
(2002) 01 GAU CK 0053
In the Gauhati High Court
Case No : Civil Rule No. 34 of 1993

Ganesh Chandra Dey

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 28-01-2002

Acts Referred:

Constitution of India, 1950 — Article 311(2)
Tripura Home Guards Rules, 1962 — Rule 9

Citation : (2002) 1 GLT 588

Hon'ble Judges : B.B. Deb, J

Bench : Single Bench

Advocate : B. Das and S. Chakraborty, for the Appellant; D.K. Bhattacharjee, for the Respondent

Final Decision : Dismissed

Judgement

1. In this writ petition, the petitioner has challenged the impugned order No. D. O. 477 dated 24.2.1990 passed by the respondent No. 3, the Commandant, Homeguard Organisation, Government of Tripura discharging the petitioner from service under the Homeguard Organisation and also sought for appropriate writ commanding the respondents to re-instate the petitioner in service with all incidental service benefits and also to regularise the petitioner's service as constable from 13.11.1965.

2. I have heard Mr. B. Das, learned senior counsel assisted by Mr. S. Chakraborty for the petitioner. Also heard Mr. D. K. Bhattacharjee, learned counsel for the respondents.

3. Precisely, the petitioner's case is as follows:

The petitioner entered in the public service on 13.11.1965 as a member of the Tripura Homeguard Organisation (THG). Though the said Organisation was constituted under Bombay Homeguards Act, 1947 as adopted in Tripura, but at no point of time, the petitioner has been engaged as a volunteer, rather, the

petitioner a service had been/has been utilised by the authority as a regularly appointed constable of Police and the petitioner had to discharge the identical duties as of Police constable. Though there was no provision either in the Bombay Homeguards Act, 1947 or rules framed thereunder empowering the authority to discharge any homeguard personnel on attaining the age of 50 years, the petitioner had been discharged on completion of 50 years of age by the impugned order. The representation made by the petitioner failed to attract any attention of the authority. Hence, this petition.

4. On the other hand, the State respondents having filed counter affidavit resisted the claim of the petitioner contending, inter alia, that as per Tripura Homeguards Rules 1962, a member of the Organisation may continue as such till he attains the age of 50 years. Of course, the Commandant General may, on consideration of individual case relax the age limit and having applied the said provision, the petitioner was discharged on attaining his age of 50 years by the impugned order and as such the petitioner is not entitled to get any relief in the present case.

5. From Annexure-A dated 13.11.1965, it reveals that the petitioner was appointed as a member of the Homeguards under the Bombay Homeguards Act, 1947 as adopted in the State of Tripura. During his service as homeguard, the petitioner had been awarded many times with monetary reward for his good performance. The respondent No. 3 Commandant issued a notice bearing No. 1928/HG/RS dated 11.4.1988 asking the petitioner to make representation if any, against his proposed discharge from service on attaining the age of 50 years. The verbatim of the letter as available under Annexure-E is reproduced below:

"As per records of this office you have attained the age of 50 years. As such it is proposed to discharge you from the membership of Homeguards within one month from the date of issue of the notice.

If you have anything to say against the proposed order you may represent within 15 days from the date of issue of this notice. You may also intimate within the same period if you would like to be heard in person."

6. The same notice was repeated by notice dated 14.8.1989. The petitioner made a representation, but nowhere he denied of his having attained the age of 50 years, rather he put forward a case seeking sympathetic consideration on the ground that his children were minors, they were not at all in a position to maintain themselves and the family depends upon his income. The authority on consideration of his representation and having consulted the record, allowed the petitioner personal hearing and thereafter issued the impugned office order bearing No. D.G. 477 dated 24.2.1990 by which the petitioner was discharged from the Homeguards Organisation. The petitioner having moved the higher authority seeking extension of service and having received no fruitful response filed this case.

7. Learned counsel for the petitioner Mr. B. Das submits that Homeguards organisation is no longer a volunteer organisation, but the members of the organisation have been declared to be treated as a civil servant by a few decisions of this Court and he referred a case law in *Ranjit Ghosh and Ors v. The State of Tripura and Ors.* reported in (1985) 1 GLR 8. In the aforesaid decision, the Division Bench of this Court while interpreting the implications and consequences of Article 311(2) of the Constitution of India held that the relationship between a member under Homeguards organisation and the State Government is undoubtedly one of master and servant relations. But that decision has been rendered by the Hon'ble Division Bench while interpreting the provision of Article 311(2) of the Constitution of India and further held that to discharge, dismiss or remove a member of the Homeguards organisation from the service as a measure of punishment, the provision of Article 311(2) is to be followed. Mr. Das having referred another decision of this Court in *Ratal Lal Dutta v. The State of Tripura* in Civil Rule No. 119/81 decided on 22.7.1968 submits that this Court in Division Bench judgment held that the status of a member of the Homeguards organisation is equivalent to civil servant. The concluding portion of the aforesaid judgment is available in paragraph 13 wherein this Court held that "the petitioner and all other similarly situated persons appointed as members of the Border Wing Homeguards in the scale of pay mentioned in their appointment letters along with allowances as applicable to the members of the equivalent ranks of the State Police organisation shall be entitled to get the said pay scale and other allowances as per appointment letters including annual increments".

The aforequoted concluding portion of the aforesaid decision reveals that so far the pay scale and other allowances of the member of the Border Wing Homeguards is concerned, that must be equivalent to the Police organisation of the State Government. This decision nowhere dealt with the discharge of a member of the Homeguards organisation (but Border Wing Homeguards) on completion of 50 years of age. Another decision of this Court in *Ratal Lal Das v. The State of Tripura and Ors.* in Civil Rule No. 64/83 dealt with the matter relating to the provision of Article 311(2) of the Constitution of India. The learned counsel for the petitioner Mr. Das having relied upon another decision of this Court in *Kalpna Paul v. The State of Tripura and Ors.* in Civil Rule No. 66/87 submits that a member of the Homeguards organisation acquired the status of the civil servant. The aforesaid judgment was delivered by this Court having relied upon the ratio of *Ranjit Ghosh & others (supra)* for interpreting the implication and consequence of Article 311 of the Constitution of India. Another decision Mr. Das relied upon in *Jitendra Das v. The State of Tripura & others* in Civil Rule No. 38/85 also dealt with the irregularities of the disciplinary proceeding.

8. Though the learned counsel for the petitioner referred the aforementioned citations of this Court, but unfortunately, this Court never dealt with the provision of Rule 9 of the Tripura Homeguards Rules, 1962. The Chief

Commissioner (the then) of Tripura in exercise of power u/s 8 of the Bombay Homeguards Act. 1947 as extended to Tripura vide notification dated 18.10.1962 framed the Rules called "Tripura Homeguards Rules, 1962" vide notification No. F. 26(3)-PD/62 dated 20.12.1962. The Rule 9 of the aforesaid Rules is excerpted below for ready reference:

"9. Limit of Age for a member of the Homeguard- A member of Homeguards may continue to be such member until he attains the age of 50 years:

Provided that the Commandant General may relax the age limit in suitable cases."

(The notification", is available in Tripura Gazette issue dated 29.12.1962)

9. The said provision of Rule 9 of the Tripura Homeguards Rules, 1962 has not been put under challenge by the petitioner. The decisions relied upon by the petitioner as referred to above have never come across the situation to interpret the said provision of Tripura Homeguards Rules the aforequoted Rules unequivocally prescribes that the service of the member of the Homeguards organisation would come to an end on completion of 50 years of age unless the authority considers the same to be relaxed in suitable cases. In the present case, in issuing the impugned order, (as revealed from paragraph 7 of the impugned order), it appears that the authority took into consideration the representation submitted by the petitioner, the relevant Rules and thereafter considered that "further extension of the petitioner in service is likely to be jeopardised and erode the voluntary character of the organisation" and as such he was discharged with immediate effect. The impugned order has not put any stigma in the character of the petitioner nor had the same been issued as a punitive measure and as such the provision of Article 311(2) of the Constitution of India is not attracted. It is a discharge simpliciter on attaining the age of 50 years as permissible under Rule 9 of the Tripura Homeguards Rules, 1962. The Court is not called upon to examine the vires of the said Rules and since the impugned discharge order appears to have been issued in compliance with the said Rules, I find no fault in the impugned order requiring any interference from the Court.

10. Mr. D. K. Bhattacharjee, learned counsel for the respondents having referred a case of our own High Court in Anjali Roy v. The State of Tripura & others in Civil Rule No. 78 of 1986 submits that this Court vide judgment dated 24.8.1995 held that "Homeguards organisation is a volunteer organisation and the member of the organisation is called out for duties in exigencies of the service and released from called out duties. It is the normal practice of the organisation. The members of the organisation are paid on daily wages basis and when they called on for duty aid do not get any daily wages if they are kept in the reserve list."

11. Since in the instant case, the petitioner has never been discharged/terminated from service as a punitive measure, but due to his completion of 50 years of age, he has been simply discharged having following Rule 9 of the Tripura Homeguards Rules, 1962 and as such the decisions relied upon by the petitioner and also by the learned counsel for the respondents are of no help in

the present case. Had the petitioner been terminated or discharged from duties for any alleged misconduct as a punitive measure, the decisions referred to by the learned counsel for the petitioner surely would have come to play. But since the case at hand has a different nature where the discharge is a simpliciter one on completion of 50 years of age pursuant to Rule 9 of the Tripura Homeguards Rules, 1962, the same cannot be interfered with by this Court in the present writ petition.

12. In that view of the matter, the writ petition stands dismissed. No order as to cost.