

**(2016) 07 AHC CK 0024**

**In the Allahabad High Court**

**Case No :** Civil Misc. Writ Petition No. 47479 of 2015

Ram Nath Gupta

APPELLANT

Vs

State of U.P.

RESPONDENT

**Date of Decision :** 08-07-2016

**Acts Referred:**

**Citation :** (2016) 7 ADJ 453 : (2016) 4 UPLBEC 3201

**Hon'ble Judges :** Devendra Kumar Upadhyaya, J.

**Bench :** Single Bench

**Advocate :** Shailesh Verma, Advocate, Vijay Gautam and Vinod Kumar Mishra, Advocates, P.N. Shukla, Advocate, for the Appellant; C.S.C, for the Respondent

**Final Decision :** Disposed Off

## Judgement

Devendra Kumar Upadhyaya, J.&mdash;Rejoinder affidavit filed in Writ-A No.47479 of 2015 is taken on record.

2. On an oral prayer made by the learned counsel for the petitioners, let petitioner no.1 of this writ petition be described as Home Guard No.0384.

3. Necessary amendment shall be incorporated by the learned counsel for the petitioners during course of the day.

4. Heard learned counsel for the petitioners and learned Standing Counsel for the State-respondents.

5. Since the issue which has been sought to be adjudicated by this Court in all these petitions is the same, with the consent of learned counsel for the parties, the Court proceeds to decide all these matters by the following common judgment and order.

6. For convenience Writ-A No.47479 of 2015, Ram Nath Gupta and others v. State of U.P. and others, shall be treated to be the leading writ petition.

7. All these petitions have been filed with the prayer to direct the State-

respondents to give the benefit to the petitioners of pay and other benefits equal in amount to the pay and other benefits which are admissible to police personnel in the light of the judgment and order dated 11.03.2015 rendered by Hon"ble Supreme Court in the case of Grah Rakshak, Home Guards Welfare Association v. State of H.P. and others, Civil Appeal No.2759 of 2015 arising out of SLP (C) No.12858 of 2009.

8. In some of the writ petitions yet another prayer has been made for regularising the services of the petitioners as a regular cadre of Home Guards.

9. In one of the writ petitions, the petitioners have prayed that they should be paid regular salary in place of honorarium which is otherwise being paid at present to the Home Guard volunteers.

10. This Court on 24.08.2015 passed an order requiring the learned Standing Counsel representing the State-respondents to seek instructions in the matter in the light of the observations made by Hon"ble Supreme Court in para 22 of the judgment in the case of Grah Rakshak, Home Guards Welfare Association v. State of H.P. and others (supra).

11. A counter affidavit was filed on 16.11.2015 by the Staterespondents, whereby a decision taken by an Expert Committee in its meeting held on 14.01.2013 has been annexed. The said Expert Committee in its meeting dated 14.01.2013 appears to have taken a decision for ensuring compliance of the order dated 16.04.2012 passed by this Court in Writ-A No.18839 of 2012, Shri Krishna @ Keshan Yadav & others v. State of U.P. and others.

12. The said Expert Committee was constituted by the State Government in terms of the order dated 16.04.2012, passed by this Court in the case of Shri Krishna @ Keshan Yadav & others v. State of U.P. and others, Writ A No.18839 of 2012. The aforesaid writ petition was filed by certain Home Guards alleging therein that they have been discharging practically the same duties as are required to be discharged by any other police constable and as such they are also entitled to be paid at least minimum of the salary, which is being paid to a regular constable of police force. It is in the background of the aforesaid facts pleaded by the petitioners of Writ -A No.18839 of 2012 that this Court by means of its order dated 16.04.2012 directed the State Government to constitute an Expert Committee and take decision qua the claim of the petitioners therein.

13. The minutes of meeting of the Expert Committee held on 14.01.2013 have been perused. The said Committee has concluded that the Home Guard volunteers discharge their functions as assistance to the regular police force and thus, it cannot be said that they perform the same duties as are being performed by the members of the regular police force. Referring to the provisions of Section 9 of the Uttar Pradesh Home Guards Adhiniyam, 1963, the Expert Committee has observed that a Home Guard can be required to serve as auxiliary to the police or to help the regular police in maintaining public order or internal security and further that if the Home Guards are required to perform the said duties only then

they will have the same powers, privileges and protection as a member of the police force appointed under any enactment for the time being in force.

14. The Committee has further observed that the said privileges will not be available to the Home Guard if he is assigned duties not as an auxiliary to the police force. Comparing the procedure for recruitment of a member of the police force with the procedure for engagement of Home Guards and educational qualification required therefor and also comparing the nature of training imparted to Home Guards and to the members of regular police force, the Expert Committee concluded that since the Home Guard volunteers are members of voluntary force and do not draw salary, as such they are not the employees of the State Government and hence, they are not entitled to be paid minimum of the salary or the pay which is admissible to a police constable who is member of regular police force.

15. This Court on a perusal of the counter affidavit, passed an order on 16.11.2015 with the observation that in the counter affidavit there is no mention as to what is the duty allowance being paid to the Home Guards and whether it conforms to the duty allowance as contemplated by Hon"ble Supreme Court in para 22 of the judgment in the case of Grah Rakshak, Home Guards Welfare Association v. State of H.P. and others, passed in Civil Appeal No. 2759 of 2015. The said order dated 16.11.2015, passed by this Court in this petition is quoted below:

"Counter affidavit filed on behalf of the State is taken on record.

Heard Sri Shailesh Verma, learned counsel for the petitioners and Sri Mata Prasad, learned Standing Counsel assisted by Sri Vikram Bahadur Yadav, learned Standing Counsel for the respondents.

In the counter affidavit there is no mention as to what is the duty allowance being paid to the Home Guards and whether it conforms to the duty allowance as contemplated by the Supreme Court in para 22 of the judgment in the case of Grah Rakshak, Home Guards Welfare Association v. State of Himachal Pradesh and others passed in Civil Appeal No. 2759 of 2015.

As prayed by the learned Standing counsel list on 24.11.2015."

16. After the aforesaid observations made by this Court in this case in its order dated 16.11.2015, State-respondents have filed another supplementary counter affidavit on 01.12.2015, wherein mention of the observations has been made by Hon"ble Supreme Court in para 22 of the judgment rendered in the case of Grah Rakshak, Home Guards Welfare Association v. State of H.P. and others (supra), has been made, however, it has been stated that since in terms of the provisions contained in Section 3 of the Home Guards Act, 1963, Home Guard is a volunteer force and since the said provision has not been amended till date and Home Guards serve as auxiliary to the police force when required and also function as an emergency force as such duty allowance of Rs.225 per day has been fixed

which is paid to the Home Guards throughout the State of U.P.

17. A perusal of the counter affidavit filed by the State-authorities dated 01.12.2015 reveals that main objection to the claim of the petitioners in respect of payment of duty allowance equal to that being paid to constables of police force is that the Home Guard is a voluntary force whereas the constables are working in the police force which is a regular police force hence, no parity can be granted to the Home Guard volunteers.

18. Having perused the aforesaid two counter affidavits filed by the State-authorities and having gone through the judgment of Hon''ble Supreme Court in the case of Grah Rakshak, Home Guards Welfare Association v. State of H.P. and others (supra), this Court is not convinced with the objections being taken by the State Government in so far as the same relate to payment of duty allowance at such rates, total of which thirty days (a month) comes to minimum of the pay to which the police constable of the State are entitled to.

19. Hon''ble Supreme Court in the aforementioned case of Grah Rakshak, Home Guards Welfare Association (supra) has traced the genesis of Home Guard organisation in India, according to which, Home Guard as a voluntary citizen organisation for local defence was raised in U.K. during Second World War. On similar lines in our country as well, Home Guards were raised in Bombay in the year 1946 to assist the police force in controlling civil disturbances and communal riots etc. Subsequently, the concept of a voluntary citizen's force as auxiliary to the police for maintenance of law and order and for meeting emergencies like floods, fires and famines etc. was adopted by several other States by different names.

20. Hon''ble Supreme Court has referred to the provisions relating to Home Guard organisation in various States including the State of Himachal Pradesh, Bombay, State of Punjab and National Capital of Delhi. The provisions relating to various enactments under which Home Guard organisation has been raised in different States have also been mentioned by Hon''ble Supreme Court in this judgment.

21. From a perusal of provisions contained in U.P. Home Guards Adhininyam, 1963 and rules framed thereunder, I am completely convinced that the Home Guard organisation in the State of U.P. is no different than the Home Guard organisation in the State of Himachal Pradesh.

22. The State legislature by passing U.P. Act No.XXIX of 1963 enacted U.P. Home Guards Act, 1963. Section 3 of the said Act provides as under:-

3. Constitution of Home Guards. - There shall be raised and maintained a volunteer force to be designated the Uttar Pradesh Home Guards, hereinafter called the Home Guards and it shall be constituted in the manner prescribed.

23. Function of Home Guards have been defined in Section 4 of the Act which is extracted herein below:-

4. Functions. - The Home Guards will have the following functions:-

(a) they will serve as auxiliary to the police, and, when required, help in maintaining public order and internal security;

(b) they will help the community in air raids, fires, floods, epidemics and other emergencies;

(c) they will function as an emergency force for such special tasks as may be prescribed;

(d) they will provide functional units for essential services; and

(e) they will perform such other duties relating to any measure of public welfare as may be prescribed.

24. Section 9 of the Act provides for powers, privileges and protection of Home Guards which runs as under:-

"9. Powers, privileges and protection of Home Guards. - (1) Subject to the provisions of this Act and the rules made thereunder, a home guard when called out under section 8 to serve as auxiliary to the police or to help in maintaining public order or internal security shall have the same powers, privileges and protection as a member of the police force appointed under any enactment for the time being in force, and shall, subject to such adaptations and modifications as may be made therein by the State Government by notification in the Gazette, be subject to the provisions of the Police Act, 1861 (Act V of 1861) and the rules or regulations made thereunder in the same manner and to the same extent as he would, if such home guard held a corresponding rank in the police force to the one he holds for the time being in the Home Guards.

(2) No prosecution shall be instituted against a home guard in respect of anything done or purporting to be done by him in the discharge of his duty as a home guard, except with the previous sanction of the District Magistrate having jurisdiction over the area in which the home guard was enrolled or in which the act was committed."

25. Section 10 of the Act provides that a Home Guard acting in discharge of his functions under the Act shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code. However, he will not be deemed to be a holder of a civil post. The Act even provides for certain penalties if a home-guard indulges into certain kinds of misconducts including desertion and act of cowardice or if he indulges into unwarranted personal violence to any person in his custody.

26. Looking into the nature of organisation and also looking into the nature of duties the home-guard performs, as has been elaborated by Hon'ble Supreme Court in the case of Grah Rakshak, Home Guards Welfare Association (supra) and as has been enumerated in the various provisions quoted herein above of U.P. Home Guards Act, 1963, I have no hesitation to hold that the petitioners are also

entitled to be given the benefit of the judgment of Hon''ble Supreme Court dated 11.03.2015 passed in the case of Grah Rakshak, Home Guards Welfare Association (supra). The reasons, which have been assigned by the State Government while filing the counter affidavits in this case and also the reasons given by the Expert Committee in its decision held on 14.01.2013, thus, run contrary to the reasons given by Hon''ble Supreme Court in the case of Grah Rakshak, Home Guards Welfare Association (supra) for issuing the direction to the State Governments, who were party therein, in relation to entitlement of the daily allowance to the Home Guards.

27. It is also noteworthy that Hon''ble Supreme Court has negated the prayer for regularisation of the services or grant of regular appointments to the Home Guards.

28. For the reasons given above and in view of the judgment of Hon''ble Supreme Court in the case of Grah Rakshak, Home Guards Welfare Association (supra), this bunch of writ petitions is disposed of with the following observations and directions:

(A) No relief to the petitioners for regularisation of their services or grant of regular appointments can be granted and hence, the prayer made in this respect in this bunch of writ petitions is declined.

As a corollary, the prayer made by some of the petitioners for grant of salary in the regular scale of pay is also rejected.

B. The State Government is directed to consider the claim of the petitioners and other Home Guards for grant of duty allowance at such rates, total of which, thirty days (a month) comes to minimum of the pay to which a police constable in the State Government is entitled to in terms of the directions issued by Hon''ble Supreme Court in the case of Grah Rakshak, Home Guards Welfare Association (supra). The State Government shall pass appropriate orders expeditiously, say within a period of three months from the date of production of certified copy of this order.

29. However, there will be no order as to costs.