
(2008) 12 RAJ CK 0011
In the Rajasthan High Court

Loon Singh and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 03-12-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2009) 4 RLW 3567

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Gopal Krishan Vyas, J.—All these four writ petitions involve common question for consideration and the controversy involved in all these matters is identical. Therefore, all these writ petitions are decided by common judgment. For the sake of convenience, however, facts and pleadings in S.B. Civil Writ Petition No. 5677/2006, Loon Singh and Ors. v. State of Rajasthan and Ors. are taken

2. This writ petition has been filed by 658 members of the Border Wing Home Guards praying for common relief that the respondents may be directed to grant them parity in all respects in terms and conditions of employment of petitioners with that of permanent whole time Border Wing of Home Guards in Rajasthan. It is further prayed that the respondents may be directed to grant all benefits of the Government servants including fixation of pay, and benefits of provident fund, gratuity and all retirement benefits as well as all sons of government allowances, leave incentives and usual increments, etc. and, so also, to pay all the arrears of pay and all other benefits from the respective date of joining. It is also prayed that the respondents be directed to absorb all the petitioners as permanent Border Wing Home Guards with all consequential benefits.

3. Facts of the case indicated in the writ petition show that all these petitioners were appointed and joined the service of Rajasthan Border Wing Home Guards Rajasthan from time to time during the period from 1973 to 2006. Schedule-A

has been appended to the writ petition showing the date of appointment and joining of the petitioners. As per the petitioners, there are four rank categories of the Border Wing Home Guards viz., Guardsman, Lance Naik, Naik and Platoon Hawaldar and Border Wing Home Guards receive a fixed monthly pay of Rs. 3050 + DA + WA for Platoon Hawaldar (SGT)/Naik (CPL) and Rs. 2750 + DA + WA for Lance Naik (LCPL)/Guardsmen, Various training sessions are prescribed to be conducted on yearly basis by the Department/Army/BSF and this training is said to be at par with the training received by the Army and BSF personnel.

4. After completion of the training, the petitioners were appointed as Border Wing Home Guards and have continued on call as such with promotion granted as and when due from time to time. As per the petitioners, they are principally performing their functions as an auxiliary force to the Army and BSF. It is further stated in the writ petition that Home Guards are mainly performing functions of internal border security, local security, prevention of infiltration and check pilferage across the border. Some times they have been deployed in election duties across the country like any other para-military force: It is specifically stated that the Rajasthan Border Wing Home Guards have taken part in major army operations like 1971 Indo-Pak war, Operation Vijay (1999 Kargil War) and were deployed along with army in Operation Parakram in 2002 - 2003 for 17 months.

5. It is pointed out in the writ petition by the petitioners that call up of Border Wing Home Guards by the Army is governed by MHA letter No. 1-36012/1/80 - DGCD (HG) dated 27.05.1982 and letter No. 1-36012/1/80 - DGCD (HG) dated 19.03.1983. Similarly, the call up by the BSF is governed by MHA letter No. 111-14011/6/79 - DGCD (HG) dated 07.06.1979 and letter No. 111-14011/6/79 - DGCD (HG) dated 05.08.1980. According to the petitioners they have been rendering services at the Indo-Pak Border and are on call all through out the year and have to be on duty for days and months as and when called.

6. The grouse expressed by the petitioners is that they have got no casual leave or medical leave. Neither do they get leaves for festivals, Sunday, Second Saturday or fourth Saturday. They have got no travelling allowance, no Provident Fund, no Gratuity, etc. The retirement age of the Force is 55 years. These Boarder Wing Home Guards face a very bleak future once they retire from the force as they get no pension or other retirement benefits. The petitioners as members of the Border Wing Home Guards have got only one set of uniform and have no adequate winter clothing to face the harsh winters of the desert in Rajasthan unlike the Jawans of BSF who have been given full protective clothing. The petitioners have to pass sleepless nights during duty hours and have to suffer mentally and physically each and every moment. For them, it is nothing but an unending mental torture to which the petitioners have been subjected to by the respondents.

7. Agony of the petitioners is that if a Border Wing Home Guard dies on account of any accident during his duty hours, nothing is paid by way of compensation to

his dependants. There is no Provident Fund, no gratuity, no pension in any way. In fact the petitioners have to forgo their salary for a solitary day if they are absent on account of illness and they are not given any leave with pay even if they lose any family member. In this view of the matter, no benefits are allowed to the Border Wing Home Guards even though the State has been engaging them regularly.

8. Petitioners contend that they have been rendering similar services as rendered by para military forces but for the last 40 years there has been a serious discrimination between the employees of para military forces and Border Wing Home Guards as well as permanent employees of Border Wing Home Guards which is clearly violative of Articles 14 and 16 of the Constitution of India. Contention is raised by the petitioners in the writ petition that the rule prohibiting arbitrary action by Government must apply equally in this case also when the Government is dealing with citizens whether by way of giving jobs or entering into contracts or otherwise and it cannot act arbitrarily and enter into relationship on an unreasonable basis, therefore, the Government is required to deal with the matter without discrimination; but, except the Border Wing Home Guards the Government is dealing with all other sectors with equity while denying the same treatment to the petitioners which is totally arbitrary and illegal action and the same is not in conformity with the principles of natural justice.

9. Argument of the petitioners is that Article 42 of the Constitution of India provides that the State shall ensure just and humane conditions of work and work environment. Further, Article 43 directs the State to ensure proper wage conditions and secure the same by suitable legislation or economic organization or in any other way. Even though the petitioners have rendered services and remained on call uninterruptedly for a pretty long time but they are being given a step-motherly treatment by the State and they have become a laughing stock in the eyes of their counter-parts in the BSF and Army and other organisations of Government of Rajasthan, therefore, the action of the respondent State is in blatant violation of the principles of natural justice, fair play and equity so as to deny the privileges and benefits of the government service to the petitioners while taking work from them on call during the 24 hours of the day throughout the year without a single paid holiday.

10. It is submitted by the petitioners that the petitioners being Border Wing Home Guards are holders of civil posts within the meaning of Article 311 of the Constitution of India, therefore, they are entitled to receive all facilities and benefits of service which are available to other holders of the civil posts and they cannot be excluded from the enjoyment of service benefits by discrimination based on no rationale. It is contended on behalf of the petitioners that the similarly situated Border Wing Home Guards of other States have been regularized pursuant to orders of the respective High Courts and finally it has been confirmed by the Hon''ble Supreme Court of India vide its judgment dated

07.07.2003 in the the case of State of West Bengal and Others Vs. Pantha Chatterjee and Others, On similar lines, other High Courts such as High Court of Gujarat gave relief and, therefore, relief granted the High Court of Calcutta and affirmed by the Hon"ble Supreme Court ought to be granted to the petitioners.

11. In the above facts and circumstances, the petitioners made a representation to the respondent on 06.06.2006 and also sent a reminder on 17.07.2006, however, neither any response was made by the State nor anything has been done by the respondents to ease the difficulties faced by the petitioners. It is urged that unless the respondents are directed to perform their legal statutory duties the petitioners will suffer irreparable loss and injury which cannot be compensated in terms of money, therefore, due to the irrational and discriminatory attitude of the respondents and non-performance of the statutory duties in allowing the various benefits to the petitioners as permanent Border Wing Home Guards and other benefits subsequent thereto, the petitioners are filing the present writ petition seeking direction to the State.

12. It is contended by learned Counsel for the petitioners that the petitioners have to render 24 hours" on call service on the Indo-Pak border without having any facility of leave, either casual or medical during the tenure of their services and the petitioners have no defined duty hours, no fixed length of service, no Provident Fund benefit, no pension nor any retiral benefits which is arbitrary and in violation of the fundamental rights of the petitioners under Articles 14, 21 and 19(1)(g) of the Constitution of India. It is vehemently argued on behalf of the petitioners that as per various government notifications the services of the petitioners are required to be confirmed, regularized and made permanent as they have completed continuous services for more than two years after their initial appointment.

13. Learned Counsel for the petitioners urged that the principle of reasonableness and rationality is an essential element of equality as projected by Article 14 and accordingly the State action either under the authority of law or in exercise of executive power must be guided by the same. It is, therefore, argued by learned Counsel for the petitioners that the entire action of the State to continuously deny equality to the petitioners as permanent members of the Border Wing Home Guards is arbitrary, illegal, malafide, harassing and without justification and the petitioners are entitled to be regularized with all consequential benefits from the date of their joining.

14. Learned Counsel for the petitioners forcefully urged that denial of the rights for regularization of service and consequential benefits to the petitioners is in violation of their fundamental rights guaranteed under the Constitution of India and also in violation of the well settled principles laid down by the Hon"ble Apex Court in the case of State of West Bengal and Others Vs. Pantha Chatterjee and Others, whereby the judgment passed by the Calcutta High Court finally adjudicating upon the controversy has been affirmed. Therefore, direction is required to be issued to the respondents to grant the same benefits to the

petitioners also.

15. Per contra, learned Counsel for the respondents vehemently argued that the petitioners are not entitled to be treated as civil servants or government employees because after the 1965 war between India and Pakistan, the situation necessitated to form a wing of volunteers, therefore, to ensure effective contribution of local in augmenting confidence of civic population Border Wing Home Guards was planned to be raised in the area along the border in Rajasthan and Punjab. It is submitted that while doing this exercise following points were taken into consideration:

(A) Rural Home Guards in close proximity to the Border had understandably become involved in the protection of villagers and, where warranted, in their evacuation, and had, as such, not responded to the call up notice. The response from Rural Home Guards living somewhat further back had, on the other hand, been very encouraging.

(B) There was need for a better organized, disciplined and trained Home Guards set up in the border areas which could be mobilized quickly for use within its own border district or even elsewhere when needed. But, these volunteers were to be kept totally free to pursue their vocation and day to day means of livelihood.

(C) There had been a demand from the BSF Organisation for assistance, which though most necessary could not be adequately provided from the existing Home Guards Organisation.

16. It is submitted by learned Counsel for the respondents that after due deliberation, it was agreed that bearing in mind the need for utmost economy there was necessity to form a Border Wing of the Home Guards in Punjab and Rajasthan with the following additional roles over and above those already laid down for the urban and rural Home Guards. As a result, four Border Battalions have been constituted in Rajasthan i.e., Jaisalmer, Bikaner, Barmer and Sriganganagar. The present writ petition is in relation to Barmer Battalion. For proper appreciation about the duties, which are required to be performed by permanent employees and the volunteers, the respondents have placed on record Schedule-R/A showing the data of the volunteers and regular permanent employees.

17. By way of filing reply, further it is pointed out that the writ petition filed by 658 persons is not maintainable because all the petitioners are not belonging to the same company and so also the schedule submitted by the petitioners in the writ petition manifestly shows that the petitioners have been enrolled on "various different dates and thus some of the petitioners were enrolled prior to ten years but some have not completed even two years and they have been included in the schedule and, upon perusal of the schedule, it is revealed that the petitioners are volunteers and they are required to perform duties as per the need of different departments of the State and/or Central Organizations. It is contended by learned Counsel for the respondents that some persons worked for couple of

days in a year and some have worked for 100 days. In this view of the matter, the factual aspect of the matter is different, therefore, joint writ petition is not maintainable in view of Rule 375 of the Rajasthan High Court Rules.

18. With regard to the judgment cited by the petitioners, it is submitted that facts of that case are altogether different because in the present writ petition prayer for granting benefits which are given to the regular employees has been made. But, in the case cited by the petitioner, the question was altogether different whether the persons who have worked for about 14 years continuously without any interruption should be treated to be at par with permanent employees because the nature and duties are the same as performed by the regular employees; meaning thereby, the facts of the case cited by the petitioner is entirely different, therefore, the petitioners have tried to mislead this Court and as such the writ petition may be dismissed.

19. It is also pointed out by the respondents that the petitioners are not employees but they are volunteers and they are not performing duties as regular employees in any regular pay scale, therefore, whenever need arises they are called otherwise they are free to do their professional/vocational activities.

20. In reply to the writ petition, the crux of the defence is that the judgment upon which the petitioners are seeking relief bears entirely different facts because, in that case, Home Guards were retained for 14 years in uninterrupted service and they worked continuously and thus their deployment continued for such long time and the same itself was against the scheme so much so that the Government of West Bengal had strongly observed that such persons who were working for such a long period continuously and uninterruptedly cannot be considered part-time workers but they were performing their duties like the permanent employees of Border Wing Home Guard. However, that position is not in existence in the present case and, therefore, in this view of the matter, the petitioners are volunteers and they have been enrolled as volunteers, therefore, they cannot seek parity with regular employees and the volunteers cannot be treated as permanent employees. It is therefore contended that the claim of the petitioners is totally baseless.

21. Further, it is submitted that as per the petitioners also, it is admitted position of the case that upon call they are required to work and continuously they are not required to work. The schedule appended by the petitioners itself shows that certain persons were enrolled 20 years ago whereas some of the petitioners have been enrolled only for one year. In this view of the matter, the petitioners cannot demand parity because after the period of engagement they are free to work for their own profession and vocation and earn their livelihood, therefore, the claim of the petitioners in this writ petition is totally unfounded and the reason behind their engagement is altogether different, that too, on the basis of engagement as volunteers. Therefore, it is totally incorrect to treat regular employees as volunteers like the petitioners. The petitioners are required to work on call basis and, that too, for some days in a year and as such volunteers are not entitled for

any retiral benefit. However, certain benefits are extended to these volunteers such as when a volunteer dies on duty then an ex gratia payment of Rs. 60,000/- is made. Similarly, they are beneficiary of Group Accident Insurance coverage for Rs. 1,00,000/- apart from the fact that Rs. 25,000/- are also given from the Welfare Fund. They are, however, not regular government employees being only volunteers and, therefore, the allegation of violation of Articles 14, 16 and 19(1) (g) of the Constitution of India is totally unfounded.

22. With regard to the notification which is cited by the petitioners for the purpose of seeking regularization and confirmation, it is specifically submitted in the reply that no such claim of regularization and confirmation can be granted as claimed by the petitioner while showing the notifications because it has been very specifically observed by the Hon'ble Supreme Court that if the appointment has not been granted in employment in law then no claim can be considered. Admittedly the petitioners were not engaged or appointed under any service rules and they are volunteers governed by different set of rules than the service rules. As such the petitioner who were enrolled as volunteers with the motto of ^fu"dke Isok^ in the Border Wing Home Guards and their rights and duties are different, therefore, there is no question of granting relief as claimed by" the petitioners for regularization. The facts of State of West Bengal v. Pantha Chatterji and Ors. are altogether different, therefore, this writ petition deserves to be dismissed because it has no force of law.

23. Learned Counsel for the respondents at last invited attention of the Court towards a recent judgment reported in All India Service Law Journal, 2008, Vol. 1, in which, it is held that Home Guards is only auxiliary wing and the members of the same cannot be regularized, therefore, in view of the recent pronouncement of the Hon'ble Supreme Court also, the petitioners cannot claim the benefit of regularization even though meage of retirement of Home Guards may be fixed as 55 years they are volunteers and, accordingly, this writ petition deserves to be dismissed.

24. In this case, learned Counsel for the respondents has raised a preliminary objection that joint writ petition filed by 658 persons is not maintainable because the dates of empanelment of the petitioners are different and they are claiming parity and other benefits for different posts, therefore, this joint writ petition is not maintainable.

25. In my opinion, in view of Rule 375 of the Rajasthan High Court Rules when all the petitioners are making the same prayer with regard to their claim then the writ petition cannot be thrown away on the basis of the objection with regard to filing joint writ petition. In this case although the dates of empanelment of all the petitioners are different but, admittedly, all these petitioners were appointed under the Rajasthan Home Guard Rules, 1962 and the said rules were not framed under Article 309 of the Constitution of India nor they were appointed on any civil posts being empanelled for voluntary service as per the Rules of 1962. In this case, the prayer of the petitioners is mechanically the same, therefore,

the preliminary objection raised by the respondents cannot be treated to be an objection worth consideration. Hence, the preliminary objection raised by the respondents is rejected.

26. After hearing both the parties and perusing the record of the case, it is abundantly clear that all the petitioners were not appointed under any service rules framed under proviso to Article 309 of the Constitution of India. Admittedly, petitioners and like persons were empaneled on various posts under the Rajasthan Home Guards Act, 1963 and Rajasthan Home Guards Rules, 1962. The petitioners are claiming the right for parity in employment with permanent employees of Border Wing viz., Guard-man, Lance Nayak, Nayak and Platoon Hawaldar and prayed that they may be allowed the regular pay-scale prescribed for the said post and to grant permanent status in all respects in terms and conditions of employment as permanent whole time Boarder Wing of Home Guards. The claim of the petitioners is based on the fact that Border Wing Home Guards of Rajasthan have taken part in major Army operations like 1971 Indo-Pak War, Operation Vijay (Kargil War), Operation Parakram etc. and have been deployed alongwith the Army in Operation Pokaran for 17 months in 2002-2003 and, further, they were called up by the Army many a time to perform the duties, therefore, they are entitled to all the service benefits which are available to the regular Border Wing Home Guard appointees. The petitioners are not getting any casual leave or medical leave nor they get leave for festivals, Sundays or Saturdays and likewise they got no travelling allowance, no provident nor any gratuity and their retirement age is 55 years; meaning thereby these Border Wing Home Guards face a very bleak future once they retire from the force as they get no pension nor any retiral benefits. The petitioners are claiming all the service benefits such as are available to the regular employees and their claim is based upon the judgment rendered by the Supreme Court in State of West Bengal and Others Vs. Pantha Chatterjee and Others,

27. I have perused the judgment dated 07.07.2003 delivered in Pantha Chatterjee's case (supra). In my opinion, the facts of the said case and the case on hand are altogether different and distinguishable because admittedly when appointment of the petitioners was not under any service rules and they were engaged as volunteers, then, in view of the judgment of the apex Court delivered in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, they cannot claim any regularisation on the said posts.

28. I am in full agreement with the argument of learned Counsel for the respondents that after the judgment of the Hon''ble Supreme Court in Uma Devi's case (supra), all the judgments earlier rendered by the apex Court in respect of regularization of services stood over-ruled. Para 54 of the judgment in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, is relevant. Meaning thereby, when the Hon''ble Supreme Court while considering "number of its earlier judgments on the question has declined to grant benefit of regularization even to ad hoc and temporary appointees who were not appointed

through any procedure laid down under the rules, then, the petitioners' case lies at a much lower pedestal than those persons also. Therefore, there is no question of issuing any direction to the respondents for granting the benefit of regularization or absorption who are admittedly appointed as volunteers by the Government under the Rajasthan Home Guards Act, 1963 and Rajasthan Home Guards Rules, 1962.

29. In this case, the writ petition has been filed by 658 persons. Of course some persons are working for more than 15 years and some for one year but, for the purpose of direction, nature of service is required to be seen. In this case, it is clearly revealed that the petitioners were not appointed under any service rules; and, so also, they were engaged as volunteers and deployed with the Border Security Force and they are not required to work regularly and their voluntary service can be utilized after empaneling as and when their voluntary service is required. Therefore, the petitioners cannot treat themselves at par with the regular appointees nor they can claim for grant of parity in all respects with permanent employees appointed under the service Rules framed under proviso to Article 309 of the Constitution of India on the posts. The petitioners are required to be governed as per the terms and conditions of the relevant rules under which they were provided appointment as such.

30. According to the rules, for voluntary service by the Home Guards certain benefits are available under the rules. In the event of death of a volunteer his legal heirs are entitled to receive a sum of Rs. 60,000/- ex gratia and, so also, Rs. 1,00,000/-. Apart from the above, Rs. 25,000/- are also given through welfare fund. Therefore, for rendering voluntary service, the petitioners were empaneled as per the Home Guard rules. Therefore, in view of the judgment in Uma Devi's case, no direction for regularization in service of these Home Guard volunteers can be given by this Court nor any order for grant of regular pay-scale can be made.

31. The contention of the petitioners that their case is squarely covered by the judgment in Pantha Chatterjee's case is not tenable because in view of the judgment in Uma Devi's case wherein the Supreme Court has categorically held that even in respect of temporary/urgent temporary appointments made under the service rules without following procedure are not entitled to regularization even if they have worked for long period. Here, in this case, the petitioners' claim is for treating them as government employees and granting them parity in all respects with the permanent employees. Such relief cannot be granted in view of adjudication made by the Apex Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, wherein following directions were given:

53. One aspect needs to be clarified. There may be cases of irregular appointments (not illegal appointments) as explained in S.V. Narayanappa, R.N. Nanjundappa and B.N. Nagarajan and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the

employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within a six months from this date. We also clarify that regularization, if any already made, but no sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.

54. It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents.

55. In cases relating to service in the commercial taxes department, the High Court has directed that those engaged on daily wages, be paid wages equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively appointed. The objection taken was to the direction for payment from the dates of engagement. We find that the High Court had clearly gone wrong in directing that these employees be paid salary equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively engaged or appointed. It was not open to the High Court to impose such an obligation on the State when the very question before the High Court in the case was whether these employees were entitled to have equal pay for equal work so called and were entitled to any other benefit. They had also been engaged in the teeth of directions not to do so. We are, therefore, of the view that, at best, the Division Bench of the High Court should have directed that wages equal to the salary that are being paid to regular employees be paid to these daily wage employees with effect from the date of its judgment. Hence, that part of the direction of the Division Bench is modified and it is directed that these daily wage earners be paid wages equal to the salary at the lowest grade of employees of their cadre in the Commercial Taxes Department in government service, from the date of the judgment of the Division Bench of the High Court. Since, they are only daily wage earners, there would be no question of other allowances being paid to them. In view of our conclusion, that Courts are not expected to issue directions for making such persons permanent in service, we set aside that part of the direction of the High Court directing the Government to

consider their cases for regularization. We also notice that the High Court has not adverted to the aspect as to whether it was regularization or it was giving permanency that was being directed by the High Court. In such a situation, the direction in that regard will stand deleted and the appeals filed by the State would stand allowed to that extent. If sanctioned posts are vacant (they are said to be vacant) the State will take immediate steps for filling those posts by a regular process of selection. But when regular recruitment is undertaken, the respondents in C.A. No. 3595-3612 and those in the Commercial Taxes Department similarly situated, will be allowed to compete, waiving the age restriction imposed for the recruitment and giving some weightage for their having been engaged for work in the Department for a significant period of time. That would be the extent of the exercise of power by this Court under Article 142 of the Constitution to do justice to them.

32. In the case of Uma Devi (supra), the Constitution Bench of the Hon'ble Supreme Court has completely imposed ban upon illegal recruitment or recruitments made contrary to the rules. The Constitution Bench of the Supreme Court while considering large number of cases has finally adjudicated that mere continuance in service on urgent temporary basis or on ad hoc basis or on daily-rated basis cannot be a ground for regularizing the services of any employee who was appointed without following the procedure of law. The only relaxation has been granted in para 53 of the said judgment. In para 53, concession has been granted in respect of those employees who rendered services for ten years or more without the intervention of the orders of the Court or Tribunals and they were held entitled to be given one time benefit for regularization and, for that purpose, it has been held that the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the Courts or of Tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed.

33. In this case, first of all, these petitioners were not appointed under any service rules framed under Article 309 of the Constitution of India. The admitted position in the case of the petitioners is that they were appointed under the Rajasthan Home Guards Rules 1962. According to Rule 8 of the said rules, the term of empanelment of a member of the Home Guards is 5 years and the said term was to be extended as per the satisfaction of the Home Guards Department and a Home Guard is held entitled for re-appointment also; meaning thereby, the appointment of Home Guards is not under any service rules nor they were given any status of civil servants. Functions and duties of the Home Guards are also prescribed under Rule 17 according to which members of Home Guards are required to help in maintaining law and order as an auxiliary force to the police or para military forces for meeting emergencies like floods, fires, famine, etc. and for civil defence purposes.

34. It is thus clear that voluntary service of Home Guards cannot be termed as an employment under the State; more so, as per the respondents their services can be utilized in emergent situation for the functions enumerated under Rule 17 of the Rules of 1962, therefore, the petitioners cannot claim parity in employment as permanent employees. So also, no service benefit can be granted to the petitioners in accordance with the Rules. In my opinion, the respondents are right in saying that empanelment of a Home Guard member cannot be termed as employment in service; more so, it can be defined as voluntary service for which selection is to be made in accordance with the Rules of 1962 by the State to take voluntary services of these Home Guards.

35. In a recent judgment in the case of State of Manipur and Anr. v. Ksh. Moirangningthou Singh and Ors. reported in 2008(1) S.L.J. 1, the Supreme Court has categorically held that the Home Guards were meant to be a reserve force which was to be utilized in emergency but it was not a service like police, para military force or Army and there is no right in a member of Home Guards to continue till the age of 55 years. In the Rajasthan Home Guards Rules also, similar provisions are there. So also, after the judgment of the apex Court in Uma Devi's case (supra), rendered by the Constitution Bench, which has been followed in the subsequent judgment in State of Manipur and Anr. v. Ks. Moirangningthou Singh and Ors. is no applicability of the ratio laid down in Pantha Chatterjee's case. Virtually, in view of the observations made in para 54 in the judgment of Uma Devi's case, the Constitution Bench has expressly overruled the adjudication so made in Pantha Chatterjee's case because the Hon'ble Supreme Court has specifically observed that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents. The apex Court has thus given final verdict that even those persons who were given urgent temporary appointments or temporary appointments or casual employment under the rules cannot be regularized merely because they were allowed to continue as such in the service. The only relaxation is granted in para 53 of the said judgment with certain restrictions which are as follows:

- i. if an employee continues for more than 10 to 15 years and appointed under the rules on urgent temporary basis;
- ii. if sanctioned post is in existence;
- iii. If such continuance is not covered under orders of the Court or Tribunal;
- iv. as one time regularization scheme.

36. In this view of the matter, the Constitution Bench of the Apex Court gave specific direction not to regularize the services of even those employees appointed under the rules, therefore, in the present case, the petitioners who were admittedly not appointed under any service rules against sanctioned posts cannot be given any parity for the purpose of permanent status of an employee of the State. Judgment in the case of Uma Devi was further followed in the case

of State of Manipur and Anr. v. Ksh. Moirangningthou Singh and Ors. (supra), in which, the Supreme Court clearly observed as follows:

10. A perusal of the provisions of the Home Guards Act and Rules show that the Home Guards was meant to be a reserve force which was to be utilized in emergencies, but it was not a service like the police, para military force, or army, and there is no right in a member to continue till the age of 55 years. We approve the view taken by the Delhi High Court in Rajesh Mishra and Others Vs. Govt. of NCT of Delhi and Others,

11. The initial appointment is for 3 years after which it is at the discretion of the Commandant (subject to approval of the Commandant General) to re-appoint a member of the Home Guards, or not.

12. The concept of Home Guards was of a voluntary citizen force as auxiliary to the police for maintaining law and order and for meeting emergencies like floods, fires, famine etc., and for civil defence.

13. For the reasons given above these appeals are allowed and the impugned judgment of the Division Bench as well as of the learned Single Judge are set aside and the writ petitions filed in the Guwahati High Court are dismissed. There shall be no order as to costs.

14. Before parting with this case, we would like to observe that the Home Guards Act in [several States appears to be misused. Hence, the Central Government may consider not releasing funds for the Home Guards in a State where the provisions of the Act are not being strictly followed.

37. Besides, the prayer clause of the writ petition itself reveals that the petitioners are seeking direction for parity of their engagement with the regular employees; meaning thereby, they are themselves admitting that they were engaged as volunteers and their services are voluntary service which cannot be treated to be any employment and, at the time of such engagement, with open eyes, they have accepted the same, therefore, after accepting such engagement for voluntary service they cannot claim regularization even after serving for long. In that view of the matter, the judgment cited by learned Counsel for the petitioners in Pantha Chatterjee's case (supra) is totally inapplicable to the facts and circumstances of the present case.

38. Accordingly, the writ petition is dismissed. There shall, however, be no order as to costs.