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**(2011) 08 AHC CK 0236**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 43665 of 2004

Chhotu Yadav and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision :** 24-08-2011

**Acts Referred:**

Constitution of India, 1950 — Article 311

Penal Code, 1860 (IPC) — Section 21

Uttar Pradesh Home Guards Rules, 1963 — Rule 10, 12, 4, 5, 9

**Citation :** (2011) 08 AHC CK 0236

**Hon'ble Judges :** Rakesh Tiwari, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

Rakesh Tiwari, J.—Heard learned Counsel for the parties and perused the record.

2. Since all the three writ petitions have been filed for the same prayer to issue a writ of mandamus directing opposite parties to regularize the Petitioners on the post of Home Guards and further to direct the opposite parties to pay the Petitioners equal pay which is being paid to a regular police and P.A.C. employees, these writ petitions are decided by a common judgment.

3. Learned Standing Counsel has raised a preliminary objection that these writ petitions are not maintainable as the Home Guards under the Act and Rules do not hold a civil post. In this regard he has relied upon a judgment passed in Writ Petition No. 5816 of 1995; Raghvendra Singh v. District Commandant, Home Guards Mainpuri and another, appended as Annexure C.A. 2 to the connected writ petition No. 51186 of 2004, wherein it has been held that " it may be very hard and source of discomfort to note that persons working as Home Guard under the Act and the Rules framed thereunder though they have attending duties which has all features of a civil post/civil service, still they have been deprived of the status/ stature of civil post and denied protection enshrined in Article 311 of the Constitution of India to a civil service or civil post".

4. The brief facts of the case are that the Petitioners claim to be working as Home Guard in the District Ballia for the last more than 10 years under the control of District Home Guard Commandant, Ballia; that with regard to their service condition, the statutory Rules known as U.P. Home Guards Rules, 1963, hereinafter referred to as Rules, have been framed, which is appended as Annexure-2 to the writ petition.

5. According to the Petitioner Rule 4 of the aforesaid Rules provides that the Home Guards will work as helper to the police department and they will assist the police in maintaining the law and order regarding help in Air attack, fire, flood, epidemic and other emergency and other urgent matters connected with public welfare. It is further stated that duties performed by the Home Guards clearly show that they are not a part of the police department, but a necessary limb of the Home Department. Under Rule 9 of the aforesaid Rules, same service conditions are framed for Home Guards as framed under Rule 4, aforesaid. Rule 5 of the aforesaid Rules, provides that Home Guards are entrusted with equal power which are performed by a regular police personnels. Under Rule 10 of the Rules aforesaid, it is provided that Home Guards have been categorised as a public servant u/s 21 of the Indian Penal Code. Rule 12 provides provisions for suspension of a Home Guard and other departmental proceedings.

6. In support of his case, learned Counsel for the Petitioner has relied upon paragraph 11 of the judgment rendered in the case of State of West Bengal and Ors. v. Pantha Chatterjee and Ors. reported in 2003 SC SLR 538, wherein it has been held that "the Scheme envisaged that on being released, after a period of three months, the volunteer Home Guards could go back and resume their vocations and may earn their livelihood and may be called as and when needed again for a short period where after again they could pursue their vocation. The step which seems to have been taken to disengage them and withdrawal of the power to recruit because of the number of cases filed in Court, is only to be ignored as extraneous. It is said to have been done in the year 1992. By that time they had already put in near about 14 years of service. After working for such a long period patrolling the borders in all weathers without any facilities, as provided to other permanent staff of Border Wing Home Guards and performing same duties, it is too much to say that their deployment was of a casual and voluntary nature and the Central Government will not be concerned with them and that it would be the responsibility of the State Government alone. The problem of infiltration continues. It is not over to say that they are being disengaged since they volunteered to be Wing Home Guards and they are free to resume their previous vocation, is simply arbitrary, unreasonable and legally unacceptable.

7. The Court further held that "there is no distinction between the permanent Border Wing Home Guards and part time Home Guards.

8. A perusal of the Judgments cited by learned Counsel for the parties shows that as to whether in the peculiar facts and circumstances of that case the Home

Guards had performed temporary or casual nature of job though they had worked for 14 years as Home Guards with a wing of Border Security Force, whereas the Division Bench of this Court in the case of Raghvendra Singh v. District Commandant, Home Guards Mainpuri and Anr. (supra) after appreciating the scheme of the Act, has come to the conclusion that though the persons working as Home Guards have all the features of civil post/civil service, still they have been deprived of the status/stature of civil post. They are neither employed nor recruited by the police or other department of the Government, but render volunteer service having certain powers to work with the police and other departments on the occurrence of an emergency in connection of public welfare. These powers have been conferred upon the Home Guards only by their duties so that they are able to maintain law and order in aid of police. This itself shows that neither they are a department of police nor employees of Govt. Department.

9. In the circumstances, the case cited by the Petitioner is not applicable in the facts and circumstances of the present case.

10. For all the reasons stated above, the Court is of the view that the Home Guards under the Act and Rules do not hold status/stature of civil post and in view of this these writ petitions are not maintainable.

11. In the result all the three writ petitions are dismissed.