

(2005) 02 AHC CK 0154

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 5980 of 2005

Ramesh Narayan Tripathi and Gaya Prasad Tiwari	APPELLANT
Vs	
State of U.P. and District Commandant Home Guards	RESPONDENT

Date of Decision : 22-02-2005

Acts Referred:

Constitution of India, 1950 — Article 311
Penal Code, 1860 (IPC) — Section 21
Uttar Pradesh Home Guards Act, 1963 — Section 10, 4, 7(2), 9

Citation : (2005) 5 AWC 4940 : (2005) 2 ESC 1057 : (2005) 105 FLR 906 :
(2005) 2 UPLBEC 1326

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : Ashok Pandey, for the Appellant; C.B. Yadav and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Sunil Ambwani, J.—Heard learned counsel for the petitioner and Sri C.B. Yadav, learned Chief Standing Counsel for respondents.

2. The petitioner is serving as a Home Guard. By this writ petition, he has prayed for quashing an order dated 31.1.2005 by which he is sought to be superannuated at the age of 58 years. Learned counsel for the petitioner submits that once the petitioner is called on duty, he holds a civil post. He has relied upon a Division Bench judgment of State of U.P. v. Dashrath Singh Parihar in Special Appeal No. 363 of 1997 decided on 26.8.2004, in which this Court had distinguished the Judgment in Riasat Ali v. State of U.P. and Ors. 2003(4) ESC (All), 1964 and held that when he is not enrolled u/s 7(2) of the Home Guard Act, 1963, a Home Guard can take up a private service and then he would obviously not be holding a civil post but when he was called on duty he holds a civil post and in that case explanation of Section 10 of the Act is not attracted. It was further held that in such circumstances, protection of Article 311 of the

Constitution of India is applicable to the petitioner.

3. In this case we are concerned with the applicability of Fundamental Rule 56 which has been amended by U.P. Fundamental Rules, 2002, and by which the age of superannuation of a Government Servant to which these rules apply has been extended to 60 years. Learned counsel for the petitioner has relied upon the interim order passed by me on 10.9.2002 in writ petition No. 37675 of 2002. After the decision in State of U.P. v. Dasharath Singh Parihar, the legal position has been more clarified. The Home Guards u/s 4 serving as auxiliary force to the police as and when required, for maintaining public order and internal security served under the superintendence and administration exercised by Commandant General. The Home Guards is a volunteer force and when not called for service can take up any private service. The powers, privileges and protection of Home Guards is maintained u/s 9 of the Act. Section 10 of the Act provides that the Home Guard acting in the discharge of his functions under the Act shall be deemed to be public servant within the meaning of Section 21 of the Indian Penal Code. The engagement of Home Guard under the U.P. Home Guards Act, 1963, is only part time. Any person either in private or in Government Service cannot be enrolled as Home Guard. He only gets an honorarium. The Act does not prescribe any retirement age. By a Government Order dated 6.11.1995, it is prescribed that a Home Guard shall not be engaged after he attains 58 years of age.

4. The expressions "Civil Post", "Public Servant" and "Government Servant" are well understood and have well defined attributes. It is not necessary that a person holding civil post is a Government Servant or that the protection, rights and privileges given to a public servant makes him a government servant. The Fundamental Rules do not apply to all the holders of civil post and public servants. These are as such not applicable to the petitioner as a Home Guard. The amendments made in Rule 56 are also not applicable to Home Guards giving the benefit of extension of service beyond 58 years.

5. The same view was taken by me in Surnam Singh v. State of U.P. (writ petition No. 32279 of 2004 decided on 13.8.2004 and Nandi Prasad v. State of U.P. (Civil Misc. Writ Petition No. 16093 of 2004 decided on 22.4.2004).

6. The writ petition is consequently dismissed.