

(2000) 07 MP CK 0022
In the Madhya Pradesh High Court
Case No : Writ Petition No. 3651/99

Punpratap Singh and Another	Vs	APPELLANT
State of M.P. and Others		RESPONDENT

Date of Decision : 12-07-2000

Acts Referred:

Madhya Pradesh (Central Provinces and Berar) Home Guards Rules, 1947 — Rule 4, 5, 5(3), 5(4)
Madhya Pradesh Home Guards Act, 1947 — Section 10, 14, 14(2), 4, 7(2)

Citation : (2000) ILR (MP) 1090 : (2001) 2 JLJ 11 : (2000) 4 MPHT 398 : (2000) 3 MPLJ 632

Hon'ble Judges : Bhawani Singh, C.J.; A.K. Mishra, J

Bench : Division Bench

Advocate : S.A. Wakil, for the Appellant; Chandana Mukherjee, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Bhawani Singh, C.J.

Petitioners have by this petition challenged the Order of the State Administrative Tribunal dated November 2, 1998 holding that the Tribunal has no jurisdiction to entertain the petition.

The petitioners are Home Guard Sainiks. They claim that they are holders of civil post under the State; therefore, the State Administrative Tribunal has jurisdiction to entertain the dispute raised by them. The submission is rested on the ground that their appointment is made under statutory rules formulated by the State Government. There existed master and servant relationship between Home Guards and the State which can deal with them from time to time as per provisions of law. The contention of the petitioners did not find favour with the Tribunal resulting in the dismissal of their application.

Shri Syed Abdul Wakil, learned counsel for the petitioners has advanced the

same submissions which were raised before the Tribunal. Reliance is placed on some decisions of Supreme Court, namely Shivnandan Sharma Vs. The Punjab National Bank Ltd., ; Piyare Lal Adishwar Lal Vs. The Commissioner of Income Tax, Delhi, ; Gazula Dasaratha Rama Rao Vs. The State of Andhra Pradesh and Others, ; State of Uttar Pradesh and Another Vs. Audh Narain Singh and Another, ; The Superintendent of Post Offices and Others Vs. P.K. Rajamma, ; State of Gujarat and Others Vs. Raman Lal Keshav Lal and Others, ; and R.N.A. Britto Vs. Chief Executive Officer and others, .

Miss Chandana Mukherjee, learned counsel for the State submitted that the petitioners are not holders of civil post. Home Guard is voluntary organisation where the petitioners are enrolled for some time against honorarium and are replaced by others after some time. Simply because they are appointed Home Guards under the statutory rules and are controlled thereunder by the State Government, they do not come within the definition of civil service of the State. Two decisions, one of Apex Court - Union of India and Another Vs. Chotelal and Others, and the other of this Court reported in AIR 1962 M.P. 51 (Roopsingh v. Sanchalak Panchayat, etc.) are cited in support of the submissions.

With a view to understand the matter closely and clearly, it is necessary to refer to the Preamble and the Statement of Objects and Reasons to the Madhya Pradesh Home Guards Act, 1947 (hereafter for short, Home Guards Act) which read thus :

"Preamble.-- Whereas it is expedient to create a body of volunteers to supplement the Police Force and to assist in any general measure of public welfare in Madhya Pradesh; it is hereby enacted as follows :--

Statement of Objects and Reasons.-- Experience has shown that in real emergencies the ordinary police force is inadequate to deal effectively with the forces of disorder without fuller assistance and cooperation from the members of the public. The present unsettled conditions point to the vital necessity of securing such cooperation and a condition precedent is the inculcation of the habits of self-reliance and discipline and spirit of civic service among the public. This Bill is designed to meet this purpose. The "Home Guards" will be a purely volunteer force and will supplement the ordinary police, to be used in times of emergency for the purpose of maintaining Law and Order, the protection of the person and property of the citizen and public safety. To start with, the force will be raised in 14 places only, but it may be extended to other areas as necessity arises."

Therefore, it is abundantly clear from the Preamble and the Statement of Objects and Reasons, quoted above, that Home Guards is a body of volunteers to supplement the police force and to assist in any general measure of public welfare in the State. The need to create this body was that ordinary police force was inadequate to deal effectively with the forces of disorder in the absence of co-operation from the members of the public in emergencies. It is, in substance,

purely a voluntary force to supplement the ordinary police in times of emergency for maintaining law and order, protection of person and property of citizens and public safety.

Section 4 of the Home Guards Act deals with subordination and superintendence of Home Guards in the State. This provision envisages control by the State Government through Inspector General of Police in such manner and to such extent as may be prescribed. It shall have officers with defined designations at the higher level to be appointed by the State Government. Home Guards are appointed from out of willing persons possessing qualifications prescribed in such manner and by such authority as may be prescribed. Every Home Guard receives training and serves in the reserve, discharges such duties as may be prescribed and called upon to do. Section 8 of the Home Guards Act deals with discharge of officer and Home Guards on expiry of period of service or extended period of service in the reserve on the conditions as may be prescribed. Other penalties like dismissal can also be inflicted by the prescribed authority. u/s 10, they can be called for duties by the District Magistrate in cases of emergency and also by officers. u/s 14, the State Government is authorised to make rules for carrying out the purposes of the Home Guards Act which include the sphere covered by Section 14 (2) (c).

The Madhya Pradesh (Central Provinces and Berar) Home Guards Rules, 1947 (hereafter, for short, Home Guard Rules) apart from dealing with organisation, deals with qualifications and recruitment of Home Guards. A person who has qualification prescribed under Rule 4 is eligible for enrolment as a Nagar Sainik (Home Guard). Any person desirous of serving as Nagar Sainik (Home Guard) and possesses qualifications prescribed for recruitment can apply. The selection is by higher authorities as mentioned in Rule 5 of the Home Guard Rules. Sub-rule (3) of Rule 5 envisages that:

"(3) A Nagar Sainik (Home Guard) shall be discharged on completion of the period of his service in the reserve and may, at the discretion of the Senani (Commandant) in the case of other ranks, and of the Provincial Government on the recommendation of the Pradhan-Senani (Commandant-General) in the case of officers, be discharged on any of the following grounds, namely :--

- (i) physical unfitness;
- (ii) attainment of 41 years of age; or
- (iii) for special reasons, at his own request."

Sub-rule (4) of Rule 5 provides that:

"(4) Every person discharged from the Nagar Sena (Home Guards) shall be furnished by the competent authority with the certificate in Form B annexed to these rules."

The Home Guard is discharged on completion of the period of service in the

reserve and is furnished with certificate in Form B annexed to the Home Guard Rules. Exact period of service for Home Guard may be found in Sub-sections (2) and (2A) of Section 7 of the Home Guards Act which provide thus :

"(2) Subject to any rules made in this behalf a Home Guard may be required to undergo training for such period and in such manner as may be prescribed after which he shall serve as a Home Guard for a period of six months which period may be extended by the State Government to a total period of not more than twelve months if the State Government considers such extension necessary and shall thereafter serve in the reserve for a period of three years and while in the reserve shall be liable to be called out for duty at any time. (2A) The Commandant-General may with the written consent of a Home Guard, extend from time to time the period of service of such Home Guard in the reserve and thereupon such Home Guard shall serve in the reserve for a further period of three years and while in the reserve shall be liable to be called out for duty at any time."

It is stated that Home Guards do not enjoy a regular scale of pay nor are the Rules applicable to the civil service of the State apply to them. Simply because the voluntary force is constituted under statutory rules with control over them by the State and its officers, that would not go to demonstrate that they are holding civil posts under the State. The test is not only the relationship of master and servant but the actual nature of the post and the circumstances under which the same is held, are also relevant apart from other factors which are to be examined in each case for determining the exact nature of the post and the status of the incumbent. The decisions to which reference was made by learned counsel for the petitioners turn on their own facts and have no application to the facts of this case.

Learned counsel for the respondents brought to our notice Order of Apex Court dated 30-7-1991 passed in the case of Rameshwar Das Sharma and Ors. v. State of Punjab and Ors. (SLP Civil No. 12465 of 1990) dated 30-7-1991 which reads:

"Heard petitioner in person and learned counsel for the respondent. The counter affidavit indicates that the Home Guards who are ordinarily demobed Army personnel are employed on the basis of temporary need from time to time and in case they are called back to do work with arms in hands, they are paid at the rate of Rs. 30/-per day on the basis of eight hours" working during the day, or otherwise they are paid at the rate of Rs. 25/- per day. Petitioner, according to the respondent, being an employee under this system can not ask for regularisation. In such circumstances, we do not think that the petitioner is entitled to any relief. We have impressed upon learned counsel, however, to find out from the Home Guards Organisation, if any manner, the petitioner can be accommodated in a limited way.

The SLP and the interlocutory application are disposed of accordingly. No costs."

It is also pointed out that number of similar petitions have been dismissed by

this Court. Be that as it may, question before us is whether the Tribunal has rightly rejected the application preferred by the petitioners, on the ground of jurisdiction ? We answer this question in the affirmative for reasons stated above.

Consequently, the petition being without any merit is dismissed. There shall be no Order as to costs.