

(1995) 05 AHC CK 0018
In the Allahabad High Court
Case No : C.M.W.P. No. 12718 of 1995

Kumari Shanti Sharma

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 17-05-1995

Acts Referred:

Constitution of India, 1950 — Article 226, 311
Penal Code, 1860 (IPC) — Section 21
Uttar Pradesh Home Guards Act, 1963 — Section 10, 11(1)

Citation : (1995) 2 UPLBEC 1254

Hon'ble Judges : R.R.K. Trivedi, J

Bench : Single Bench

Advocate : G.K. Singh and R.N. Singh, for the Appellant;

Final Decision : Dismissed

Judgement

R.R.K. Trivedi, J.—Heard learned Counsel for Petitioner and learned standing counsel. Both the learned Counsel have agreed that this petition may be decided finally at this stage.

2. The short controversy raised in this petition is about the age of superannuation of the Petitioner who has been serving as Company Commander in Home Guards at Hardwar. The Petitioner was served a letter dated 27.4.1995 communicating that she will attain the age of superannuation on 2.5.1995 and from 3.5.1995 she will be relieved from the post in view of the Government Order dated 16.7.1990. Aggrieved by this order, the Petitioner has approached this Court Under Article 226 of the Constitution.

3. Learned Counsel for Petitioner has submitted that Petitioner has been holding a civil post and she, as such, was a Government servant and is entitled to continue on the post up to the age of 58 years which is the age of superannuation normally for all the Government servants. The contention of learned Counsel is not acceptable in view of the provisions contained in Section 10 of Uttar Pradesh Home Guards Adhiniyam, 1963. Section 10 is being

reproduced below:

10. Home Guards to be public servants but not civil servants: A home guard acting in the discharge of his function under this Act shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code.

Explanation: A home guard shall not be deemed to be a holder of a civil post merely by reason of his enrolment as home guard.

4. As clear from the Explanation, a home guard cannot be deemed to be holder of a civil post merely by reason of his enrolment as home guard. The constitution of this organisation was based on the voluntary offer of services by persons from all walks of life. Members of the home guards could be employees of other institutions, Industries, departments or even a civilian earning his livelihood by doing any private work or vocation. They could offer their services on voluntary basis against nominal payments. Considering the composition of the organisation, mode of enrolment and nature of services rendered, the contention of the learned Counsel that members of the home guards should also have a date of retirement like other Government servants cannot be accepted. They are not required to serve regularly like other Government servants. They are simply enrolled as home guards and are called for duty whenever required. They cannot be equated with other Government servants who are deemed to be in service all the time. It appears that by general practice adopted in this organisation, the members are not allowed to remain in the roll of members after attaining the age of 55 years. If this age has been adopted by practice invariably for all members for cessation of the membership, in my opinion, there is no illegality involved. The Petitioner who volunteered herself to Join the organisation as home guard has no legal right which may be enforced through court to keep her in service up to a particular age.

5. Learned Counsel for Petitioner, however, submitted that this Court in case of *Bibhutl Harayan Singh v. State and Ors.* reported in 1986 UPLBEC 1130, has held that the home guards hold a civil post under the Government. I have considered the judgment and its ratio, which in my opinion, cannot be applied in the present case as the controversy before the Court was altogether different with regard to applicability of Article 311 of the Constitution. While resolving that question, Court after taking into account various factors held that the protection provided Under Article 311 of the Constitution may be extended to home guards also. In my opinion, extending protection of Article 311 is altogether a different question than the claim to continue in service up to a certain age made in the present writ petition. A Division Bench of this Court in case of *Ghulam Mohd and Ors. v. State of Uttar Pradesh and others* in Civil Misc. Writ Petitions Nos. 29824 of 1992 and 27685 of 1992 decided on 23.9.1992 has held that there is no provision under which the home guard can compel the Government or its officers to continue him on duty even though the period of three years specified in Sub-section (1) of Section 11 has expired. The contention that the home guards hold a civil post was repelled by the Division Bench relying on Section 10 of the Act. Similar view

was expressed by learned single Judge in case of Ravindra Prasad Upadhyaya v. State of U.P. and Ors. vide judgment dated 20.5.1994. I am in respectful agreement with the aforesaid judgment of this Court.

6. For the reasons stated above, the contention of the learned Counsel for Petitioner cannot be accepted. The order does not suffer from any illegality. The petition has no merit and is accordingly rejected.