area in which the Act is in force."

"18. Compensation-- If a member of the Home Guards suffers any damage to his person or property while under training or on duty, he shall be paid such compensation as may be determined by the Chief Commissioner; provided that such damage is not caused by his own negligence or willful act, omission is contravention of any of the provisions of the Act or rules made there under or orders or directions issued by his superior officers."

16. The said Act postulates that the Home Guards would be a voluntary organization and the services of the members thereof can be requisitioned as and when required by the Commandant in the interest of the country. The Act and the Rules postulate that the members of the Force would be volunteers.

17. Before the learned Tribunal, the petitioners having not questioned the virus of Section 2 of the Act and the relevant rules, they cannot be permitted to raise the said contentions for the first time before this court.

18. In *Mansukh Lal Rawal v. UOI*, CWP 4286/97, a Division Bench of this court having regard to the provisions of the said Act, inter alia, held:

"The two questions that have been raised by the petitioners before us are whether they are entitled to be regularized as members of the Home Guards, and whether their services can be terminated without following the procedure laid down by Rule 8 of the Rules.

In so far as the first question is concerned, the genesis, history and concept of the Home Guards clearly shows that it is not an "employment" or a "source of employment". It is a volunteer body where citizens voluntarily offer their services for the benefit of society. There are no hard and fast rules for recruitment or the nature of duties and functions that are to be performed by a member of the Home Guards. It is also not as if a member of the Home Guards cannot have employment elsewhere. A member of the Home Guards can be a professional or a government servant or a person carrying on any trade or occupation, industrial worker, university student, etc., it can be anyone who can give some spare time

for the benefit of the community. In fact, of the applicants who were before the Tribunal, admittedly some of them were employed in the government and some in the private sector. This being the position, there cannot be any question of regularizing any person as a volunteer or for carrying on any voluntary activity. A contrary view will destroy the very ethos and character of the Home Guards."

19. Referring to the decision of the apex court in SLP (Civil) No. 12465/90 in the case of Rameshwar Dass Sharma and Ors. v. State of Punjab and Ors., it was held:

"In this view of the matter, we have no doubt in our minds that the petitioners are not entitled to be regularized as members of the Home Guards. In fact, such a concept does not exist except in the case of personnel involved in training, command or control."

20. As regards termination of their services, it was held that Rule 8 of the Rules can be invoked. Having held so, the Division Bench observed:

"What does, however, disturb us a little bit is the fact that many of the Petitioners have been rendering services as Home Guards for several years, in some cases for almost about twenty years. It does appear a little unfair to them to be suddenly told that when their existing tenure comes to an end, they will not be re-enrolled. In such a situation, it will be extremely difficult for them to look for a job in the open market.

The saving grace, however, is that the Government does give weightage to a member of the Home Guards for appointment to a Group "C" or a Group "D" post with the Government. Moreover, para 1.23 on page 15 of the booklet says that Respondent No. 1 has requested State Governments "to provide assistance to unemployed Home Guards in seeking gainful employment on the completion of their term of employment". We hope the Respondents are aware of both these responsibilities."

21. The ratio of the said decision, Therefore, run contrary to the submissions made by the learned counsel for the petitioners. The observations made by the Division Bench do not constitute the ratio of the decision. The fact remains that in a similar situation, a Division Bench of this court has held that termination of service of the Home Guards in terms of Rule 8 would be valid and they cannot be directed to be regularized.

22. The decisions of the apex court cited above have been rendered under the Industrial Disputes Act and they cannot be said to have any application in the facts and circumstances of the instant case.

23. It is true that in AIR 1955 175 (Nagpur) , a Division Bench of the Nagpur High Court has held that the members of the Home Guards appointed under the Central Provinces of the Berar Home Guards Act, 1947 would be holding civil posts under the State. Unfortunately, therein the provisions of the Act and in particular the provisions of Section 2 had not been correctly interpreted. Therein

the learned Judge of the Nagpur High Court failed to take into consideration that the character of service is a voluntary one which is volunteered by the members of the force for the safety and security of the nation. With utmost respect we are not in a position to persuade ourselves to subscribe to the views that Home Guards are holders of civil posts.

24. Keeping in view the afore-mentioned Division Bench decision of this court, we are of the opinion that no case has been made out for interference with the impugned judgment. There is thus no merit and the writ petition is accordingly dismissed. In the facts and circumstances of this case, however, there shall be no orders as to costs.