

(2015) 03 RAJ CK 0185

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 4663/2012, 5012, 6457, 11659 and 11660/2013 and 2370 of 2015

Ishwar Singh and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 12-03-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 309
Rajasthan Home Guards Act, 1963 — Section 2(1)

Citation : (2015) 4 RLW 3386 : (2015) 3 SCT 328

Hon'ble Judges : Nirmaljit Kaur, J

Bench : Single Bench

Advocate : Ankur Mathur, Counsel, for the Appellant; Rajesh Panwar, A.A.G and Sunil Joshi, Counsel, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Nirmaljit Kaur, J.

1. All the above six writ petitions shall stand decided by this common order as the issue involved is identical. For convenience, the facts are being taken from S.B. Civil Writ Petition No. 4663/2012. Reply has been filed in all above writ petitions except C.W.P. No. 2370/2015 but the same being identical shall too stand disposed of along with the other petitions.

2. The petitioners herein are individuals working on the post of Constable (Home Guard) after being appointed by the Selection Committee. After selection, the petitioners were provided basic training with regard to performance of their duties for support to the regular police department in maintenance of law and order and other related duties. The respondents have also provided promotion to some of the petitioners to higher posts without any financial benefits. The relief claimed in the writ petition was that the petitioners be declared as holders of civil post and to treat them so for all consequential benefits being granted to the regular employees of the State Government and to pay to the petitioners the

regular pay scale commensurate to the post held by them with all consequential benefits with a further prayer to dispense with the policy of rotation and calling off duty of home guards so that they are deployed throughout the period.

3. Shri Rajesh Panwar, learned Additional Advocate General appearing for the State while vehemently opposing the contentions raised by the learned counsel for the petitioners submitted that the said judgments are not applicable as the Rajasthan Home Guards and Civil Defence Department is a Government Department of Rajasthan State Government duly constituted and governed by the provisions of Rajasthan Home Guards Act, 1963 (for short hereinafter referred to as "the Act of 1963") and Rajasthan Home Guards Rules, 1962 (for short hereinafter referred to as "the Rules of 1962"). Section 2(1) of the Act of 1963 cloths the State Government with power to constitute a volunteer body called the Home Guards. Further, the enrollment of a candidate is not an appointment rather it is an enrollment for a particular period for rendering the volunteer services. The promotions as claimed by the petitioners are not promotions in its true and actual sense of the term as available to regular employees of any State Government's department. As a matter of fact, there exists "no posts" in the volunteers cadre in the department. Rather, volunteers whose devotion to duty, discipline, duty performance leadership qualities, and uniform turn out, command and control of section, platoons etc. are of an extra ordinary nature within the cadre, are only given honorary ranks as morale booster and active help to regular command and control staff, and these honorary ranks do not bear any kind of monetary benefits or any other benefits as is sought to be claimed by the petitioners. It is further stated that a volunteer home guard is paid Rs. 320/- per day. The deployment of Home Guards volunteers is on demand basis as requested by the user agencies and Home Guard Department. It was further contended that in these circumstances, the services of the petitioners cannot be regularized and they have no right to claim regular pay. There exists no relationship of "master" and "servant" and in no circumstances, they can be called "civil servant".

4. Learned counsel for the respondents has relied on the judgments rendered by the Apex Court in the case of State of Manipur and anr. Vs. Ksh. Moirangningthou Singh and ors. reported in 2007 AIR SCW 4456 as well as this Court in the case of Loon Singh and others Vs. State of Rajasthan and others (S.B. Civil Writ Petition No. 5677/2006) decided on 08.12.2008 to state that the petitioners are not entitled for regularization and cannot be given regular pay scale equivalent to the Constables who are in the regular service.

5. Although, the prayer in the petition is to declare the petitioners as holders of civil post and to grant them the same benefits as being granted to the regular employees of the State Government, learned counsel for the petitioner at the outset restricted his prayer only to the extent of grant of the salary at the minimum/basic of the pay prescribed for the lowest post i.e. Constable as granted in the judgment rendered by the learned Single Bench of Madhya

Pradesh High Court, Jabalpur in the case of Home Guard Sainik Evam Parivar Kalyan Sangh and others Vs. State of Madhya Pradesh and another (Writ Petition No. 10000 of 2010) along with number of other connected writ petitions decided on 02.12.2011 which has been confirmed by the Division Bench and further upheld by the Apex Court in Special Leave to Appeal (C) CC Nos. 21470-21471/2014 (State of M.P. and ors. Vs. Damodar Malviya and ors.) decided on 21.01.2015.

6. The similar objections as raised by the learned counsel for the respondents were raised by the State of Madhya Pradesh in the case of Home Guard Sainik Evam Parivar Kalyan Sangh (supra). The duties of a home guard as detailed in Section 10 of the Madhya Pradesh Home Guards Act, 1947 are identical as per Rule 17 of the Rules of 1962. The argument that the home guard is a volunteer organization was dealt in Para 24 and 25 of the said judgment wherein it was held that the scheme which had originally indicated as a voluntary organization, had lost its characteristic by holding:-

"24- Even though initially when the Act of 1947 was enacted, the same was enforced for establishing a voluntary organization and the organization that came into force was also a voluntary organization, but the voluntary nature of the organization lost its identity, with the passage of time and the nature of work which the organization started performing also underwent substantial change in due course of time, it attained the status of a regular establishment. Even the employees, like the petitioners, who are working have continued to work for more than 10- 20 years and it is, therefore, correct on the part of the petitioners in contending that with the passage of time and with the manner in which the organization had progressed, the voluntary nature of the organization had ceased to exist. This aspect of the matter is considered by the Supreme Court in the case of Pantha Chatterjee (supra) and after taking note of the continued deployment of Home Guards for a period of more than 10 years, in that particular case, it has been held by the Supreme Court that the voluntary nature of the organization has lost its identity and it has become more or less a regular establishment. It is held by the Supreme Court that in the prevailing situation, it is unfair on the part of the competent authorities to contend that it is a voluntary organization and no relationship of master and servant exists. It has been held that the scheme, which was originally indicated as a voluntary organization, has lost its characteristic and now it is nothing but a regular establishment, catering to the needs of the State in various matters.

25- Even though under the Act of 1947, the Home Guards organization is termed to be a voluntary organization, the nature of duties of the Home Guards as is specified in Section 10 clearly indicates that the Home Guards have to perform various duties. The duties performed by the Home Guards and the findings recorded by the Human Rights Commission in this regard would be referred to after some point of time. For the present, it may be taken note of that the State Government itself feeling that the Home Guards organization is no more a

voluntary organization, temporary in nature, has enacted various rules exercising powers under Article 309 of the Constitution and if these rules are taken note of, it would be seen that the State Government had been harping upon an idea of creating a permanent organization with a permanent set up, regular substantive posts were to be created with a particular pay scale. The statutory rules framed in this regard namely the Madhya Pradesh Home Guards (Gazetted) Service Rules, 1973; the Madhya Pradesh Home Guards [Class III Ministerial] Service Recruitment Rules, 1973; The Madhya Pradesh Home Guards Class III (Ministerial) Service Recruitment Rules, 1973; The Madhya Pradesh Home Guards Class III (Executive) Recruitment Rules, 2000; The Home Guards Class III (Executive) Recruitment Rules and the Pension Rules are all examples of various enactment made by the State Government for giving a permanent characteristic to the Home Guards organization."

7. Though, the said writ petition was disposed of with the following directions:-

"49- In view of the aforesaid and in the facts and circumstances of the case, for the grounds and reasons indicated hereinabove, these petitions are allowed in part. Even though this Court does not deem it appropriate to issue any "mandamus" with regard to the prayer made by the petitioners for declaring them as civil post holders or for granting them regular service alongwith regular benefits available to a personnel in the police department, the following directions are issued in the facts of the present case:

(a) On receipt of a certified copy of this order, the State Government shall take note of the recommendations made by the State Human Rights Commission and if required after constituting a High Level Committee or Commission to go into the questions and recommendations made by the Human Rights Commission and after studying the organization, working set up and other factors in the establishment of the Home Guards, make endeavour to lay down schemes, rules or regulations for regulating the working of the Home Guards establishment and if required, may formulate statutory rules and regulations in this regard, for prescribing their service conditions.

(b) Till the aforesaid exercise is not completed, all the employees working in the Home Guards department and who are petitioners before this Court, so also other similarly situated persons, who may have not filed writ petitions, be granted salary at the minimum/basic of the pay prescribed for the lowest post i.e.... constable in the police department, without any running pay scale, allowances etc.

(c) All the employees would be entitled to the minimum of the pay scale i.e.... the basic of the pay, as is payable to a constable in the police department, and the said benefit shall be extended to the employees with effect from 1.1.2011.

(d) The employees would be paid the aforesaid amount with revision of basic pay, if any, in the corresponding police department from time to time hereafter, till a final scheme or regular rules and regulations are not formulated for working

in the Home Guards organization.

(e) Apart from the aforesaid, the system of calling of duty shall be done away with and the employees shall be employed throughout the year subject to their being physically fit or otherwise entitled to work in accordance to law.

50- If this Court does not grant even this bare minimum relief to the petitioners, this Court would be failing in its duty of protecting the constitutional rights of the petitioners and having been prima facie satisfied that the action of the State Government is unjustified and amounts to violation of the constitutional and human rights, cannot sit back and look without issuing any directions. It is under these compelling circumstances that this Court is constrained to pass this order so that till the State Government takes a final decision into the matter, the petitioners are granted some interim benefit.

51- With the aforesaid directions, all these petitions stand allowed and disposed of."

8. The Apex Court modified the above mentioned order only to the following extent:-

"Having considered the submissions made by both the learned counsel, we are of the opinion, that if the benefit that is payable to the respondents is modified to the extent that the said benefit shall be paid by the State w.e.f. 01.12.2011, it would not cause prejudice either to the petitioners/State or to the respondents. Accordingly, we direct that the benefit of the basic pay as ordered by the High Court shall be extended to the respondents not w.e.f. 01.01.2011 but w.e.f. 01.12.2011 till the date honorarium had been enhanced to Rs. 9000/- by the State Government."

9. In view of the above and the limited prayer made by the learned counsel for the petitioners to grant salary at the minimum/basic of the pay provided for the said post, no case for either regularization of their services or grant of regular appointment is made out. However, there is merit in the argument of the learned counsel for the petitioners that the case of the petitioners is otherwise squarely covered by the ratio of judgments rendered in the case of Grah Rakshak, Home Guards Wel. Asso. Vs. State of H.P. and ors. (Civil Appeal No. 2759 of 2015) decided on 11.03.2015 as well as Home Guard Sainik Evam Parivar Kalyan Sangh (supra).

10. It is not denied that in the backdrop of the Chinese invasion in the year 1962, it was felt necessary by the Central Government for creating a mechanism for providing social security mechanism to help and support the police department in every State and in this way, the department of home security came into existence and the home guards were appointed. In this connection, the State of Rajasthan promulgated the Act of 1963 whereby provisions have been made to create a volunteer body called the "Home Guards", for services in the emergencies and other purposes in the State of Rajasthan. The functions and

duties of the Home Guards are provided in Rule 17 of the Rules of 1962, which includes:-

- (i) To help in maintaining law and order.
- (ii) To be nucleus of a civil emergency organization to help in abnormal calamities.
- (iii) To provide the nucleus of auxiliary, fire, rescue, communication and ambulance services.
- (iv) To operate transport, communications electricity, water and essential services, when the normal services are not functioning.
- (v) To assist in the social welfare scheme of the Government.
- (vi) To perform such other duties as may be assigned from time to time by the State Government or the Commandant General."

11. It is specifically stated in the petition which has not been denied that about 1341 posts have been sanctioned for the entire State including the higher officers (Commandant General) and lower ranks (Constables, Ward boy, Sweeper etc.). To overcome this shortage of manpower, apart from sanctioned permanent staff, since inception of department of home security, the respondents have adopted method of recruiting persons in the name of volunteers and the same are termed as "volunteer home guards". These so called volunteer/contractual home guards are paid remuneration on daily rated basis to be fixed by the State Government. In each and every district, the persons who apply as such and are found eligible as per the provisions of Rules of 1962 are appointed as Volunteer Constables (Home Guard) for a period of five years, which is renewed after 05 years depending on their merit. Sometimes, it is renewed for less than 05 years as well. They are paid remuneration of Rs. 320/- for every working day and for the rest period, nothing is being paid to the home guards to maintain their family. Often, a home guard works for a month then for the next two months, he is not assigned any duty.

12. The argument of the learned counsel for the respondents that the same is likely to cause financial strain has no merit in view of the fact that it is a welfare State and the State has to act as a model employer. The State is duty bound to provide salary sufficient to make both ends meet.

13. While dealing with similar argument of the learned counsel for the respondents that they are not regularly deployed and called for duties as and when their services are required, the Apex Court in the case of Grah Rakshak, Home Guards Wel. Asso. (supra) granted minimum pay scale to the appellants in the said case, to individuals who were Home Guards of States of Himachal Pradesh, Punjab and National Capital of Territory of Delhi. While granting the minimum of the pay to which the police personnel of the State is entitled, the Apex Court held in Para 21 and 22 as under:-

"21. It is not the case of the State Government that enrollment/appointments of the Home Guards were backdoor engagement and illegal made in violation of Articles 14 and 16 of the Constitution of India. Therefore, the decision of this Court in Umadevi (3) is not applicable in the case of the appellants-Home Guards. Admittedly, there is no concept of wages. These volunteers are paid duty allowance and other allowances to which they are entitled. There is nothing on the record to suggest that they performed duties through out the year. On the other hand, it is the specific case of the State that as and when there is requirement they were called for duty and otherwise they remained in their homes. Therefore, in absence of any details about continuity of service, month to month basis or year to year basis, the duties and responsibilities performed by them through out the year can neither be equated with that of police personnel.

22. In view of the discussion made above, no relief can be granted to the appellants either regularization of services or grant of regular appointments hence no interference is called for against the judgments passed by the Himachal Pradesh, Punjab and Delhi High Courts. However, taking into consideration the fact that Home Guards are used during the emergency and for other purposes and at the time of their duty they are empowered with the power of police personnel, we are of the view that the State Government should pay them the duty allowance at such rates, total of which 30 days (a month) comes to minimum of the pay to which the police personnel of State are entitled. It is expected that the State Governments shall pass appropriate orders in terms of aforesaid observation on an early date preferably within three months."

14. As stated above, learned counsel for the petitioners has restricted his prayer only to the extent of grant of the salary at the minimum/basic of the pay prescribed for the lowest post i.e. Constable as granted in the case of Home Guard Sainik Evam Parivar Kalyan Sangh (supra).

15. I find that to the said extent, the matter is squarely covered by the ratio of the judgments rendered by the learned Single Bench of the Madhya Pradesh High Court in the case of Home Guard Sainik Evam Parivar Kalyan Sangh (supra) as well as Apex Court in the case of Pantha Chatterjee (supra) and Grah Rakshak, Home Guards Wel. Asso. (supra).

16. In view of the above, no direction to either regularize the services of the petitioners or grant of regular appointment can be issued. However, the petitioners working in the Home Guard Department shall be granted salary at the minimum of the pay prescribed for the post of Constable in the Police Department without any running pay scale, allowance etc. and the said benefit shall be extended to the petitioners w.e.f. 01.03.2015. The petitioners would be paid the aforesaid amount with revision of basic pay, if any, in the corresponding police department from time to time. Appropriate order to the said effect will be passed within one month.

17. All the aforesaid writ petitions stand disposed of as above.